

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Shambhoogiri

Crl.A.No.955 of 2003

(K. G. Balakrishnan and Dr.A.R.Lakshmanan JJ.)

12.10.2004

JUDGMENT

Dr. A.R.Lakshmanan, J.

1. This appeal is directed against the judgment and order dated 16.01.2001 passed by the High Court of Rajasthan at Jodhpur in S.B. Criminal Appeal No. 198 of 1983 whereby the High Court allowed the appeal filed by the respondent herein.

2. The said appeal before the High Court was directed against the order dated 03.05.1983 passed by the Special Judge, Anti Corruption Cases, Udaipur in Criminal Case No. 47 of 1978 convicting the respondent herein Shambhoogiri for the offence under Section 161 I.P.C. and Section 5(1)(d) and (2) of the *Prevention of Corruption Act, 1947* (hereinafter referred to as "the PC Act") and sentencing him to undergo two years R.I. and a fine of Rs. 250/- on each count and in default of payment of fine to further undergo six months simple imprisonment.

3. Both the sentences were ordered to run concurrently.

4. The case of the prosecution is as follows:

5. The respondent was working as Head Constable Police, Arnod, District Chittorgarh. One Fakir Chand PW-1 was the resident of the same local police station, where the respondent/accused was posted. There was some pending case against Fakir Chand PW-1 and his friends before the SDM, Pratap Garh, where he used to come in the Court of the SDM. The respondent arrested PW-1 under Section 110 of the Cr.P.C. and demanded illegal gratification of Rs. 500/- from him and further threatened him for lodging more complaints for not doing so. Therefore, PW-1 had to give Rs. 100/- to the respondent. The respondent had to produce PW- 1 before the SDM, Pratapgarh on 12.09.1977 and on the same day PW-1 had to give him Rs. 200/- more. On that date, before appearance in the Court, PW-1 met PW-7 and told him about the accused/respondent, who advised PW-1 to give the entire details in written complaint with Rs. 200/- currency notes. PW-1 did so.

6. Thereafter, PW-7 had given the written complaint with Rs. 200/- currency notes to the SDM, Pratapgarh. PW-6, who noted the numbers of the currency notes in his diary and after getting initials of the SDM, these notes were given to PW-1 and he was asked to give these currency notes to the respondent/accused. When the respondent demanded money from PW-1, the same was given in the presence of PW-5 and PW-7 to him. Thereafter, PW-5 informed the SDM PW-6 who called the accused in his chamber and asked him to produce Rs. 200/- from his pocket.

7. The accused is said to have produced that Rs. 200/- before the SDM who verified the numbers of the currency notes from the entries noted in his diary, which was found the same. The SDM prepared a recovery Memo of those notes and thereafter sent the memo of recovery along with the notes to the Collector, Chittorgarh and also sent this information to the Superintendent of Police. Thereafter, the Superintendent of Police sent this information to the Anti Corruption Department and the case was registered under Section 161 I.P.C. and Section 5(1)(d) and 5(2) of the PC Act. The Deputy S.P. Anti Corruption Department collected the entire documents and after seeking permission filed the challan against the accused. On 11.09.1978, charges were framed against the accused in the Court of the Special Judge Anti Corruption, Jaipur. The respondent denied the charges and claimed the trial. The case was committed in the Court of Special Judge, Anti Corruption, Udaipur.

8. The prosecution examined eight witnesses in support of its case. The trial Court came to the conclusion that the respondent/accused being a public servant was guilty for the offence under Section 161 I.P.C. and Section 5(1) and 5(2) of the PC Act of having accepted Rs. 200/- as bribe and convicted him vide judgment dated 03.05.1983 in Criminal Case No. 47 of 1978.

9. Aggrieved against the conviction, the respondent preferred an appeal before the High Court in which a question of law was raised on behalf of the respondent that as per Section 5-A of the PC Act the investigation has to be taken by a person not below the rank of Deputy Superintendent of Police or by Inspector of Police provided that there is a special authorization in that regard by the State Government generally or specially for a particular case. It was further argued on behalf of the respondent that the complaint was lodged before the SDM, Pratapgarh PW-6 who was not the competent person to investigate and that he did not have any such authorization generally or specifically to investigate the case of corruption.

