

ORISSA HIGH COURT

State (Orissa)

Vs

Sadhu Charan Panigrahi

Govt. Appeal No. 6 of 1950

(Jagannadhadas and Panigrahi, JJ.)

18.07.1951

JUDGMENT

Jagannadhadas, J.

1. This is an appeal by the State against the acquittal of one Sadhu Charan Panigrahi, who was charged under Section 161/116, Penal Code. At the trial he was convicted by the Sub-Divisional Magistrate and sentenced to undergo R. I. for four months and to pay a fine of Rs. 50. On appeal, the learned Sessions Judge acquitted him and hence this appeal.

2. The case against the respondent is as follows: He was the authorised agent of the wife of one of the younger brothers of the Raja of Dhenkanal. On her behalf, he presented a sale-deed, Ex. I, for registration on 18.6.1949 to the Sub-Registrar, Dhenkanal. That remained without being registered until 2.7.1949 for one reason or other to be stated presently. It is said that on the morning of 2.7.1949, the respondent went to the house of the Sub-Registrar, had some general gossip with him, and at a time when he found him alone, offered some currency notes to him which he refused. It is said that thereafter the respondent left the currency notes of the value of Rs. 25 on the trunk of the Sub-Registrar and went away without paying any heed to the call of the Sub-Registrar not to leave the money there, but to take it back. The prosecution case is that this amounted to the abetment of offence of bribery under Section 161/116. The accused totally denied the offering of the money or the leaving of it on the trunk of the Sub-Registrar and stated that this case was foisted on him, because the Sub-Registrar was not giving a receipt for the document, Ex. I presented to him for registration, for which he was repeatedly insisting.

3. Both the lower Courts have accepted it as a fact that on the morning of 2.7.1949, the respondent did offer money to the Sub-Registrar at his house. In order to substantiate that there were circumstances which rendered the offer of the money an offence, the Sub-Registrar P. W. 1 gave evidence to the following effect. There was at the time a confidential circular from the

Government that Khanja lands of the relatives of the ruler are non-transferable and that when any transfer-deed is presented on behalf of any such person, it has to be carefully scrutinized whether it relates to any such non-transferable lands and that all such cases are to be submitted to the Collector for orders. P. W. 1 had some reason to think that the lands covered by the sale deed Ex. I presented for registration, were Khanja lands. He therefore took the sale-deed to the Additional District Magistrate of the place. The Additional District Magistrate told him that the matter would be decided by the District Magistrate who was not at the moment available and P. W. 1 accordingly left it with the Additional District Magistrate who was to place the matter before the District Magistrate and convey his orders.

4. The trial Court thought that in these circumstances the motive of the respondent in offering the money was obviously in connection with the registration of Ex. I, and that therefore the respondent was guilty of the offence charged. The appellate Court, however, held that since according to the evidence of the Sub-Registrar, he had at the time left the document with the Additional District Magistrate for the orders of the District Magistrate and was simply awaiting his orders and had himself no official function to discharge, in connection with the registration, at the time, when the money was offered, the offer cannot amount to the offer of a bribe to a public servant under Section 161, Penal Code. For this view the learned Sessions Judge relied on certain cases, namely, *Chanan Singh v. Emperor*¹, and *Venkatarama Naidu In re*², These cases take the view that when money is offered to a public servant for doing an official act, at a time when he is *functus officio* in respect of the matter concerned, the person so offering is not guilty of an offence under Section 161/116. The learned Sessions Judge notices that this view is opposed to the view taken in certain other cases, namely, those in *Emperor v. Bhagwan Das Kanji*³, *Ajudhia Prasad v. Emperor*⁴, *Emperor v. Phul Singh*⁵, *Gopeshwar v. Emperor*⁶, and *Ram Swarup v. The Crown*⁷, but prefers to follow the two cases from Calcutta and Madras above mentioned. The learned Advocate-General appearing for the State contests the correctness of this view.

5. We are inclined to agree with the contention of the learned Advocate General that the cases in AIR 1921 Calcutta 344 and AIR 1929 Madras 756, do not lay down the correct law. We are of opinion that the fact that the public servant is *functus officio* would not by itself and as a matter of law, be sufficient to negative the offence under Section 161 which is in the following terms :

"Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

The content of this offence, broadly stated, is that a public servant accepts extra-legal gratification as a motive or reward for (1) doing or forbearing to do any official acts; (2) showing in the exercise of his official function favour or disfavour to any person ; (3) rendering service or disservice to any person with any public servant as such, (omitting other details for simplification of discussion). In all the three categories, the act intended to be procured by the offerer of the bribe is something connected with the official work of the bribe-taker himself or of some other public servant. It is this connection between the bribe and the act sought to be procured by the bribe that has inclined the learned Judges in the two cases cited above to think that where the act sought to be brought about was in fact outside the scope of the official function of the bribe-taker or of the public servant, at the time, no offence under Section 16t is committed. It appears to us, however, with great respect that this is unduly narrowing the purport of the section. The gist of the offence clearly is not that there was at the time, an official act to be procured capable of being performed by the taker of the bribe or by another public servant with whom he is intended to exercise his influence, but that the extra-legal gratification is obtained as a motive or reward for doing official acts, that is for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official act itself, or on its being capable of performance but on the nature of the act as being official. This is meant to exclude from its purview acts which were totally unconnected with any official conduct and which may be attributable purely to the private capacity of the bribe taker or of the other public servant. The emphasis is on the gratification offered being a motive or reward for official conduct (inclusive of that which is believed or held out to be so). This, to some extent, is amplified in the section itself, wherein the phrase "motive or reward" for doing is explained as follows : A person who receives gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done comes within these words. Further illustration "C" to Section 161 says :

