KERALA HIGH COURT

State of Kerala

Vs.

Samuel

Criminal Appeal No. 281 of 1958 Trivandrum, in S.C. No. 1 of 1958

(M.A. Ansari, C.J., Anna Chandy and P. Govinda Menon, JJ.)

27.06.1960

JUDGMENT

Anna Chandy, J.

1. This appeal by the State is against the judgment in Sessions Case No. 1 of 1958 on the file of the Special Judge, Trivandrum, acquitting the respondent, a Forester of the Thodupuzha Range of the offences punishable under Section 5(i)(a) and (ii) of the Prevention of Corruption Act (Act 2 of 1947). The case was referred by Kumara Pillai and Vein Pillai, JJ., to a Full Bench as important questions of law regarding the registration and investigation of offences under Central Act 2 of 1947 were raised in it and it was thought desirable in view of the several similar cases pending trial or investigation to have an authoritative pronouncement by this Court on these questions.

2. The case against the accused was that while he was functioning as Forester in the Thodupuzha Range he took bribes from a number of persons belonging to the hill tribes who had trespassed into the Government Forest Reserve and were carrying on illegal cultivation there. It was the accused's duty as the Forester to take action against the trespassers and to bring them to book. However, it is alleged that he began to utilize his position as a Forester to force such trespassers who carried on unauthorised cultivation to pay him illegal gratification. The charge against him is that he received several amounts ranging from Rs. 10 to Rs. 200 from witnesses 1 to 9, 11 to 15, 13 and 20 to 25 between the months of February and August 1956. These witnesses from whom illegal gratification was obtained by the accused were members of an Association called the Thiru-Cochi Vanavarga Maha Sabha (Travencore-Cochin Hill Tribes Association), an association created for the purpose of safeguarding the tights of the hill-tribes. The aggrieved parties complained to P.W. 16 the then President of the Association who after making some enquiries to verify the truth of the allegations, forwarded a petition on 6-7-1956 to the Special Inspector-General of Police, Anti-corruption, Trivandrum. Exhibit P-16 is the copy of that petition. The petition contains definite allegations against the accused, of having obtained illegal gratification from several persons, some of whom were named. The petition was received on 7-7-1956 by the Special Inspector-General of Police who forwarded it to the then Assistant Superintendent of Police, Anti-corruption, Kottayam (later on designated as Deputy

Superintendent of Police) for enquiry and report. The Assistant Superintendent of Police in turn forwarded it to the Circle Inspector of Police, P.W. 31 for enquiry. P.W. 31 questioned P.W. 16 as well as P.Ws. 1 to 9, 11 to 15, 18 and 20 to 25 who are alleged to have actually paid bribes to the accused, took signed statements from them and sent in his report. On the basis of this report P.W. 32, the Assistant Superintendent of Police, Anti-Corruption, Kottayam, filed Ext. P-29, the First Information Report on 27-3-1957 that is, some eight months after the receipt of the petition from the President of the Hill-Tribes Association. Thereafter P.W. 32 is said to have investigated the case and charge-sheeted the accused on 3-1-1958.

3. The accused denied the charges. He alleged that the case was concocted against him by P.W. 16, the President of the Association due to enmity resulting from his refusal to withdraw the proceedings taken against some of the members of the Association for trespass into the Government Forest Reserve.

4. The learned Special Judge acquitted the accused for want of acceptable evidence to prove the charges against him. The learned Judge held that it was the petition from the President of the Association and not the report from the Assistant Superintendent of Police that should be treated as the First Information and as such the enquiry conducted by the Circle Inspector of Police can only be considered as part of the investigation. According to the learned Judge the signed statements taken by the Circle Inspector from the witnesses are hit by Section 102, Criminal Procedure Code with the result that the testimony of these witnesses in court has lost much, of its evidentiary value. After pointing out certain other defects in the prosecution case, the learned Judge came to the conclusion that it would not be sate to act on the tainted evidence of these witnesses without independent corroboration, which was totally absent in the case.

5. The main points on which the learned Advocate General addressed the court were about the legality and the propriety of the Police Officers taking signed statements from the witnesses and the effect of such a procedure on the admissibility and acceptability of their evidence as well as its effect on the trial of the case. It was conceded by him that the conduct of the police officers in taking signed statements was objectionable and that he was not for supporting such a procedure. However, he contended that in the present case, the signed statements of witnesses taken by P.W. 31 are not hit by Section 162 of the Code of Criminal Procedure since what was conducted by P.W. 31 was not an investigation under Chapter XIV of the Code but only a preliminary enquiry prior to the registration of the case. To determine this point we have first to answer the question as to which document, the petition by the President of the Hill-Tribes Association or the report of the Assistant Superintendent of Police, is the First Information in this case and at what point of time the case should have been registered.

