

P.K. Subbiah Vs. the State

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Court : Guwahati

Decided On : Jun-10-1952

Judge : Lakshmi Narain, J.C.

Appellant : P.K. Subbiah

Respondent : The State

Judgement :

Lakshmi Narain, J.C.

1. The petitioner has come to this Court on the Revision Side against the order of the Sessions Judge, Tripura, dismissing his appeal from an order of trial Magistrate convicting the petitioner under Section 161, Penal Code and sentencing him to 18 months' rigorous imprisonment and to pay a fine of Rs. 500/-; in default of payment of fine the petitioner was to undergo a further period of 4 months' rigorous imprisonment.

2. The prosecution case against the petitioner who was Executive Engineer of Assam Agartala Road Project (with Head quarters at Agartala), was that he accepted a bribe of Rs. 5100/- from one Sushil Kumar Ghosh (P.W. 2) a contractor under him. It is suggested that in the beginning when the contractor applied for work, the Engineer told him that the work would be given to him if he would agree to pay 5 per cent of the bill dues. It this the contractor agreed. His name was entered as a B Class contractor with an understanding that he would be promoted

to A Class afterwards. Some-advance for the 5 per cent, was demanded which was paid on getting the work. This 5 per cent, was afterwards raised to 10 per cent, by the Executive Engineer when time for payment of bills arrived. This percentage on the bill dues by that time would come to about to Rs. 7600/- out of which Rs. 2500/- had already been paid. Rs. 5100/- were to be paid after encasing the last cheque for Rs. 63000/-.

This cheque is said to have been encashed at Calcutta. After that the contractor Shri Ghosh went to P.W. 1 Shri K.N. Mukherji S.P. of Special Police Establishment which was brought into being to check bribery, corruptions etc.; apprised him of the situation and gave his written statement Ex. 1. It appears that Sri Mukherji was already known to the contractor. Shri Mukherji along with his Assistant Shri Dutta, D.S.P. accompanied by the contractor came down to Agartala. It is alleged that Shri Mukherji went to the then Dewan of the State and got his verbal permission to investigate into the matter with the help of Shri Jyotilal Dev Barma Magistrate, P.W. 6. The petition to the Magistrate for giving permission to investigate and to depute a Magistrate to watch it, is Ex. 2. The required permission was ordered on the application and also that the Magistrate was himself to accompany the party. A trap was arranged. 51 hundred-rupee G.C. notes which were supplied by the contractor and a list of them Ex. 3 were handed over to the Magistrate who compared the numbers on the notes and the list, and gave his certificate on it.

The party started for the office of the Executive Engineer. The local S.P. was not to go with the party for fear of disclosure of the trap as he was known to almost everybody. On reaching the gate of the office the Magistrate handed over the bundle of G.C. notes to the contractor for paying to the Executive Engineer if he would demand as bribe. The party waited at a little distance so as to watch the giving and taking of G.C. notes. It was arranged that the contractor after paying the notes to the Executive Engineer would come out and put off his spectacles as a signal. This was done. The party (i.e., Shri Mukherji, his D.S.P. Shri Dutta and the Magistrate) thereafter rushed to the office, disclosed their identity and demanded the money from the Executive Engineer, which was accepted by him. It is alleged that the Executive Engineer got the envelop containing the bundle of notes out of the right-hand side drawer of his table and handed it over to the party.

The numbers were compared and found correct. The seizure list Ex. 4 was duly prepared on the spot, a copy of which was given to the accused. The local S.P. also by that time arrived. Ultimately the occurrence and investigation resulted in a complaint Ex. 7 made on 21.2.50 by Shri Mukherjee, S.P. of Special Police Establishment, after getting the necessary sanction for prosecuting the Executive Engineer from the Governor of Assam under the signatures of the Chief Engineer and Secretary, P.W. D., Assam, which is Ex. P. 7(i).

