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G. Moogappa Vs. the State

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Court : Karnataka

Decided On : Oct-28-1960

Reported in : AIR1961Kant44; AIR1961Mys44; 1961CriLJ285

Judge : H. Hombe Gowda and ;M. Sadasivayya, JJ.

Acts : Prevention of Corruption Act, 1947 - Sections 5, 5(1), 5(2) and 5A; Evidence Act, 1872 - Sections 133; Code of Criminal Procedure (CrPC) , 1898 - Sections 367; Indian Penal Code (IPC), 1860 - Sections 161, 165 and 165A; Indian Police Service (Recruitment Rules), 1954

Appeal No. : Petition of Criminal Appeal No. 362 of 1958

Appellant : G. Moogappa

Respondent : The State

Advocate for Def. : Santosh, High Court Government Pleader

Advocate for Pet/Ap. : A. Shamanna, Adv.

Judgement :

Hombe Gowda, J.

1. This is an appeal against the judgment of the Special Judge, Civil Station, Bangalore, In Special Criminal Case No. 1 of 1958 convicting the appellant. G.

Moogappa of offences under Section 161 of the Indian Penal Code and Section 5 (2) of the Prevention of Corruption Act (Act II of 1947) and sentencing him to suffer simple imprisonment for three months and also to pay a fine of Rs. 500/- on each of the counts and in default of the payment of fine to suffer simple imprisonment for one month with a direction that the substantive sentences in respect of the two founts should run concurrently.

2. The appellant and one Nanjiah, a peon attached to the Office of the Sub-Registrar, Civil Station, were both tried on a charge that they while being public servants directly accepted from Dr. Mrs. K. Tarabai illegal gratification as a motive or reward for doing an official act, namely, for returning a gift-deed which she had presented for registration on 12th of August, 1957 and had thereby abused their position as public servants. The learn cd Special Judge acquitted Nanjiah, who was the second accused before him, giving him the benefit of doubt, but found that the case against the appellant had been clearly established on both the counts and convicted and sentenced him as stated above.

3. Appellant C. Moogappa was serving as the Sub-Registrar in Civil Station, Bangalore, in the month of August, 1957. On 12th of August, 1957 Dr. Mrs. K. Tarabai, a retired lady Doctor and her daughter Mrs. Bharathi Rao accompanied hy their Advocate Mr. U. Subramanyam of the Bangalore Bar went to the office of the appellant for getting a gift-deed registered. Dr. Mrs. K. Tarabai presented the document for registration to the appellant at about 3 P.M. on that day. The execution of the document was admitted by Dr. Mrs. K. Tarabai and her daughter Mrs. Bharathi Rao and their thumb impressions in token thereof were taken before the appellant. Mr. U. Subramanyam identified the executants in the office.

The appellant then issued Exhibit D-1, a receipt. 12-9-1957 was fixed as the date for receiving back the document in Exhibit D-1. Dr. Mrs. K. Tarabai enquired the appellant as to whether it was possible to deliver the document earlier than the date mentioned in Exhibit D-1. The appellant said that she could have it after about a week. Immediately thereafter, the executants and their Advocate Mr. U. Subramanyam left the Office. Mr. U. Subramanyam and Mrs. Bharathi Rao were walking ahead in the lobby in front of the Sub-Registrar's Office while Dr. Mrs. K.

Tarabai was a few feet behind them in the lobby.

It is stated that while Dr. Mrs. K. Tarabai was in the lobby Nanjiah (who was A-2 in the Trial Court), peon attached to the Office of the Sub-Registrar, Civil Station. Bangalore, followed her from behind and stretched his hand towards her muttering something in Kannada which Dr. Mrs. K. Tarabai did not understand. Being under the impression that the peon was probably asking for some 'baksheesh' she took out a rupee-note from her hand-bag and handed it over to him.

