SUPREME COURT OF INDIA

Shiv Nandan Dixit

Vs.

State of U.P

Crl.A.No.546 of 1997

(N.Santosh Hegde and B.P. Singh JJ.)

19.12.2003

JUDGEMENT

Santosh Hegde, J.

1. The two appellants in these appeals were convicted by the Special Judge, Anti-Corruption (Central), U.P., Lucknow for offences punishable under sections 120B IPC, 161, 5(1)(d) read with section 5(2) of the *Prevention of Corruption Act, 1947* (for short 'the Act') and sentenced to undergo 2 years' RI under section 161 IPC and section 5(1)(d) read with section 5(2) of the Act, and were further directed to pay a fine of Rs.500 for an offence punishable under sections 120B and 161 IPC and section 5(2) of the Act; in default to undergo further sentence of 6 months' RI. In an appeal filed by the appellants, the High Court of Allahabad, Lucknow, while dismissing the said appeals, reduced the sentence to one year RI. It is against the said order of the High Court that the two appellants are before us in these two appeals. The basic facts necessary for the disposal of these appeals are as follows:

2. At the relevant time, Suleman Tayyab A-1 was working as a LDC in 'B' Ward, Circle II, Income Tax Office, Lucknow and also as a Record Keeper. S.N. Dixit A-2, the appellant in the connected appeal before us was then working as a Class IV employee in the same office and was assigned the work of a 'Farash'. One Surendra Kumar PW-3 who was a partner in the firm M/s. Singhal Paper Products had applied to the ITO concerned to return the copy of the partnership deed filed in the said office since he wanted the same for obtaining a loan from a Bank. An application in this regard was moved on 21.5.1980 on which the concerned ITO passed an order on 26.5.1980 to return the said document after retaining a copy on record. This order of the ITO was sent to A-1 through A-2 for compliance. It is stated that on receiving the said order, A-1 told PW-3 that he was very busy on that day, hence, he will not be available to trace out the document immediately. However, PW-3 impressed upon A-1 as to his urgency in getting the document whereupon A-1 allegedly demanded Rs.50 as bribe to return the document on the same day. On PW-3 agreeing to pay the said sum of money, A-1 told him that the document in question would be returned to him by about 5.30 p.m. that day at India Coffee House, Hazratganj and that he should pay the amount of Rs.50 when the document is delivered. The further case of the prosecution is though PW-3 agreed to pay the

said amount, he was angered by the said demand hence he went and lodged a complaint Ex. Ka-7. The S.P./CBI/SPE, Lucknow, ordered registration of the case upon which FIR Ex. Ka-9 was registered. Said SP/CBI entrusted the case to Inspector R.K. Singh, PW-6, for laying a trap. For the purpose of having independent witnesses, the investigating agency wrote a letter to the Central Excise Department to depute two Inspectors to the office of the CBI on the same day. The Assistant Collector, Central Excise then directed V.K. Saxena PW-1 and S.L. Banodha PW-2 to attend the CBI office on the same day which they did at about 4.15 p.m. After recording the statement of PW-3, PW-6, the Inspector directed PW-3 the complainant to procure the money which was to be paid as bribe and on receipt of 5 ten-rupee notes the said notes were treated with phenolphthalein powder and PW-3 was instructed to give the said notes to A-1 when he receives the document. At about 5.25 p.m. when PW-3 and rest of the party had taken their allotted place in and near the Coffee House, they noticed A-2 coming over to PW-3 and handing over the document to him and obtaining a receipt for the same and immediately thereafter it was noticed that he collected the money also. On being signalled the concerned officers approached A-2 and identified themselves at which point of time it is stated that A-2 gave the money to PW-6. Since at that place a large number of people had gathered they took A-2 and PW-3 along with other witnesses to the nearby fire station and on testing the fingers of A-2 by phenolphthalein test, it was noticed that A-2 had handled the said currency. It is based on the said result of the trap and further investigation conducted by the CBI, a chargesheet was filed against the appellants herein and as stated above, the two courts below have found the appellants guilty and convicted them.

3. Mr. P P Malhotra and Mr. S C Maheshwari, learned senior counsel appearing for the appellants, firstly contended that in view of the provisions of section 196(2) of the *Code of Criminal Procedure, 1898* (the Code), the trial court could not have taken cognizance of the offence punishable under section 120B IPC without the consent in writing of the State Government or the District Magistrate concerned. Cognizance of the offence punishable under section 120B IPC can be taken without consent under the aforesaid provisions only if the offence is one punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards. In the instant case, according to them, since no such consent was taken, the trial court could not have taken cognizance of the offence punishable under section 120B IPC. Section 120B IPC makes it abundantly clear that whoever is charged of a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall where no expressed provision is made in the Code, for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

4. In the instant case the appellants were charged of having conspired to commit an offence punishable under section 161 IPC.