6. The learned Advocate General contended that the police officer was not bound to treat the petition that he received as the First Information and register a case without making himself sure as to the identity of the person sending the petition and the truth of the allegations made therein, and cited several cases which according to him would support his position.
We shall first consider the cases referred to by the learned Advocate General though it must be stated at the outset that in our opinion the decisions only support the learned counsel to the extent of recognising the principle, that it is not every information regarding offences received by a police officer that can be termed First Information for the sole reason that such information was the first indication the police had about some criminal activity. The first case referred to by the

learned Advocate-General was *Public Prosecutor v. Chidambaram*[1], In that case a telegram was sent to the police that an offence had been committed. The police officer went to the place from which the telegram was sent and questioned the person by whom it is purported to have been sent, took down his statement and registered the case on the basis of that statement. It was contended that the statement was one taken in the course of the investigation and was therefore inadmissible in evidence. Overruling that contention it was held that :

> "So far as authenticity goes, a telegram stands in no better position than village gossip. There is no guarantee that a telegram received has actually been sent by the person who purports to send it and it undoubtedly would be the duty of the police officer on receiving the telegram that an offence has been committed, to verify the fact that it was really sent as it purports to Have been sent."

Another case cited by the learned Advocate-General was *Gansa Oraon v. King Emperor*[2], In that case the information given by a chaukidar to the effect that the mother of toe accused had told him that the accused had assaulted his younger brother whilst under the influence of drink and that he (the chaukidar) had seen blood-stains on the younger brother's head, was entered in the station dairy but not signed by the chaukidar. The police officer proceeded to the scene of occurrence and there took down the statement of the wife of the accused and had her thumb impression taken thereon. It was held that the chaukidar's information was the first information in the case and that the statement made by the wife of the accused to the investigating officer was not admissible in evidence. However it was observed that "When the information which is first given to the police is of such a vague and indefinite character that it cannot be treated as coming under Section 154, so as to make it incumbent upon the officer in charge of the police-station to start an investigation, he may reasonably require more information before doing so Further information given to him in such circumstances may fall within Section 154. In such a case such further information will not fall within B, 162." A third case that was referred to was *Qamrul Hasan v. Emperor*[3], In that case while a riot accompanied by arson and looting was going on in a village, M. who happened to pass through that village, at once proceeded to the nearest police-station arid gave some vague information about the disturbance in the village whereupon the Police Superintendent rushed to the village instructing the kotwal to follow him with a force. While the Superintendent was busy extinguishing fire many persons made complaints to him. After the Superintendent had gone away the kotwal started investigation and took down the report of D. It was held that the complaints made to the Superintendent could not be treated as first information report but the report by D fell within the purview of Section 154.

1 AIR 1928 Mad 791

2 ILR 2 Pat 517: AIR 1923 Pat 550

3 AIR 1942 Oudh 60

7. Whether or not a particular statement would constitute the First Information in a case is a question of fact and would depend on the circumstances of that case. However it can be stated as a general principle that it is not every piece of information however vague, indefinite and such information was the first, in point of time, unauthenticated it may be that should be recorded : is the First Information for the sole reason that to be received by the police regarding the commission of an offence.

To hold otherwise would be to place the police at the mercy of every crank and practical joker who could then set the entire investigating machinery of the police into action with as little effort as that of scribbling a letter or dialing a telephone. On the other hand it is equally clear that to

permit a preliminary enquiry before recording the First Information is to diminish, if not destroy the value of the First Information Report itself. The special significance of the First Information Report lies in the fact that it is a record of the earliest information about an alleged offence, a statement given before the circumstances of the crime can be forgotten or embellished. It cannot be denied that If the First Information were to be recorded alter an enquiry into the offence is conducted the temptation would be great to incorporate in the First Information Report details and circumstances advantageous to the prosecution which might have been lacking in the earliest information about the offence. These principles are clearly inferable from the provisions of Section 154 of the Criminal Procedure Code which deals with the recording of the "First Information". Section 154 reads :

> "Every information relating to the commission of a cognizable offence given orally to an officer in charge of a police-station shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