3. In support of its case the prosecution presented only 7 witnesses, viz.,:

1. Shri K.N. Mukherji, S.P., Special Police Establishment.
2. Shri S.K. Ghosh, the contractor (P.W. 1).
3. Shri B.C. Dutta, D.S.P., Special Police Establishment (P.W. 2).
4. Shri Kamalapati Roy Superintending Engineer, Assam Agartala Road Project. (P.W. 3).
5. Shri Abinash Birattacharyya, Accountant, Assam Agartala Road Project. (P.W. 4),
6. Shri Hrishikesh Dev Barma, S.P., Agartala. (P.W. 5).
7. Shri J.L. Der Barma, Magistrate 1st Class, Tripura State (P.W. 6).

4. The accused stated that he was innocent and that he had been falsely implicated by means of the trap. He also stated on 7.11.1950, that his written statement to his Superintending Engineer on the date of occurrence was his true statement. He pleaded not guilty to the charge and produced 3 witnesses in defence.

5. I have not been led through the evidence of this case by the parties and rightly so, as this Court would not ordinarily interfere with finding of facts based on evidence.

6. The learned Counsel for the petitioner has addressed this Court on the following points:

(a) That there is no legal basis for the case in as much as the S.P., of the Special Police Establishment has had no jurisdiction and authority to investigate at Agartala (Tripura State) in April 1949, when the State was not merged but was independent; and also that no complaint could be filed in the case which was made cognisable by means of Prevention of Corruption Act, Act 11 of 1947.

(b) That the statement of the accused is not in accordance with Section 342, Cr.P.C.

(c) That the search for the bribe-money was not in accordance with law.

(d) That the statement of the accused purported to be recorded under Section 164, Cr.P.C., is not valid and therefore not admissible.

(e) That the signatures on the seizure list Ex. 4 do not signify that the accused admitted the contents of the document to be correct.

(f) That the report Ex. 8 of the Magistrate as it is, is very suspicious and, therefore, should not be taken into account against the accused.

(g) That the contractor is an accomplice and as such his evidence should be corroborated in material particulars by other good evidence.

(h) That the sanction for prosecution is not valid.

7. The points may be taken one by one.

7A(a) 'Jurisdiction or authority of the Special Police Establishment to investigate the matter': It is argued by the learned Counsel for the petitioner that Shri Mukherji being Superintendent of Police of the Special Police Establishment which was directly under the Home Ministry, Government of India, had no authority to investigate the matter in Tripura State which then had an independent status. The department was brought into being to check immorality like bribery, corruption in services etc. The petitioner was serving under the Indian Government as an

Executive Engineer for Assam Agartala Road Project which was undertaken by that Government. The petitioner was therefore serving under the Indian Government, working at Agartala (Tripura State) when there was an allegation of bribery against him, as (?) there was nothing wrong if the S.P., of Central Police Establishment took up the investigation in the matter. All that required (?) is that permission of the State should be obtained before doing so. It is in the evidence of Shri Mukherji that he went to the then Dewan and apprised him of the situation. The Dewan directed the witness to go to Shri J.L. Dev Barma, Additional Magistrate and seek his help. The local S.P., was also with the party at that time. A regular application Ex. 2 for permission to investigate the matter was made to the Magistrate who granted it and agreed to accompany the party himself. There is nothing wrong therefore in the investigation by (?) the complaint. Even if there is any, it is curable under Section 537, Cr.P.C.

8. There is no material irregularity if a complaint is filed Instead of submitting a charge-sheet in a case Investigated by the police. A complaint attended by schedule of prosecution witnesses and other relevant documents, if any, comes within the purview of Section 190(1)(b) of the Criminal Procedure Code, It makes no difference whether it is in the form of a report or a complaint. A magistrate is competent to take cognisance on such a complaint.

9. Irregularity if any made in investigation of a case by different police other than the local police is also curable when it does not prejudice the case of the accused. In the present case, it is to be noted that permission to investigate was duly obtained which is proved by the evidence.

10. It is argued that Shri K.N. Mukherji, S.P., of the Special Police Establishment ought to have been examined before issue of process by the trial Court taking cognisance on the complaint. The reply from the other side is that he is exempted from any such examination under Section 200(1)(aa), Cr.P.C., as he is a public servant.

