

T. M. Joseph

Vs

State of Kerala

Criminal Appeal No. 508 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

07.04.1992

JUDGMENT

1. The appellant was convicted under S. 5(1)(d) of the Prevention of Corruption Act and under S. 161 of the Indian Penal Code. He was sentenced to undergo one year rigorous imprisonment and a fine of Rs. 250/- on the first count and one year rigorous imprisonment on the second count. Both sentences were directed to run concurrently.

2. The facts of the case are as follows :

The appellant was a Junior Superintendent attached to the Regional Transport Officer, Kottayam in the year 1975. PW 1 was the President of the Changanacherry Motor Workers Transport Co-operative Society Ltd. and PW2 was the Secretary. The Society was running a bus on a temporary permit which expired on 2-10-75. The Society applied for an extension of the period of the temporary permit. Therefore, the matter came up before the Regional Transport Authority. The extension was allowed for a period of four months. PWs 1 and 2 went to the office of the Regional Transport Authority and submitted the necessary papers to PW4, who found the papers were in order and note was put up to that effect. At about 2 p.m. on 25-9-75 PWs 1 and 2 approached the accused and enquired about the permit. It may be stated that it was the duty of the accused to sign the permit. The sum and substance of the prosecution case is that the appellant demanded a bribe of Rs. 25 / -. PW 1 went to the office of Dy. S. P., Vigilance Department and lodged a complaint. Pursuant to the same a trap was laid and before that a Panchanama was prepared and number of currency notes tainted money were noted in the same and they were treated with Phenolphthalein powder. According to the prosecution PW7, Dy. S. P. and PW5 the Joint Regional Transport Officer came to the room of the accused at the time the accused was not in his seat and it is alleged that he received the bribe of Rs. 25/- from PW1. As soon as the appellant entered into the room the officers disclosed their identities and recovered Rs. 25/- from the pocket of the accused and usual formalities were gone through and a Panchanama was prepared. The prosecution examined several witnesses. The trial Court accepted the prosecution case that there was a demand and acceptance of illegal gratification on the part of the accused and, therefore, convicted the appellant. The Appellate Court dismissed the appeal.

3. In this appeal Mr. P. S. Poti learned counsel for the appellant submits that the evidence on the

question of demand as well as on the acceptance of illegal gratification is insufficient and does not inspire confidence. According to the learned counsel, the prosecution version as to how the accused appeared to receive the tainted money is highly artificial and does not merit acceptance at all. We have gone through the judgments of the Courts below and have perused the relevant evidence. We find it difficult to come to a different conclusion.

4. Now coming to the question of sentence, there are certain circumstances which have to be taken into consideration. The occurrence took place on 6-10-75. It is nearly 16 years ago since then the accused was out of the job and has undergone the trial for number of years. It is also submitted that up till now he has not received his pension and he has a large family to maintain. Further, he is aged about 65 years. In similar circumstances this Court in *B. C. Goswami v. Delhi Administration*, AIR 1973 SC 1457, has observed that "appellant suffered agony and the harassment of the proceedings for over seven years and that he is also going to lose his job and has to earn for himself and his family members and for those dependent on him and, therefore, to meet the ends of justice the sentence is reduced to the period already undergone." In the instant case the learned counsel submits that the appellant suffered some imprisonment during the trial stage. We do not find sufficient proof of the same on the record. However, even taking into account that he has suffered some imprisonment, we think that he has to undergo some more imprisonment. Accordingly we confirm the conviction and reduce the sentence of one year rigorous imprisonment to 15 days on each count. The sentence of fine, however, is confirmed. The sentences shall run concurrently. Subject to the modification of sentence the appeal is dismissed. The bail bonds shall stand cancelled. Appeal dismissed.

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