The section provides that the information should relate to the commission of a cognizable offence, i.e., the information should be such that it enables the police to come to the conclusion that a cognizably offence has been committed. The section further provides that if the information is given orally it should be reduced to writing and such information whether given in writing or reduced to writing should be signed by the informant. It is also clear from the section that no enquiry is contemplated before the information is recorded by the police. However, the provision in the section regarding the reduction of oral statement to writing and obtaining the signature of the informant to it, which procedure obviously is for the purpose of discouraging irresponsible statements about criminal offences by fixing the informant with the responsibility for the statement he makes, indicates that some similar procedure may be adopted to authenticate information received by other methods also. But this should be the limit of the enquiry. Any further probing into the matter will have no legal basis. It might not be out of place to consider the provisions of Section 157, Criminal Procedure Code also in this connection Section 157 Sub-Section (i) reads :

> "If from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, be shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers (not being below such rank as the (State Government may, by general or special order prescribe in this behalf) to proceed to the spot, to investigate the facts and circumstances of the case (and, it necessary, to take measures) for the discovery and arrest of the offender."

The section gives a command that the police officer who has reason to suspect, be it from information received or otherwise, that a cognizable offence has been committed, shall forthwith report the matter to the Magistrate and initiate the investigation. Thus it is quite clear that in the

case of cognizable offences, there should be no time lag between the reception of information about the commission of the offence and the recording of such information.

8. In applying these principles to the present case, it will be seen that Ext. P-16 satisfied all the requirements of a First Information. Exhibit P-16 gives the name of the accused and the fact that he had committed the offence of accepting illegal gratification (an offence made cognizable by Act 2 of 1947). The names of some of the persons who actually gave bribes to the accused as well as the amounts paid by them are also specified. In one instance, the source of the money with the necessary details to trace it is also included. It is seldom that one comes across a complaint with an much of relevant details as Ext. P-16. It was also sent by a responsible person like the President of the Hill-Tribes Association. Strictly speaking, the police could have registered a case on the text of the complaint itself. Even if they wanted to verify whether such a complaint was actually sent by P.W. 16 that purpose could well have been served by questioning him. However, in this case the police proceeded much further and had conducted practically the entire investigation of the case and after the lapse of eight months from the receipt of Ext. P-16, a report by the Deputy Superintendent of Police was recorded as the First Information. It is therefore cleat that it is Ext. P-16, the petition sent by P.W. 16 that should be considered the First Information in this case and that a case should have been registered at least by the time, when by questioning P.W. 16, the police were assured that it wag he who sent the petition.

9. We shall now consider the question whether or not the 'enquiry' conducted by the Circle Inspector should be considered an investigation under Chapter XIV of the Criminal Procedure Code. As observed in *H.N. Rishbud v. State of Delhi*[4], an investigation under the Criminal Procedure Code consists generally of the following steps (1) Proceeding to the spot, (2). Ascertainment of the facts and circumstances of the case (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial and (5) Formation of the

4 AIR 1955 SC 196

opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so take the necessary steps for the same by the filing of a charge-sheet under Section 173. Now, in this case when the Circle Inspector received Ext. P-16 he proceeded to the spot and after, questioning P.W. 16 the person who sent the petition continued his enquiries and questioned all the persons who are alleged to have bribed the accused and recorded their statements. That was definitely one of the steps in the investigation of the case, viz., collection of evidence relating to the commission of the offence. That is practically the only evidence in the case from which he could have formed an opinion as to whether there was a case to place the accused before a competent court for trial. The only thing that remained thereafter to be done was the filing of a charge-sheet under Section 173. So practically the report filed by the Circle Inspector in this case after collecting all the evidence amounts to a charge-sheet and not a statement which can be called the First Information affording a starting point for a fresh investigation. In effect there were two investigations in this case one by the Circle Inspector of Police and the other by the Deputy Superintendent of Police, the latter being practically the duplicate or repetition of the former.