5. A mere perusal of section 161 IPC and section 5(1)(d) of the Act would make it obvious that the maximum punishment which can be imposed under section 161 IPC (as it then stood) is imprisonment of either description which may extend to three years or with fine or with both. For the offence under section 5(1)(d) of the Act, the punishment prescribed is imprisonment for a term which shall not be less than one year but which may extend to seven

years and shall also be liable to fine. Thus, the conspiracy to commit either of the offences was punishable with imprisonment for a term exceeding two years rigorous imprisonment and, therefore, in our view section 196(2) of the Code had no application because in respect of both the offences, the Court had jurisdiction to pass a sentence of over two years' rigorous imprisonment. The submission that it was permissible for the Court to award simple imprisonment for any term subject to the maximum prescribed and, therefore, section 196(2) of the Code was applicable, cannot be accepted. Equally without substance is the submission that the conspiracy alleged must be compulsorily punishable with rigorous imprisonment for a term exceeding two years, leaving no discretion in the Court to pass a lesser sentence. The true test is whether the conspiracy alleged was punishable with a term of imprisonment exceeding two years' rigorous imprisonment and, as we have noticed earlier, it was so in the instant case having regard to the punishment prescribed for the offences under section 5(1)(d) of the Act as well as section 161 IPC. Therefore this argument of the appellants has to be rejected.

6. It was then contended that the presumption of guilt available to the prosecution under section 4 of the Act would not be available for an offence punishable under section 5(1)(d) of the Act. This argument is based on the language of section 5(1)(d) which reads thus:

> "5. Criminal misconduct.(1) A public servant is said to commit the offence of criminal misconduct -- (a) to (c) x x x (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage." According to learned counsel for the appellants, since according to the prosecution case itself the bribe in question was not received by A-1 himself, the said presumption is not available to the prosecution. This argument again has to be noted only to be rejected because that is not the intendment of section 4 or 5(1)(d) of the Act. The words "obtains for himself" connote not only receiving the bribe personally but receipt of any bribe either directly or indirectly. The interpretation given by learned counsel for the appellants to section 5(1)(d) if accepted, would do violence to that section hence this argument is also rejected.
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> Nextly, it was argued by the learned counsel that under section 161 IPC as it stood at the relevant point of time made it an offence only if the bribe is received/obtained with a view to render any service with the Government concerned. In the instant case it is submitted that even according to the prosecution, giving of the bribe was for the purpose of receiving a document back from the custody of the Department which cannot be treated as an act of the Government. This argument also in our opinion is without any substance. The document in question was produced before the income-tax authorities for some official purpose and was in its custody."

7. When the ITO directed the return of the document, he was doing an official duty on behalf of the Government. The order that he passed for the return of the document was an official order and any act which has to be done to fulfil or comply with the said order will also be an official act hence when A-1 was directed to return back the document, A-1 was not acting in

a private capacity, he was doing an official act hence if in that process he demands bribe, it would be an offence under section 161 IPC as it stood then.

8. Having considered the legal arguments we will now consider the factual arguments. Learned counsel appearing for A-2 argued that there is no material to show that A-2 was a party to the conspiracy to demand and receive bribe and the prosecution has failed to establish that the money collected by A-2 was bribe money therefore A-2 cannot be held to be guilty for merely receiving Rs.50 for and on behalf of A-1 in the absence of any material to show that either he had a share in the money or he had knowledge that he was collecting this money on behalf of A-1. This argument also has no legs to stand. It is seen from the evidence led by the prosecution that when the ITO passed the order on 26.5.1980 and directed A-2 to take that order to A-1, he took the same along with PW-3 and was present when A-1 made the demand for Rs.50, therefore, A-2 had the knowledge as to the demand made by A-1. The necessary inference therefore should be that A-2 who was also present when the bribe money was demanded definitely knew the money he was collecting was bribe money. This is more so in the background of the fact that no explanation has been given by A-2 in this regard in his statement under section 313 of the Code. If A-2 was present when the bribe money was demanded, he definitely knew that it was being asked for delivering the document. That apart, the fact that he carried the document to the Coffee House and refused to reduce the amount by saying that A-1 would be suspicious of him, would clearly indicate the fact that A-2 was receiving the money knowing it to be a bribe for and on behalf of A-1, therefore, in our opinion, that part of the conspiracy and acceptance of the bribe money knowingly stands proved.

9. The learned counsel tried to take support from the evidence of DW-2, the lawyer, who applied for the return of the document. Having perused the same we do not find any material in the evidence of this witness which would help the appellant.

10. Mr. S C Maheshwari, learned senior counsel, in support of his arguments relied on three judgments of this Court in *M.K. Harshan v. State of Kerala*[1], *Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe v. State of Maharashtra*[2] *and State of Madhya Pradesh v. J.B. Singh*[3]. We do not think that the said judgments are based on any principle of law and the same were decided on facts of those cases and the facts of this case being not similar, we are of the opinion that the said judgments are of no assistance to the appellants.

11. Then it is argued on behalf of the appellants that the incident in question having taken place nearly 23 years ago, the appellants have already suffered sufficiently and we should take a lenient view of the matter and award a lesser sentence. We notice that the two appellants who were Government servants have since lost their jobs and all retiral benefits and the prolonged litigation has caused considerable loss and suffering.

12. Bearing in mind the fact that both the appellants have crossed 60 years of age, we think it appropriate that the sentence of 1 year RI imposed by the High Court should be further reduced to a period of 6 months. Therefore, for the reasons recorded hereinabove, we alter the sentence awarded by the High Court for offences punishable under section 120B IPC,

161, 5(1)(d) read with 5(2) of the Act to 6 months' RI. We do not think it is necessary to award separate sentences under other provisions of the Act for which they have been sentenced by the trial court.

13. The sentence already undergone, if any, will be given set off.

14. The appellants are on bail. Their bail-bonds shall stand cancelled. They shall surrender to their bail-bonds. The appeals are partly allowed.

[1] *(1996 (11) SCC 720)*
[2] *(1990 (1) SCC 299)*
[3] *JT 2000 (7) SC 539*