M. Sunderamoorthy

Vs

State of Tamilnadu, (through Inspector of Police)

Criminal Appeal No. 818 of 1979

(V. Ramaswami I, Smt. M. S. Fathima Beevi JJ)

05.04.1990

JUDGMENT

FATHIMA BEEVI, J. -

1. This appeal is directed against the judgment dated October 27, 1979 of the High Court of Madras confirming the conviction of the appellant under Section 161 IPC and under Section 5(2) read with Section 5(1)(d) of the prevention of Corruption Act. The appellant had been sentenced to undergo RI for 15 months under Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act with no separate sentence under Section 161 IPC. The brief facts of the case are as under :

> The appellant, Sunderamoorthy was an Accountant-cum-Headclerk in the Tamil Nadu Forest Training School at Vaigai Dam. He took charge of the office on October 6, 1975 and had been residing in a house opposite the training school. PW 3, the Principal of the training school issued Ex. P 2 show-cause notice to PW 1, Venkataswamy the canteen contractor, as to why his licence for running the canteen should not be cancelled. This was on the basis of a complaint made by the appellant that the food severed in the canteen was sub-standard. The appellant had taken food in the canteen for two days and being dissatisfied discontinued the practice before the notice was issued. The prosecution case is that the accused thereafter sent for PW 1, informed him that he would help him in restoring the licence and demanded a bribe of Rs. 100. On October 21, 1975, the appellant is stated to have pressed the demand to PW 1. The latter made a complaint to PW 6 who thereupon arranged a trap. As instructed, PW 1 was ready with ten rupees currency notes. PW 6 after drawing up a mahazar in the presence of PW 2, Jaganathan, Assistant of the Office of the Special Tahsildar, Usilampatti directed PW 1 to give the notes to the appellant. PW 1 handed over the money to the appellant who received the same. When PW 1 emerged, PW 6 along with PW 2 confronted the appellant. The appellant produced the currency notes. PW 6 conducted the phenolphthalein test with reference to the fingers of the appellant. The test was positive, the currency notes were seized and the appellant arrested. PW 3, the Principal produced the concerned file relating to show-cause notice, from the house of the appellant on the same day. Finally, the appellant was charge-sheeted.

2. At the trial, the prosecution witnesses supported the case. PW 1 affirmed the fact that the appellant made the demand and had also received the amount on October 22, 1975. The recovery of the currency notes from the appellant was not challenged. The plea of the appellant was that PW 1 had returned the amount due to him and there had been no demand for a bribe as there had been no

occasion for doing so. The trial court accepted the prosecution evidence, rejected the plea of the appellant and recorded the conviction. Before the High Court, the contentions of the appellant were that there was no independent evidence regarding the demand, the messenger who had contacted PW 1 at the behest of the appellant had not been examined, the solitary evidence of PW 1 is insufficient, the explanation offered by the appellant was probable and there is no conclusive evidence to hold that the appellant was guilty. It was also urged that the appellant being new in the office could exert little influence on the Principal and the whole story is, therefore improbable. These contentions did not find favour with the High Court. It took the view that the evidence of PW 1 find corroboration in the testimony of PWs 2 and 6 and the contemporary records. The recovery of the currency notes from the appellant proves the guilty conduct of the appellant in view of the presumption arising under Section 4(1) of the Prevention of Corruption Act which has not been rebutted. The decisions of this Court in State of Rajasthan v. Mohammad Habeeb (1973 Cri LJ 703 : 1972 Raj LW 482), C. I. Emden v. State of Uttar Pradesh (AIR 1960 SC 548 : (1960) 2 SCR 592 : 1960 Cri LJ 729) and Lohana Kantilal v. State (AIR 1954 Sau 121 : 55 Cri LJ 1466) were referred to. The High Court thought the conviction under Section 161 IPC and Section 5 (2) of the Prevention of Corruption Act is to be maintained, no separate sentence need be awarded under Section 161 IPC.

3. The appellant has reiterated the contentions before us. The learned counsel appearing for the appellant, however, maintained that the appellant had a consistent case even from the earliest opportunity that the currency notes found in his possession was the money returned by PW 1, the circumstances of the case would probabilise this case of the appellant and the presumption, if any, arising under Section 4 is rebutted and the conviction cannot therefore be sustained. PW 6 has stated at the time of the seizure the explanation offered by the appellant was that PW 1 had returned the loan and that he had given the money for the Dipawali. The case that has been developed in the course of the trial is not that of a loan transaction but payment of an advance of Rs. 125 in the canteen when the appellant started to take food there. The case of Dipawali gift or return of a loan given to PW 1 has not been even suggested. It cannot, therefore, be said that there had been consistent explanation for the appellant. PW 3, the Principal has averred in unequivocal terms that Ex. P-2 memo had been issued on the basis of the complaint received from the appellant that on getting the explanation from PW 1 he on October 18, 1975 itself passed orders and closed the file. The order made was not disclosed to PW 1 and till October 22, 1975, the file itself was kept by the appellant in his personal custody. He had thereafter received the amount of Rs. 100 from PW 1. This conduct of the appellant is clearly inconsistent with the transaction of loan or return of money by PW 1.

4. This Court observed in Dhavantrai Balwantrai Desai v. State of Maharashtra (AIR 1964 SC 575 : 1963 Supp 1 SCR 485 : (1964) 1 Cri LJ 437) as under : (AIR p. 580, para 12)

> ".... where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in Section 161, IPC. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of

> Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to the rebutted."

5. On a careful consideration of the facts and circumstances, we are not satisfied that the appellant had even by preponderance of probability succeeded in rebutting the presumption.

6. The argument that clause (d) of Section 5 (1) of the Prevention of Corruption Act is not attracted on the proved facts is also not impressive.

7. We find no merit in the appeal. It is accordingly dismissed.

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