10. Another argument advanced by the learned Advocate-General was that in view of the mandatory provisions of Section 5-A of the Prevention of Corruption Act insisting on the investigation of the case by an officer not below the rank of a Deputy Superintendent of Police, any enquiry that was made by a Circle Inspector of Police does not have the legal effect of an investigation and as such the taking of signed statements during such enquiry is not hit by Section 162, Criminal Procedure Code which only prohibits the taking of such statements during investigations. We cannot accede to this argument for such a proposition would in effect defeat the object of the legislature in enacting the provision prescribing that only high police officials should investigate the offence under this Act, a provision clearly meant to safeguard the interest of public servants, The intention of the legislature enacting this provision was considered by the Supreme Court in AIR 1955 SC 196. That was a case under the Prevention of Corruption Act in which the investigation was conducted by an officer below the rank of a Deputy Superintendent of Police. While discussing the question whether the provisions in the Act to that effect are mandatory or directory, it is observe by their Lordships that :

> "When the legislature has enacted in emphatic terms such a provision it is clear that it had a definite policy behind it. To appreciate that policy it is relevant to observe that under the Code of Criminal Procedure most of the offences relating to public servants as such, are non-cognizable. A cursory perusal of Schedule II of the Criminal Procedure Code discloses that almost all the offences which may be alleged to have been committed by a public servant, fall within two Chapters, Chapter IX "offences by or relating to public servants," and Chapter II "Offences against public justice" and that each one of them is non-cognizable. (Vide entries in Schedule II under Sections 161 to 269, 217 to 233, 225-A as also 128 and 129).

The underlying policy in making these offences by public servants non-cognizable appears to be that public servants who have to discharge their functions - often enough in difficult circumstances - should not be exposed to the harassment of investigation against them on information leveled, possibly, by persons affected by their official acts, unless a Magistrate is satisfied that an investigation is called for, and on such satisfaction authorizes the same. This is meant to ensure the diligent discharge of their official functions by public servants, without fear or favor. When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making them cognizable it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank." It will be a travesty of justice, if a provision which was introduced with the definite object of safeguarding the interests of public servants is to be used as a weapon against them, so that the investigating officer by deputing his function to an officer incompetent to investigate can rely upon that in-competency to deny the public servants even the general safeguards provided by Section 162 of the Criminal Procedure Code. It is clearly the very negation of the idea behind the provision. We have no hesitation in finding that the Circle Inspector acted in violation of Section 162 of the Criminal Procedure Code when he took down the statement of the witnesses P.Ws. 1 to 9, 11 to 15, 18 and 20 to 25 and got their signatures thereto.

11. As Sections 154 and 157 of the Criminal Procedure Code govern the registration and investigation of offences under Prevention of Corruption Act and in view of the bar in Section 5-A of that Act that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under Sections 161, 165 or 165-A of the Indian Penal Code and under Sub-Section (2) of clause 5 of the Act without the order of a Presidency Magistrate or a Magistrate of the First Class, such cases will have to be registered promptly and investigated by the competent officer instead of allowing the incompetent subordinates to "enquire and report" and then incorporating the result of the enquiry in the First Information Report prepared by the competent officer. The promptness of the police in the investigation of cognizable cases is of the highest importance to all concerned and delay and that of eight months as in this case is a serious neglect of duty which invariably leads to failure of justice.

12. The only remaining question for consideration is what would be the effect of such an illegal action. The question has been considered by the Privy Council in *Zahiruddin v. Emperor*[5], Lord Normand observed as follows :

> "The effect of a contravention of Section 162(1) depends on the prohibition which has been contravened. If the contravention consists in the signing of a statement made to the police and reduced into writing, the evidence of the witness who signed it does not become inadmissible. There are no words either in the section or elsewhere in the statute which express or imply such a consequence. Still less can it be said that the statute has the effect of vitiating the whole proceedings when evidence is given by a witness who has signed such a statement. But the value of his evidence may be seriously impaired as a consequence of the contravention of this statutory safeguard against inv proper

[5] AIR 1947 PC 75

> practices. The use by a witness while he is giving evidence of a statement made by him to the police raises different considerations. The categorical prohibition of such use would be merely disregarded of reliance were to be placed on the evidence of a witness who had made material use of the statement when he was giving evidence at the trial. When, therefore, the Magistrate or Presiding Judge discovers that a witness has made material use of such a statement it is his duty under the section to disregard the evidence of that witness as inadmissible."

The same is the view taken by the Travencore-Cochin High Court in the decisions reported in *Joseph v. State*[6], *Vasu v. State*[7], and *Isreal v. State*[8]. In the present case the signed statements were not made use of at the trial and as such the questions as to their admissibility and effect on the trial do not arise. The only effect of it would be to impair the value of the evidence of these witnesses. It was contended by the learned Advocate-General that a mistaken view entertained by the learned Judge that the trial was adversely affected by this illegality has contributed to the decision the Judge arrived at in this case. No doubt, there is one sentence towards the end of the finding on point 2 that the evidence is "of a tainted character and to this extent the trial was affected." A reading of the judgment as a whole would indicate that what the lower court meant was that the evidence of the witnesses was tainted and as such it was not proper to act upon it in the absence of independent corroboration. It was further contended that even the view that the evidence of a witness whose signed statement was taken during investigation cannot be acted

upon in the absence of independent corroborative evidence is not acceptable as a general proposition. Though, it cannot be laid down as a rule of law that the evidence of such a witness should not be acted upon in the absence of corroboration, as a matter of caution courts would hesitate to act upon the uncorroborated evidence unless it be that in any particular case there are circumstances to indicate that the credibility of the witness was not affected by being pinned' down to a particular statement and that he was acting as a free agent when he gave the evidence before court.