10. The High Court, on 16.01.2001, has set aside the conviction and sentence awarded by the Special Judge on the ground that the prosecution based on investigation having been commenced at the instance of unauthorized person is without jurisdiction and faulty and, therefore, it cannot be sustained. Aggrieved against the same, the State of Rajasthan has come up on appeal before us. Leave was granted on 01.08.2003 by this Court.

11. Learned counsel for the appellant-State contended that the High Court seriously erred in holding that there was no compliance of Section 5-A of the PC Act. It was contended that the SDM who laid the trap and caught the accused red-handed was not conducting any

investigation and the High Court wrongly assumed that the investigation by the SDM was without jurisdiction and the entire proceedings were vitiated by such illegality. The learned Counsel for the respondent, on the other hand, contended that Section 5-A of the PC Act authorises only specified person to conduct the investigation and action conducted by any authority other than the specified authority is illegal and the accused has been rightly acquitted by the High Court. Section 5-A of the P.C. Act reads as follows:-

"5-A. Investigation into cases under this Act.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank, -

(a) In the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) In the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;

(c) In the presidency-town of Bombay, of a Superintendent of Police; and

(d) elsewhere, of a Deputy Superintendent of Police, shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under Section 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant: Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore, without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

12. The above provision shows that only the authorities specified in sub-clause (a) to (d) of Clause 5-A alone are authorised to conduct the investigation and no Police Officer below the rank of those categories of officers are not competent to conduct investigation unless there is an order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, and the State can authorize any officer for the purpose of investigation of such crimes under the PC Act but not below the rank of any Inspector of Police.

13. In the instant case, the High Court took the view that SDM conducted the investigation of the case and that he was not competent to do so. This view of the High Court is incorrect. The SDM got an information from PW 1 that the accused had been demanding illegal gratification. The SDM wanted to ascertain whether this allegation is true or not. He asked PW-1 to give a written complaint with Rs. 200/- currency notes. The SDM noted the

numbers of the currency notes in his diary and these notes were given to PW-1 who, in turn, gave these currency notes to the accused as illegal gratification. The SDM called the accused who was working under him and asked him to produce 200 rupees given by PW-1.

14. The accused produced the notes before the SDM and the numbers of the currency notes were verified with the entries noted earlier by him in the diary. SDM himself prepared a recovery memo and sent it to the Superintendent of Police with a complaint alleging that the accused received bribery. He also sent a note to his superior officer. Here, the SDM was not doing any investigation. The High Court was of the view that he laid a trap and recovered the notes and thus conducted an investigation of the crime.

15. The investigation of the crime would start only after the complaint is given by the SDM to the Superintendent of Police (Anti-Corruption) and investigation as such is defined under the Code of Criminal Procedure under Section 2(h) of the Act which is to the following effect:-

"Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf"

16. Every citizen is competent and entitled to detect crimes and report and, if any, information regarding the commission of any crime is known to any person, such information can be passed on to the police or any other competent authority for taking appropriate action, for example, under the Food Adulteration Act, an ordinary citizen is competent to collect samples and send to public analysis and based on the report of the public analyst, the complaint can be filed before the appropriate authority. The collection of the samples and the analysis by the public analyst do not amount to investigation. If a crime is committed in the presence of any citizen, he can very well ascertain the truth of the fact and make all efforts to bring home the guilt of the accused. The Sub-Divisional Magistrate had only discharged his duties as a law abiding citizen and the allegation that SDM had conducted investigation of the case is incorrect and the High Court seriously erred in holding that the trial was vitiated owing to the investigation having been conducted by the SDM. The acquittal of the accused was improper and we set aside the Judgment of the High Court as the High Court had not considered the criminal appeal filed by respondent on merits and the same is remitted to the High Court for proper consideration in accordance with law.

17. In the result, the appeal is remitted to the High Court for disposal in accordance with law. The appeal would stand disposed of accordingly.