11. There is no dispute that he is a public servant. The dispute is whether he is such for filing the present complaint. The complaint was filed by him on 21.2.1950, when the State had already merged in the Centre on 16.10.1949. 'The Tripura

State Adoption of Indian Laws Act 1359 T.E.: 1.10.1949 A.D.' came into operation on or from 1.10.1949 by means of which Indian Penal Code and Criminal Procedure Code were adopted. The 'Existing Laws' were to continue - vide Tripura Administration Order - as published in the Tripura State Gazette Extraordinary on 15.10.1949. The State Merger (Chief Commissioner's Province) Order 1950 came in force on 23.1.1950 A.D., by means of which the State of Tripura was created as a new Province. The Tripura State was made a Part C State by the Indian Constitution which came into force on 26.1.1950 A.D. It is, therefore, quite clear that the complainant in this case was a public servant for the purpose of Section 200(1)(aa) of the Criminal Procedure Code and as such exempted from examination on receipt of the complaint.

12. (b) It is argued that the statement of the accused is not in accordance with the provision of Section 342 of the Criminal Procedure Code and on that account the trial is vitiated. In this I do not agree with the learned Counsel for the petitioner. At the close of the prosecution case the accused was asked on 1.6.1950, 'Have you anything to say against the evidence appearing in the prosecution story?' The answer was, 'False, I am innocent and I have been falsely implicated.' Again on 7.11.1950 (probably after the re-cross examination of the prosecution witnesses) the accused stated, 'I am not guilty, I did not accept any bribe. Ex. P contains my true statement.' It is to be noted here that Ex. F is the written statement of the accused submitted to his officer the Superintending Engineer on the day of occurrence. It was produced at the instance of the accused and runs as follows:

This morning some contractor without permission, came in and left a long envelope addressed to the Executive Engineer, Division 1 and disappeared. Before I had time to open and find out what documents it contained, three unknown officers rushed in and took the envelope from me and on their opening it, found a bundle of 100/- notes. All these persons jointly appear to have played, this dirty trick on me, with a view to blackmail me. I have had no hand in any money transaction with anyone. Please enquire into this arid give me the necessary protection against such frauds, calculated to disgrace and blackmail officials of the Project for nothing. This happened at about 9-45 a.m. today. I have already reported to you personally about this.

13. Under the circumstances it cannot be said that provisions of Section 342, Cr.P.C., have not been complied with. Detailed examination of the accused is not essential in every case and specially it was not essential in this case.

14. The nature of the questions to be put to the accused depends on the circumstances of each individual case. It would be sufficient compliance of the provision of the Code if the Court gives the accused an opportunity by questioning him generally on the case to explain the circumstances appearing in the case against him. The accused in this case has been represented by more than one counsel. The failure of the Magistrate to put explicit questions beyond asking a general formal question does not vitiate the trial and more specially when the accused is not prejudiced by such examination. It is not explained how the accused was prejudiced by such a statement.

15. (c) It is contended on behalf of the petitioner that the proceedings for search of the bribe-money were not in accordance with law. The reply of the Government Advocate is that it was production and not a breach; and that even if it was a search, conviction is not bad if evidence to support the conviction is ample. On the face of it, it is a case of production and not of search. Even if it be a search and an irregular one, its illegality or irregularity unattended by prejudice to the accused does not vitiate trial. It has not been shown that there was any prejudice caused to the accused in tills respect. In *Emperor v. Kutroo* AIR 1925 All 434, it has been held that 'Although the search is illegal a person can be convicted where the evidence against him is conclusive.' Further 'Any irregularity or illegality in the search can neither vitiate trial nor affect the conviction of the accused where the accused has not been prejudiced by the defect. *Rure Mal v. Emperor* AIR 1929 All 937 at p. 938. It has also been held in AIR 1924 All 214 (1) that 'Where the discovery of articles showing the guilt of the accused and found in the search is proved by direct evidence any irregularity or illegality in the search can neither vitiate the trial nor affect the conviction.' This contention is therefore ineffectual.