" A a public servant induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. 'A' has committed the offence defined in this section."

This illustration clearly shows that the inducing of the belief by the taker of the bribe would be quite enough to bring the case within the purview of Section 161 so long as the achievement contemplated is an act of official character if the bribe is a motive or reward for the same. Similarly the belief in the giver of the bribe would be enough to bring the case under Section 161/116.

6. It appears to us therefore that the view taken in 51 All 467, AIR 1941 Lahore 276 and AIR 1948 Nagpur 82 is the better one, and the view expressed in AIR 1921 Calcutta 344 and AIR 1929 Madras 756 is, with great respect, unduly narrow. The observations of the Federal Court in *Afzalur Rahman v. Emperor*⁸, substantially confirm the view with which we are inclined to agree.

It may be noticed that the later decisions in *Ramchandriah In re*⁹, and *Tarit Bhusan v. Pramatha Bhusan*¹⁰, are not quite in accord with the view taken in AIR 1921 Calcutta 344 and AIR 1929 Madras 756.

7. We hold therefore that the view taken by the learned Sessions Judge on the question of law involved, relying on AIR 1929 Madras 756, is erroneous, namely, that no such offence can be committed as a matter of law, when the bribe taker is *functus officio* at the time in respect of the matter concerned. It must, however, be borne in mind that the fact of the public servant being *functus officio* at the time may have, in any particular case, an important bearing on the question whether the gratification offered or accepted was intended to be or was believed or held out to be an official act. There can be absolutely no doubt that the extra-legal gratification must be clearly made out as being for the purpose of securing the performance of what is believed to be, or held out to be, or is an official act. Further the connection between the money and the act sought to be procured as being by way of motive or reward for procuring such act must be clearly established. Such connection may be made out either by direct or circumstantial evidence, but must be established beyond any reasonable doubt.

8. Learned counsel for the respondent argues that though the view taken by the learned Sessions Judge on the point of law may be erroneous, the evidence does not establish any such clear connection between the money offered to the Sub-Registrar and the purpose for which it was offered. We are inclined to agree with this contention. The charge against the respondent is that the bribe of Rs. 25 was offered

"as a reward to show favour in the exercise of his official function, namely, for hastening the registration of the sale deed."

The evidence of P. W. 1 does not in terms show that the respondent when offering the money made any such specific request. It merely says that the respondent paid when offering the money that he should take it and spend it and that he refused. In his deposition he says as follows :

"I did not ask him why he offered me the money, I anticipated clearly that the accused offered me money just to get his document registered, because I had no other connection with him."

It is arguable, however, that this impression of P. W. 1 is not correct in the face of the very evidence given by him that to the knowledge of the respondent, the sale-deed was with the Additional District Magistrate or the District Magistrate. According to P. W. 1, the registration itself depended on the orders of the District Magistrate and he had no power at the time to register the document. In this state of evidence, it is difficult to come to any positive conclusion as to the motive with which the money was offered by the respondent to P. W. 1 though the circumstances do create grave suspicion. It is possible that the offer of the money was with a

view to procure the services of P. W. 1 to get the District Magistrate to pass favourable orders. This may bring the case under the third portion of Section 161/116, but that is not the case covered by the charge as framed. A close perusal of the very unsatisfactory evidence of the Sub-Registrar, P. W. 1 also leaves considerable room for doubt that the truth as regards the objection to the registration of the document and the pendency of the document with the District Magistrate awaiting his orders is otherwise than what P. W. 1 says, and that the registration was being purposely delayed. If so, the offer of the bribe might be to hasten the registration. This, however, would be, to find a case contrary to the evidence given by P. W. 1, who is the main prosecution witness.

9. In the circumstances, we must give the benefit of doubt to the respondent. We are, therefore, not prepared to interfere with his acquittal by the lower appellate Court.

10. The appeal must accordingly be dismissed.

Panigrahi, J.

11. I agree.

Appeal dismissed.

Cases Referred.

¹ AIR 1921 Cal 344

² AIR 1929 Mad 756

³ 31 Bom 335

⁴ 51 All 467

⁵ AIR 1941 Lah 276

⁶ AIR 1948 Nag 82

⁷ AIR 1949 Ajm 12

⁸ AIR 1943 PC 18 at p. 28

⁹ AIR 1927 Mad 1011

¹⁰ AIR 1946 Cal 370