

S. V. Kameswar Rao and Another

Vs

State (A.C.B. Police, Karnool District, Andhra Pradesh)

Criminal Appeal No. 444 of 1979

(S.R. Pandian, Smt. M.S. Fathima Beevi JJ)

30.11.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. This appeal by special leave is directed against the judgment made in Criminal Appeal No. 461 of 1978 on the file of the High Court of Andhra Pradesh. The facts material for the purpose of this appeal may, however, be briefly indicated.

2. Appellant 1 was working as a Forest Ranger in Adoni Range from July 20, 1973 whilst appellant 2 was working as a Forester in the same range from October 24, 1973. PW 1 was a Forest Guard in Iswi Beat comprised in Adoni Range from November 1972. In 1975 the appellant summoned PW 1 to the Range Office and instructed him to permit grazing of goats in his beat and to collect mamools (bribe amount) from the owners thereof and pay a sum of Rs. 200 to appellant 1 and Rs. 100 to appellant 2 every month. Though PW 1 pleaded his inability to comply with the demand of the appellants, the appellants, however, insisted on collection of mamools from the owners of goats and also threatened PW 1 stating that an adverse report for his premature retirement would be sent against him, if he failed to comply with their demand. Helpless as he was, PW 1 collected mamools and paid the amounts to the appellants as demanded by them for four months i.e. from June to September 1975. When PW 1 again pleaded his inability to collect mamools any longer, the appellants got angry and insisted him to continue the practice. Therefore, on October 4, 1975 PW 1 met PW 6, the Inspector of Anti-Corruption Bureau, Karnool and presented a complaint (Ex. P-1) setting out his grievance against the appellants. As advised by PW 6 on October 8, 1975 PW 1 met PW 6 at Adoni and complained to him about the incident and lodged another complaint (Ex. P-2). PW 6 in turn handed over Exs. P-1 and P-2 to PW 5, the then DSP, ACB, Karnool. PW 5 registered the complaints as Crime Nos. 6 and 7 of ACB, Karnool Range. Ex. P-6 is the first information report. As instructed by PW 5, PW 1 met PWs 5 and 6 in the Municipal Travellers' Bungalow at Adoni. In the meantime, PW 5 secured two witnesses of whom PW 3, former Sub-Registrar of Adoni was one. PW 1 produced before PW 5 two currency notes of the denomination of Rs. 100 each (MOs 1 and 2) and one currency note of Rs. 20 (MO 3) and 8 currency notes of the denomination of Rs. 10 each (MOs 4 to 11) and informed PW 5 that he would hand over MOs 1 and 2 to appellant 1, MOs 3 to 11 to appellant 2. PW 5 after explaining to PW 1, PW 3 and other witnesses about the use of phenolphthelene and sodium carbonate carried by him and making demonstration of the same, applied phenolphthelene powder to MOs 1 to 11, instructed PW 1 to pass on the currency notes to the appellants and asked him to give the signal in case the appellants had received the amount. Accordingly, PW 1 met both the appellants who asked him as to whether he had brought the money. Immediately, PW 1 gave MOs 1 and 2 to appellant 2 and MOs 3 to 11 to appellant 2. Both the appellants received that amount and kept them in their respective shirt pockets.

As pre-arranged, PW 1 gave the signal. Immediately PW 5 rushed to the office with the witnesses and recovered the amount from the shirt pockets of the respective appellants after conducting the required phenolphthelene test. The appellants on being questioned stated that PW 1 had repaid only the hand loans which they had advanced earlier. PW 5 arrested both the appellants and examined PWs 1 and 3. After completing the investigation and obtaining the requisite sanction order Ex. P-5 from the Chief Conservator of Forests PW 6 filed the charge-sheet against both the appellants on April 17, 1976.

3. The appellants when examined under Section 313, CrPC denied having received any amounts of bribe from PW 1 and both appellants explained that PW 1 returned only the hand loans received from them. Further, appellant 1 stated that he found fault with PW 1 for indulging in malpractices and also for levelling false allegations against appellant 2 and that he himself had sent up an adverse confidential report against PW 1 for the year 1975. On the defence side, DWs 1 to 5 were examined of whom DW 2 who was the village Munsif of Iswi, deposed that he along with the appellants visited the village in September and October 1975 and came to know from the ryots about PW 1 collecting money and that the appellants warned that PW 1 would be removed from the service if he continued to do so and also requested the ryots not to pay any money to PW 1 who thereupon took strong objection to the warning of the appellants. Both the courts discarding the evidence of the defence witnesses and accepting the evidence of the prosecution witnesses negatived the defence and held that the prosecution has made out the case. The High Court while confirming the judgment of the trial court observed :

"In the light of the conclusions reached by me, it is not necessary to rely upon the presumption enacted in Section 4(1) of the Prevention of Corruption Act in respect of the offence punishable under Section 161 of the Indian Penal Code."

