PATNA HIGH COURT

Jagdish Prasad Verma

Vs

State (Patna)

Criminal Appeal No. 476 of 1962

(N.L. Untwalia and Anant Singh, JJ.)

31.03.1965

JUDGMENT

Untwalia, J.

1.The sole appellant in this appeal has been convicted by the Special Judge of Bhagalpur under Section 5(2) of the Prevention of Corruption Act, 1947, hereinafter called Act 2 of 1947, and has been sentenced to undergo rigorous imprisonment for three years.

2. The appellant was the Karmchari of Halka No. 2 in Pipra Anchal and was in charge of village Dinapatti also. There is a Gram Panchayat in that village named as Dinapatti Gram Panchayat in the sub-division of Supaul, district Saharsa. In June and July 1959, working as a Karmchari in village Dinapatti, he is said to have taken by way of illegal gratification various sums of money from various persons of village Dinapatti, Tola Litiahi, for showing them favour in his duty connected with the mutation of their names or the work of table survey. In or about that time one Ramadhin Khatbe (P.W. 19) had filed an application for mutation of his name in respect of certain land on the 25th July, 1959, in the office of the Circle Officer, who at the relevant time was Sri Bishwanath Sukla (P.W. 30), at Pipra Anchal. The application was sent for enquiry to the appellant. He is said to have demanded a sum of Rs. 30/- from P.W. 19, who refused to pay any sum to the appellant. It seems that the appellant had submitted a report against P.W. 19 in connection with his application for mutation filed in the circle office. On the 30th or November, 1959, the Circle Officer (P.W. 30) was camping at Village Basaha and there on that date an application (Exhibit 8) scribed by Dukhi Panjiar (P.W. 18) was filed making a complaint against the appellant and this application was signed by Ramadhin Khatbe (P.W. 19), Sukhdeo Khatbe (P.W. 20), Garbhu Khatbe (P.W. 21), and Bihari Khatbe (P.W. 23) all of Tola Litiahi. In this application the complaint made against the appellant was that he had demanded a sum of Rs. 30/- from P.W. 19 but he had refused to pay and that the appellant had taken a sum of Rs. 14/- from P.W. 20; a sum of Rs. 36/- against his demand of Rs. 40/- from P.W. 21; a sum of Rs. 30/- from P.W. 23 and a sum of Rs. 30/- from one Bambholi since deceased. The Circle Officer on the filing of this application took down the statements or P.Ws. 19, 20 and 21 which are respectively Exhibits 7/2, 7 and 7/1. He asked Sri Bishwanath Siiigh (P.W. 14), the then Circle Inspector of Pipra Anchal, who was also present at Village Basaha on the 30th November, 1959, to enquire