After receiving the said note, Nanjiah said something in Kannada and pointed out both his hands in the direction of the Office of the Sub-Registrar. Dr. Mrs. K. Tarabai gained the impression that the peon had been sent by the Sub-Registrar in connection with some flaw in the document presented for registration by her and went back to the place where the appellant was sitting in his chair and questioned him as to why she had been called back.

It is stated that the appellant did not give any reply. Dr. Mrs. K. Tarabai, therefore, looked in the direction of the peon and asked him why he had brought her to the place. Nanjiah then made a sign with his fingers giving Dr. Mrs. K. Tarabai the impression that he was referring to the money to be paid to the Sub-Registrar. Thereafter Dr. Mrs. K. Tarabai took out a ten-rupee currency note from her hand-bag and handed it over to the appellant, who took it and put it into his drawer without saying anything.

Dr. Mrs. K. Tarabai then requested the appellant as to whether she could got the document a week later to which the appellant replied that the return of the document will take a month. Thereafter Dr. Mrs. K. Tarabai reminded the appellant that he had just a few minutes back told her that he would see that the document was delivered to her after a week. It is stated that the appellant told her that the staff was overworked and pointed out the file of papers before him and told her that it is not possible for him to deliver the document within about a week. From the demeanour of the appellant Dr. Mrs. K. Tarabai gained an impression that he was not satisfied with the amount of Rs. 10/- that she had paid to him. She then walked out of the Office to the portico where the car had been parked and got into the car.

Mr. U. Subramanyam and Mrs. Bharathi R. Rao were already seated in the car and were waiting for her. When the car was about to be started Nanjiah, the Sub-Registrar's peon came up to the car and told Mr. Subramanyam that he was wanted by the Sub-Registrar. Mr. Subramanyam then went and met the appellant in his office and questioned him as to why he was sent for. The appellant told Mr. U. Subramanyam that Dr. Mrs. K. Tarabai had paid him only a sum of Rs. 10/-; that he was thoroughly dissatisfied and that he expected at least Rs. 25/- and requested him to speak to her and see that she paid at least Rs. 25. Mr. U. Subramanyam told the appellant that he disapproved such things and that he would not speak to his client and went back to the car.

Dr. Mrs. K. Tarabai questioned Mr. U. Subramanyam why he had been sent for by the Sub-Registrar and learnt from him that the Sub-Registrar informed him that she had already paid a sum of Rs. 10/- to him and that the Sub-Registrar requested him that he should ask her to pay at least Rs. 25. Mr. U. Subramanyam expressed to Dr. Mrs. K. Tarabai that she should not have paid Rs. 10 as bribe and encouraged a public servant to accept bribes. Dr. Mrs. K. Tarabai said that though she had paid the money, she knew what to do in the matter. Then all of them proceeded to their respective places.

4. Dr. Mrs. K. Tarabai was contemplating to lodge a complaint to the Anti-Corruption Department but she was under the impression that there was no Anti-Conniptions Branch, Police in Bangalore. On or about 20-8-1957 she met one Mrs. Naidu working in the Mysore Government Arts and Crafts Emporium, Mahatma Gandhi Road, Civil Station, Bangalore and casually informed her about the Sub-Registrar of the Civil Station, Bangalore accepting from her Rs. 10 as bribe and demanding a further sum of Rs. 15 for early delivery of the gift deed which she had presented for registration. Mrs. Naidu then informed Dr. Mrs. Tarabai that she could write to the Special Officer, Efficiency Audit at Bangalore and that he would investigate into the matter.

Accordingly on 20-8-1957 Dr. Mrs. K. Tarabai wrote a letter to the Special Officer, Efficiency Audit at Bangalore intimating him that she had to report a case of corruption to him and seeking an appointment with him either at her residence or

at the residence of the officer but not in his office for obvious reasons. She sent this letter by ordinary post on 22-8-1957. She got a reply from Mr. K.G. Ramanna, Special Officer, Efficiency Audit informing her that he was deputing Ms assistant Mr. G.S. Sunder Ram, Inspector of Police attached to office to contact her at 10 A.M. or. 24-8-1957 and requesting her to confide to him whatever she wanted to convey to him.