13. As for the merits of the case, it must be stated that we can find no ground that would justify interference with the order of acquittal passed by the trial court. The prosecution examined 32 witnesses of whom P.Ws. 1 to 9, 11 to 15, 18 and 20 to 25 are persons who are alleged to have actually paid the bribes to the accused and whose signed statements were recorded by P.W. 31, the Circle Inspector of Police. They are all members of the Hill-Tribes Association. As mentioned already P.W. 16 is the president of the Hill-Tribes Association who sent the petition to the police. The only other witnesses who were examined in connection with the alleged payment are P.Ws. 17 and 27 to 29. P.W. 17 gave evidence that he pledged some ornaments with the Palai Central Bank on behalf of P.W. 22 and jot Rs. 150 and that P.W. 22 told him that the amount was intended for payment to a Forester in connection with a cardamom plantation. P.W. 29 also gave evidence that P.W. 17 pledged the ornaments and got the money. There is nothing to connect P.W. 22 with the pledge and there is no explanation why he should have sought the aid of P.W. 17 to effect the

[6]1952 Ker LT 216: (AIR 1952 Trav Coc 300)

[7]1953 Ker LT 780: (AIR 1954 Trave Coc 282)

[8]1954 Ker LT 638: (AIR 1955 Tra Coc 6)

pledge. P.W. 27 was the then agent of the Palai Central Bank whose evidence is only to the effect that one Kanda Narayanan had pledged certain ornaments and taken Rs. 100 from the Bank on 21-6-1956. He admitted that he was not acquainted with the person who actually pledged the ornaments and did not identify. P.W. 28 was another agent of the Bank who produced the ledger before the police. Thus it is seen that there is absolutely no evidence to connect the accused with the offence other than the evidence of the persons who are alleged to have given the bribes to him. The learned Judge thought it not prudent to act upon the uncorroborated testimony of witnesses whose evidence was tainted by the circumstance that signed statements were taken from them during the investigation of the case by the police officer in violation of the mandatory provisions of Section 162, Criminal Procedure Code. Another circumstance which weighed with the lower court in not acting upon the evidence of P.Ws. 1 to 9, 11 to 15, 18 and 20 to 25 is that being themselves the bribe-givers their evidence cannot be acted upon without corroboration. Though a person who gives a bribe is technically an accomplice of the person who receives it, his position is different from that of a co-offender. In cases where the accused is charged with extorting bribes from persons the giver of the bribe becomes not a willing participant but a victim of the offence. The consideration that an accomplice is likely to swear falsely in order to shift the guilt from himself hardly applies to the evidence of one who testifies that he has bribed the accused thereby making himself out to be a briber. Courts seem to have taken the view that in the case of bribe givers even if corroboration is considered desirable a less strict standard may be applied than in the case of accomplices. However, in this case where the evidence of these witnesses has been found to be tainted for the reason that signed statements were taken from them by the police in the course of the investigation, the further circumstance that they are the bribe-givers themselves assumes a greater significance and it may not be prudent to base a conviction on their sole evidence in the absence of any, corroboration whatsoever.

14. The learned Special Judge has also pointed out that the prosecution has no explanation why the bribe-givers had waited for more than six months before bringing the fact to the notice of P.W. 16 the President of their Association who used to take the necessary action to redress their grievances. Again, on the admission of these witnesses themselves it is seen that no Forester before the accused had taken any action against them and that it was the accused who first hauled them up for trespass. These circumstances seem to lend some support to the accused's allegation that the case was foisted on him due to his refusal to withdraw the proceedings for trespass against some of the members of the Hill-Tribes Association.

15. In view of the tainted evidence adduced by the prosecution the learned Special Judge has rightly acquitted the accused. We find no substantial or compelling reason to interfere with the order of acquittal.

16. The appeal is hence dismissed.
Appeal dismissed.