into the matter. Shortly thereafter on that very date three more petitions were filed before the Circle Officer and they are Exhibits 8/5, 8/4 and 8/6. The petitioners in Exhibit 8/5 are Saukhi Mandal (P.W. 4), Mosst. Dukhani (P.W. 16 tendered) and Bihari Khatbe (P.W. 29). Their complaint was that the appellant had taken from them respectively Rs. 35/-, Rs. 12/- and Rs. 2/- in connection with the mutation of their respective names over certain lands. There was also a mention of the fact that the appellant had accepted a sum of Rs. 3/- from Babujan, since deceased, whose son Bihari Mandal (P.W. 15) is a tendered witness in the case. The two other applications, Exhibits 8/4 and 8/6 were in connection with the table survey matter. In the former the sole petitioner was Govind Paswan (P.W. 24), who complained that the appellant had taken a sum of Rs. 10/- from him against his demand of Rs. 30/- for doing the table survey work in respect of his land. The petitioners in Exhibit 8/6 making a similar grievance were Sukhal Paswan (P.W. 25), Domi Paswan (P.W. 26), Chauthi Paswan (P.W. 27) and Raghuni Paswan (P.W. 28). They stated that they had respectively paid Rs. 6/-, Rs, 10/-, Rs. 5/- and Rs. 7/- to the appellant in connection with their work of table survey. The Circle Officer asked the Circle Inspector to make enquiries in connection with the said three applications also. When the Circle Inspector had proceeded with the matter of enquiry, another application (Exhibit 1) was filed before him on the 2nd December, 1959, by Tanak Lal Jadav (P.W. 1), Munar Jadav (P.W. 2), Kishan Jadav (P.W. 3) and Chhattar Khatbe (P.W. 22). Their complaint was that the appellant for the mutation of their names in respect of their respective lands had accepted from them Rs. 9/-, Rs. 10/- and Rs. 40/- respectively. The Circle Inspector made enquiries in regard to the four petitions filed before the Circle Officer and one filed before him. On the 5th or 6th December, 1959, it appears that the Circle Officer was camping at Village Thumba, head-quarters of another Gram Panchayat within Pipra Anchal. The Circle Inspector also happened to be there. By that time, it appears, enquiries had been made by the Circle Inspector from the persons concerned and a verbal report made to the Circle Officer. It further appears that the appellant was also present there at village Thumba and he undertook in presence of the Circle Officer to refund all the amounts taken by him, the total of which was Rs. 262/-, to the persons concerned, who had made their complaints before the Circle Officer and the Circle Inspector. Upon this the Circle Officer directed the Circle Inspector to get the amounts refunded, which, as is the prosecution case, were, actually refunded on the 7th December, 1959, at village Dinapatti at the darwaza of Sri Girjanand Mandal (P.W. 8), Mukhiya of Dinapatti Gram Panchayat. A list (Exhibit 3) bearing the signature or the thumb impression of the persons concerned was prepared on that date by Narain Mandal, Gram Sevak of Thumba Gram Panchayat, (P.W. 17). Thereafter the Circle Inspector made a report (Exhibit 5) on the 10th December, 1959, to the Circle Officer, who received it on the 12th December, 1959, and which bears his endorsement (Exhibit 5/1).

3. The evidence of the Circle Officer (P.W. 30) is that the appellant was asked to submit an explanation in connection with the report (Exhibit 5) submitted by the Circle Inspector. But on his failure to do so, after consultation with the Additional Collector, he directed the Circle Inspector to file the complaint against the appellant. The complaint petition (Exhibit 6) was filed in the Court of the Sub-divisional Magistrate, Supaul, on the 25th of January, 1960, along with a copy of the sanction of the Collector as was stated in Exhibit 6. It was found that the case was exclusively triable by the Special Judge at Bhagalpur and, therefore, the complaint was forwarded to and received by him on the 3rd February, 1960. He, however, did not take cognizance of the case immediately on receipt of the complaint as it appears that probably the sanction of the Collector which was stated to have been filed along with the complaint petition was not received by him. He directed the riling of the sanction order. The Collector accorded his

sanction on the 8th August, i960, which order is Exhibit 10 in the case. This was filed in the court of the Special Judge on the 9th August 1960, whereupon he took cognizance of the case under Section 8 of Criminal Law (Amendment) Act, 1952, hereinafter called Act 46 of 1952. The defence of the appellant has been that he has committed no offence and a false case has been filed against him at the instance of the Circle Inspector (P.W. 14) in collusion with the Mukhiya (P.W. 6) and on the machination of Ramadhin Khatbe (P.W. 19). The learned Special Judge, however, has believed the prosecution case to be true and has convicted and sentenced the appellant as stated above.

4. In support of the appeal, Mr. J.N. Varma, learned counsel for the appellant, has urged three points :

> (1) That in absence of any investigation by the police in accordance with Section 5A of Act 2 of 1947 no cognizance of the offence could be taken by the Special Judge on the mere complaint of the Circle Inspector.
> (2) That the sanction of the Collector (Ext. 10) is invalid inasmuch as there is no material in the case to indicate that the facts constituting the offence with which the appellant has been charged with were placed before the sanction authority, namely, the Collector.
> (3) That the evidence adduced by the prosecution in support of the charge is not reliable and the guilt has not been brought home to the appellant.

5. I shall deal with the point of sanction in the last. In my opinion, there is no substance in the first point urged on behalf of the appellant. Section 5A of Act 2 of 1947, broadly speaking, merely modifies the provisions of Section 156 of the Code of Criminal Procedure and provides that notwithstanding anything contained in the said Code, no police officer below the rank of the officers specified in clauses (a) to (c) of Section 5A

> "shall investigate any offence punishable under Section 161, S. 165 or Section 185A of the I.P.C. (Act 45 of 1860) or under Sub-Section (2) of 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 therefor without a warrant."