Mr. G.S. Sundar Ram, Inspector of Police accordingly called on Dr. Mrs. K. Tarabai on 24th of August 1957 and made enquiries. Dr. Mrs. K. Tarabai refused to disclose to him anything and told him that she desired to speak to the Special Officer himself personally and not to any one of his officer. Thereupon, the Inspector of Police, Mr. G.S. Sundar Ram, went back to the Office and informed Mr. Ramanna, the Special Officer that Mrs. K. Tarabai would not divulge anything to him and would like him to go to her and to receive the complaint.

Accordingly Mr. Ramanna went to the residence of Dr. Mrs. K. Tarabai at about 2 P.M. an that day which happened to be a Saturday. Dr. Mrs. K. Tarabai informed Mr. Ramanna all that had happened. The Special Officer then advised Dr. Mrs. K. Tarabai to give a written complaint and hand it over to Mr. Sundar Ram, his assistant. On the next working day, that is, on Monday, the 26th of August 1957 Dr. Mrs. K. Tarabai gave a written complaint addressed to the Special Officer and handed it over to Mr. Sundar Ram, the Inspector of Police.

The Special Officer forwarded the written complaint lodged by Dr. Mrs. K. Taiabai with a Demi-official letter to the District Superintendent of Police, Bangalore South, requesting him to depute the Assistant Superintendent of Police, who had jurisdiction over the Civil Station to take up the investigation and assuring him that his stuff would render ail help to lay a trap in the matter. This complaint was in turn sent by the District Superintendent of Police to Mr. P.S. Chellappa, Assistant Superintendent of Police, Crime Branch, Bangalore South at about 1-30 P.M. on 26th of August 1957. He registered a case in Shoolay Police Station as Crime No. 128/57 under Section 161 of the Indian Penal Code and Section 5(1) (a) and (2) of the Prevention of Corruption Act and submitted the F.I.R. to the jurisdictional Magistrate.

He secured some mahazar witnesses and proceeded to the residence of Dr. Mrs. K. Tarabai along with Mr. Sundar Ram, Inspector of Police and others. He requested Dr. Mrs. K. Tarabai to produce currency notes of Rs. 15 for laying a trap. She produced two currency notes one of Rs. 10 and another of Rs. 5. In the presence of the panchayatdars the two currency notes were treated with anthracene powder and a demonstration was held in the presence of the panchayatdars in the light of the ultra-violet lamp. A fluorescent glow was noticed on the treated currency notes.

A mahazar was drawn up noting down the number of the currency notes and also of the fact that the currency notes had been treated with anthracene powder and a demonstration was held in the light of the ultra-violet lamp and a fluorescent glow was noticed on them. Thereafter Mr. Chellappa, Assistant Superintendent of Police handed over those two currency notes to Dr. Mrs. K, Tarabai with instructions to proceed to the office ot the appellant in the company of Mrs. Bharathi R. Rao and the Police Daffedar Bommiah Gowda and deliver them to the Sub-Registrar (the appellant).

She was instructed that in case the appellant accepted the bribe, she should give a signal to the Police Daffedar Bommiah Gowda, who will be standing in the corridor by removing her spectacles and the Police Daffedar Bommiah Gowda in turn would give a signal to the Police Officers who would be waiting near the porch of the building.

In accordance with these instructions Dr. Mrs. K. Tarabai accompanied by her daughter Mrs. Bharathi R. Rao and the Police Daffedar Bommiah Gowda went in her car and reached the Office of the Sub-Registrar, Civil Station, Bangalore. Mr. Chellapa and the other panchayatdars followed them in a separate car and were waiting near the Mayo Hall building. The Police Daffedar Bommiah Gowda, who was in mufti, stood at the entrance of the corridor. Dr. Mrs. Tarabai and her daughter Mrs. Bharathi R. Rao entered the office of the appellant at about 3-30 P.M. and found the appellant busy with two other persons who had come there for work. Therefore, they sat on the bench for some time.