16. (d) 'Statement of the accused dated 7.4.1950 under Section 164, Cr.P.C.

17. It is Ex. 17 recorded by the Magistrate who was present when the bribe-money was produced by the accused immediately after the occurrence to the police party.

I have gone through this statement. It does not appear from this document that the Magistrate has acted or purported to act under Section 164 or Section 364, Cr.P.C. Oral evidence of the Magistrate under such circumstances is not admissible. Following Nazir Aamd v. King Emperor AIR 1936 P.C. 253, 'If oral evidence be allowed in such a case, all the precautions and safe-guards laid down by Sections 164 and 364 would be of such trifling value as to be almost idle.' This statement Ex. 17 is there is fore of no value.

18. (e) 'Seizure list.': It appears that the seizure list Ex. 4 is signed by the accused with a note, 'received a copy of this list.' It is not denied that a copy of the same was given to the accused forthwith. The learned Counsel for the petitioner wants the Court to draw conclusion, that his client did not know the contents of the seizure list which particularly contain the words 'the following hundred-rupee G.C., notes inside the official cover addressed to the Executive Engineer, Division 1 were produced from inside the right-hand-side drawer of Mr. P.K. Subbiah by him etc.' This may be because the learned Counsel for the accused has now urged that the bundle of G.C. notes was collected from above the table by the Police and not given by the petitioner after taking it from the right-hand-side drawer of the table. To contradict this the learned Government Advocate has drawn attention of the Court to document Ex. P which is a written statement of the accused in his own hand, given to his Superintending Engineer the same day. In that statement of the accused it is written 'and took the envelope from me.' From this the learned Government Advocate argues that the envelope containing the G.C. notes was taken by the police from the possession of the accused and the statement given about it in the seizure list is correct. On the basis of this it is pressed on behalf of the respondent that the accused was well aware of the contents of the seizure list Ex. 4 which was prepared in his presence and a copy of which was handed over to him. Otherwise, he argues, that the accused who is well-educated and holding a very high office would have created a row or at least protested as to the incorrectness of the contents of the seizure list and more specially when his Superintending Engineer was sitting in an adjacent room.

Under the circumstances the presumption can be fairly drawn that the accused knew the contents of the seizure list at the time of his signing it with the above said

note. Further Ex. H a letter of the accused dated 11.5.1950, addressed to the Chief Engineer does not leave any room for doubt that he knew the contents of the seizure list when he signed it. The relevant portion of the above letter produced at the instance of the accused himself runs as follows:

Then they made out a seizure list in which they stated that they found the cover from inside the right-hand-side drawer of my table which was wholly incorrect. Later they compelled me to sign the seizure list. To this I strongly objected and protested and refused to sign it as it contained deliberately wrong, distorted and incorrect statement of actual facts and then they requested me to sign it in token of receiving a copy of the seizure list, which I did and received a copy from them.

This letter is proved by the statement of P.W. 3 Superintending Engineer in cross-examination by the accused.

19. (f) 'Verification Report': It is objected that Report Ex. 18 signed by the Magistrate P.W. 6 to the higher authority is in admissible in evidence. This report is proved by the Magistrate himself in this case (though objected to by the other party) as the same which he wrote and sent on the same day, i.e., 7.4.1949, to the Dewan of the State. The prosecution has urged that this is the verification report by the Magistrate in connection with the confessional statement of the accused recorded by him on that day. On perusal of the report it is evident that it is addressed to nobody; it is also received by nobody. It bears no endorsement of despatch or receipt. I need not discuss it at length here in view of the fact that the very statement for whose verification this report is relied upon by the prosecution, has already been held inadmissible. Verification report made by a Magistrate not addressed to any authority and without any endorsement of despatch or receipt, is evidently of a doubtful character and has no probative value and is, therefore, not admissible in evidence so far as the confessional statement of the accused is concerned.