The prohibitory command of the Legislature contained in Section 6 of Act 2 of 1947 does not say that the Court shall not take cognizance of an offence except upon a police report submitted after investigation in accordance with the provisions of Section 5A. Sub-Section (1) of Section 8 of Act 46 of 1952 states :

> "8(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act 5 of 1898) for the trial of warrant cases by Magistrates."

Section 8(1) does not provide as to in what manner and on what material the Special Judge may take cognizance of the offences referred to therein. For this one has to go to the provisions of

Sub-Section (1) of Section 190 of the Code of Criminal Procedure. I find no sufficient reason to import the provisions of clause (b) of Sub-Section (1) of Section 190 and to hold that the Special Judge may take cognizance of the offence only upon a report in writing of the facts of the offence made by any police officer and not otherwise. It, therefore, follows that he can take cognizance upon receiving a complaint of the facts which constitute the offence or even upon information received from any person other than a police officer or upon his own knowledge of suspicion that the offence has been committed. That being so, the taking of the cognizance by the Special Judge upon the complaint led by the Circle Inspector cannot be held to be illegal or without jurisdiction. Learned counsel when confronted with the various aspects of the matter fairly conceded that no other reasonable view of the law was possible to be taken except the one I have expressed above. Some support may be lent to this view from the judgment of Sahai J., in *Nil Madhab Patnaik v. State*[1], wherein cognizance seems to have been taken by the Special Judge in accordance with the provisions of law contained in clause (c) of Sub-Section (1) of Section 190 of the Code of Criminal Procedure.

6-13. I shall now take up the point as to whether the prosecution has been able to prove the guilt of the appellant. In this connection I may refer to the evidence of the persons who had filed the petition (Ext. 8) before the Circle Officer. [His Lordship then discussed the oral evidence and continued as follows : -]

14. If the case of the appellant and the evidence of a large number of prosecution witnesses, who claimed to have made payments to the appellant, is judged in the background of his paying back the money to the persons concerned, I have no doubt in my mind that their evidence is reliable and truthful, although the criticisms levelled against their evidence in regard to the payments of money to the appellant may not be without substance. Some of them may have force and if the evidence of paying back the money voluntarily by the appellant would not have been reliable, some of the criticisms would have at least cast a doubt in regard to the prosecution story of payment of money to the appellant by way of illegal gratification.

15. It is no doubt true that the Circle Inspector was not quite careful and vigilant in making the departmental enquiry against the appellant which was entrusted to him by the Circle Officer nor the Circle Officer himself carefully looked into the papers to find out as to whether the enquiry made by the Circle Inspector was thorough as he had directed it to be. None the less, I am not impressed by the argument advanced on behalf of the appellant that if the enquiry would have been by a police officer of the rank mentioned in Section 5A of Act 2 of 1947, perhaps there would have been no prosecution in this case and since the departmental enquiry was perfunctory, the appellant was prejudiced in his defense. Assuming that the departmental enquiry was perfunctory, the evidence adduced in Court seems to me truthful and reliable and that being so, in my opinion, the fact has been proved that the appellant had accepted money from as many as eighteen persons in June and or July 1959, and, therefore, he had committed the offence of criminal misconduct in the discharge of his duty within the meaning of clause (a) of Sub-Section (1) of Section 5 of Act 2 of 1947 punishable under Sub-Section (2) of that Section.

16. On the point of sanction, however, the appeal has got to succeed and it has get to be held that the sanction is invalid. The sanction (Ext. 10) reads as follows :

"Having perused the note and recommendation of the Additional Collector, Saharsa dated

> 27-12-1959, and being fully satisfied after due consideration of the facts of the case and gist of evidence against the Karamchari that there exist a prima facie case for the grant of sanction, I.P.S. Kohli, I. A. S., District Magistrate and Collector, Saharsa, in exercise of the powers conferred upon me under Section 6(1)(c) of the Prevention of Corruption Act, 1947 (Act 2 of 1947) as amended by the Prevention of Corruption (Second Amendment) Act, 1952 (Act 59 of 1952) to hereby accord sanction for prosecution under Section 161, Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 (Act 2 of 1947) of Sri Jagdish Prasad Verroa, Karamchari, Halka No. 2 of Pipra Anchal District Saharsa.

Given under my hand and seal the 8th August, 1960.
Sd./- P.S. Kohli,
District Magistrate
and
Collector, Saharsa."