4. During the hearing of this appeal, it was brought to our notice that appellant 1 died on December 6, 1980. In this connection, it may be noted that after the hearing of the appeal the son of the appellant (since deceased) by name, Ravi Kumar has filed Cri. M.P. No. 6385 of 1990 seeking leave of this Court to permit him to continue the appeal so that in case of acquittal he being the legal representative of the deceased appellant 1 could secure the consequential benefits that may accrue as a result of the acquittal. In the same petition, one more prayer is made to condone the delay, if any, as well as the abatement, if any, in preferring this petition.

5. Section 394 of the Code of Criminal Procedure reads that every appeal shall finally abate on the death of the appellant. The proviso to that section says that where the appeal is against a conviction and sentence of death or of imprisonment and the appellant dies during the pendency of the appeal, any of his relatives, which expression is defined by the explanation appended to this proviso may within 30 days of the death of the appellant, apply to the appellate court for leave to continue the appeal; and if leave is granted, the appeal shall not abate. In the present case, none of the relatives of the deceased within the term of the explanation to the proviso has approached this Court within 30 days for leave to continue the appeal. This present application is filed nearly after a period of 10 years. No explanation is given in this application for not approaching the court within that prescribed period and no sufficient cause is shown for condonation of such undue and inordinate delay of 10 years. A decision of this Court in P.S.R. Sadhanantham v. Arunachalam [(1980) 3 SCC 141 : (1980) 2 SCR 837] is relied on in the petition wherein it has been held thus : (SCC p. 145, para 7)

"Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its

amplitude, its limit, when it chases injustice, is the sky itself."

6. In our opinion, this judgment cannot be availed of by Ravi Kumar, the petitioner in Cri. M.P. No. 6385 of 1990 because his application has become liable to be rejected on the ground of limitation.

7. Further as we have pointed out above, no sufficient cause is shown for condonation of the delay except stating that the petitioner, Ravi Kumar would be deprived of securing the consequential benefits to which he would be entitled in case his application is allowed and his deceased father is notionally acquitted. This reasoning cannot be accepted. Hence we reject his application and hold that the appeal abates so far as appellant 1 is concerned.

8. Now the appeal of appellant 2 remains to be considered. This appellant has accepted the receipt of the amount of Rs. 100. Therefore, as per Section 4(1) of the Prevention of Corruption Act, it has to be presumed unless the contrary is proved that he accepted that gratification as a motive or reward within the terms of Section 161 of Indian Penal Code. It has been repeatedly held by this court that once it is established that a public servant accepted a gratification which was not his legal remuneration, the burden shifts on him to prove that money was not accepted as a motive or reward as mentioned in Section 161 IPC. We think it is not necessary to refer to all those decisions. That presumption is a rebuttable one. As the High Court has not gone into that question as it is borne out from the observation which we have extracted above, this legal question need not detain us any more. Now let us examine as to whether there is evidence, establishing the demand and receipt of this amount as a motive or reward within the meaning of Section 161 IPC.

9. After going through the entire evidence, we are of the view that there is acceptable evidence about the demand of the bribe. PW 1 has admitted in the cross-examination that he could not give any one of the names of the villagers from whom he collected mamools. Further, he states that there were some charges against him in 1952, but he did not remember whether his service was terminated and thereafter reinstated by an order on his appeal and that he did not report to the Conservator, DFO that appellants were demanding mamools.

10. The prosecution has not made any attempt to secure any witness among the ryots from the village to prove the factum of collection of the alleged mamools. In the absence of such evidence, it cannot be safely concluded that the appellant demanded PW 1 to collect mamools and pay the same to him as a motive or reward for allowing the farmers to graze their cattle in the forest.

11. Under these circumstances, we are unable to agree with the finding of the High Court that the prosecution has established the charges levelled against appellant 2. In the absence of such evidence regarding the demand of the mamools as a motive or reward the explanation offered by the appellant cannot be simply thrown away as unworthy of acceptance.

12. For all the reasons stated above, we hold that the prosecution has not satisfactorily established the charges levelled against appellant 2 whose appeal is now considered and both the courts below have failed to advert to this aspect of the case.

13. In the result, we allow the appeal of appellant 2 (T. Nanne Sahib) and set aside the conviction and the sentence imposed by the courts below and acquit him. Accordingly, while the appeal of appellant 1 abated on his death, the appeal of appellant 2 is allowed.

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