20. (g) 'Bribe giver as an accomplice': It remains to be determined now how much corroboration if any required, is needed of the statement of a bribe giver who is an accomplice and whether, other evidence in this case is a sufficient corroboration of the same.

21. It would be helpful to quote some of the rulings of different High Courts on the subject:

In cases where the payment of bribe has not been voluntary very slight corroboration would be sufficient to make the evidence of the accomplice admissible against the receiver of the bribe. The rule of the Court which requires corroboration of the evidence of an accomplice as against each accused, if it applies at all, applies with very little force to a case in which the accused is charged with extorting a bribe from other person. The objection which usually arises to the evidence of an accomplice does not really apply where the alleged accomplice, that is the person who pays the bribe, is not a willing participant in the offence, but is really a victim of that offence. *Kamal Khan v. Emperor* AIR 1935 Bom 230.

22. In this case it is evident that 10 per cent, amount of the bill dues was being extorted and the contractor Shri Ghosh was not a willing participant to it. The same view as in the case cited above has been taken in *Narayan Prasad v. Emperor* AIR 1948 Nag 342.

23. According to Section 133 of the Evidence Act conviction can be based on the uncorroborated evidence of an accomplice if the Court is satisfied as to its veracity. In the present case, the marked G.C. notes have been recovered from the possession of the accused and that in itself is a corroboration of the accomplice's evidence. It is laid down in *K.H. Bhattacharjee v. Emperor* AIR 1944 Cal 374 that:

no doubt in a sense the person who pays the bribe is an accomplice of the person who receives the bribe, but the position is essentially, different from that of one dacoit deposing regarding the dacoity against his fellow dacoits. There is no hard and fast rule regarding the corroboration of an accomplice. The legislature has left the Court free to act on the uncorroborated testimony of an accomplice if the Court believes that evidence.

24. Reliance can be placed on the uncorroborated evidence of an accomplice who acts under a form of pressure which it would, require firmness to resist.

25. There is nothing in this case to doubt the veracity of the 3 eye-witnesses, i.e., the Section P, Special Police Establishment, D.S.P., of the same department and the Magistrate of the State. The learned Counsel for the petitioner found it difficult to colour these 3 witnesses with any animus against the accused and explain as to why and how they, should have joined hands against him.

26. Full reliance has been placed on the evidence of these 3 witnesses by the Courts below, apart from the accomplice in the case. There is thus not only sufficient corroboration of the bribe-giver but that the case is also fully proved against the accused. It is also to be noted that according to Section 4 of the Prevention of Corruption Acts Act 11 of 1947 the onus on prosecution has been made much lighter.

27. (h) An objection is also raised that there was no proper sanction in the case to prosecute the petitioner. It is to be seen that sanction of the Governor of Assam to prosecute the petitioner, in this case was obtained on 9.1.1950, under the signatures of Chief Engineer and Secretary, P.W.D. Assam, It is duly signed and sealed. This order Ex. P-7 (1) was filed along with the complaint. It is contended that the Governor of Assam could not sanction the prosecution as it is not proved that he had any authority to remove the petitioner from his office. The petitioner was appointed as an Executive Engineer for the Tripura State Road from February 24th 1948 by an order of the Governor of Assam No. 104, E dated 24.3.1948, as published in Assam Gazette of the 31st March, 1948 at page 265. The petitioner was later on placed in charge of Division No. 1 with Head Quarters at Agartala by an order of the Assam Governor No. 109-E dated 30.3.1948, published in the Assam Gazette of April 7, 1948 at page 287. There is nothing to show that he had no power to dismiss. It is general common law rule that a power to appoint carries with it in the absence of any other provision a power to dismiss. It goes clear, therefore, that the Governor of Assam had also power to dismiss the petitioner and as such he was authorized to sanction the prosecution. The prosecution is thus found valid.

28. The learned Counsel for the petitioner has not addressed the Court on the point of sentence.

29. In view of the above discussions this petition is dismissed. The petitioner is to surrender to his bail bond.

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