The note and recommendation of the Additional Collector dated 27th December, 1959, spoken of in the order of sanction of the District Magistrate and Collector has not been produced by' the prosecution. The evidence of the Circle Officer is that after the 12th December, 1959, when the appellant failed to file his explanation, he had discussed the matter with the Additional Collector but he has not deposed to the fact as to what papers were prepared by him and what facts were stated in the note which was placed before the Collector. The "gist of evidence against the Karamchari," referred to in the sanction order, has also not been connected with the evidence of three witnesses recorded by the Circle Officer which has been produced in the case as Exhibits 7 series. Nobody on behalf of the prosecution has deposed to the fact that the "gist of evidence" contained in Exhibits 7 series was placed before the Collector at the time when he made the order of sanction for the prosecution of the appellant. It is no doubt true that in the order the Collector has said that he was "fully satisfied after due consideration of the facts of the case" that there existed a prima facie case for the grant of sanction, and, therefore, he was according sanction but the prosecution has failed to adduce any evidence in Court to show as to what were the facts which were placed before the Collector.

17. In *Gokulchand Dwarkadas Morarka v. The King*[2], Sir John Beaumont, delivering the judgment of the Board, has pointed out with reference to the provisions of Clause
23 of the Cotton Cloth and Yarn (Control) Order which are in pari materia with the provisions of Section 6 of Act 2 of 1947, that :

> "It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove the extraneous evidence that those facts were placed before the sanctioning authority."

It has further been pointed out :

> "The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seems to have-thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient."

In *Madan Mohan Singh v. State of Uttar Pradesh*[3] following the Morarka's case, AIR 1948 PC 82 decided by the Privy Council, it has been pointed out :

> "The burden of proving that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based; and these facts might appear on the face of the sanction or might be proved by extraneous evidence."

The case in hand is slightly distinguishable from the two cases referred to above in that in the sanction orders of those cases it was not stated that the sanctioning authority had considered the facts of those cises. None the less, I am of the view that in absence of the statement of any fact in the order of sanction it was incumbent upon the prosecution to satisfy the court that the facts upon which the sanction order was obtained by the sanctioning authority were those in respect of which the delinquent public servant has been charged with in court. In absence of any evidence to that effect it is difficult to hold that the sanction order was made by the Collector after all the facts concerning this case had been placed before him. From a layman's point of view, one is tempted to think that the facts considered by the Collector must have been the facts in relation to this case. But a court of law has got to take the strict legal view of the matter specially in regard to the order of sanction which is a condition precedent, as pointed out by the Privy Council in Morarka's case, AIR 1948 PC 82 for launching prosecution against the delinquent public servant. In absence of any evidence as to the missing links either in the form of the note and recommendation of the Additional Collector or the gist of evidence or any other paper showing that the facts concerning this particular case were placed before the Collector before his order of sanction was obtained, I find it difficult to hold that the order of sanction was validly obtained after placing all the facts of the case.

18. Reliance was placed on behalf of the State on an unreported decision of this Court, to which I was a party, in *Bhagwat Prasad v. State*[4], and to another Bench decision of this Court, to which also I was a party, in *Baidyanath Prasad Sinha v. State*[5], With reference to the facts of both those cases, it would be noticed that the documents on the basis of which sanction orders had been obtained in those cases were produced and got exhibited by the prosecution in court and those documents did contain the facts of the case. The test, therefore, laid down by the Privy Council and the Supreme Court in the two cases, referred to above, was satisfied in both those cases, but in my opinion it is not satisfied in the case in hand. I would, therefore, hold that the sanction (Exhibit 10) was invalid and taking cognizance by the learned Special Judge on the basis of such a sanction was without jurisdiction. The trial was, therefore, vitiated. Upon this ground alone the

conviction of the appellant has got to be set aside.

19. In the result, I allow the appeal and set aside the conviction of and the sentence imposed upon the appellant.

Anant Singh, J.

20. I agree.

Appeal allowed.

Cases Referred.

[1] AIR 1955 Pat 317
[2] AIR 1948 P C 82
[3] AIR 1954 SC 637
[4] Criminal Appeal No." 262 of 1956 D/d. 9-7-1958 (Pat)
[5] 1961 (1) Cri LJ 544 (Pat)