As soon as the two persons left the Office Dr. Mrs. K. Tarabai approached the appellant and enquired him if her document was ready. It is stated that the appellant curtly replied that the document was not ready and that it would take about a fortnight more. Thereafter Dr. Mrs. K. Tarabai told him that her lawyer Mr. U. Subramanyam had informed her that he expected Rs. 25 from her; that she had already paid him Rs. 10 and that she had brought the balance of Rs. 15. Thereupon it is stated that the appellant's face changed and that he turned towards Dr. Mrs. K. Tarabai. Dr. Mrs. K. Tarabai then handed over the two treated currency notes of Rs. 15 (M. O. 1) to the appellant.

He took them in his left hand and put them into the left lower pocket of his coat. He then called his clerk and directed him to keep the document ready for delivery on that day. But the clerk told him that he was busy with the other work entrusted to him for the day. The appellant directed the clerk to keep the document ready for delivery on the following day. Dr. Mrs. K. Tarabai and her daughter Mrs. Bharathi R. Rao came out of the corridor. Dr. Mrs. K. Tarabai gave the prearranged signal by removing her spectacles. The police Daffedar Bomme Gowda, who observed this signal, in turn conveyed the pre-arranged signal to Mr. Chellappa and the panchayatdars who were waiting near the porch.

The Assistant Superintendent of Police, the other Police Officers and the mahazar witnesses then proceeded to the Office of the appellant along the corridor. All of them including Dr. Mrs. K. Tarabai and her daughter Mrs. Bharathi R. Rao entered the Office of the appellant. When questioned by Mr. Chellappa, Dr. Mrs. K. Tarabai informed him that the appellant had received the bribe from her and put the money into his left lower pocket of his coat. Then Mr. Chellappa asked the appellant to produce the money from his pocket. The appellant took out some currency notes from his left lower pocket and placed them on the table. The two treated currency notes were among the several notes that were found in his pocket so taken out.

The two currency notes were identified by holding them against the light of the ultra-violet tamp and by verifying their numbers previously noted down in the mahazar. The appellant's palm and finger tips of the left hand also showed the fluorescent glow when held against the ultra-violet light. The other currency notes,

which were found in the pocket of the appellant along with M.O. I did not exhibit any such fluorescent glow. The two treated currency notes were seized under a mahazar in the presence of the Panchayatdars by the Assistant Superintendent of Police.

The other currency notes which did not emit any glow when held against the light of the ultraviolet lamp were also seized under a separate mahazar. Mr. Chellappa thereafter investigated the case. He examined the several witnesses. Subsequently the investigation was conducted by Dy. S.P. who succeeded Mr. Chellappa in November 1957. After obtaining the necessary sanction from the Government and the Inspector-General of Registration the appellant and Nanjiah, the peon attached to his office were both prosecuted for offences punishable under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act (Act II of 1947) by presenting a charge to the Court of the Special Judge, Civil Station Bangalore. The appellant and Nanjiah, (second accused before the trial court) denied the charges that were read over and explained to them. The prosecution examined eleven witnesses to establish the charges against the appellant and the other accused. The appellant having entered upon his defence examined a clerk attached to the Office of the Sub-Registrar, Civil Station, Bangalore to disprove the case of the prosecution. The learned Special Judge, who recorded the evidence of the several witnesses and heard the statement made by the appellant came to the conclusion that Nanjiah (the second accused in the trial court) should be given the benefit of doubt and acquitted him.

But the learned Special Judge was of the opinion that the evidence adduced by the prosecution had established the two charges against the appellant beyond all reasonable doubt and convicted and sentenced him as stated above. It is against this judgment that the appellant has preferred this appeal to this Court.

(After summarising facts and discussing evidence of P. W. 1 His Lordship proceeded:)

5-6. It was contended by Sri Shamanna, the Learned Counsel for the appellant, that Dr. Mrs. K. Tarabai is in the nature of an accomplice and therefore, her evidence in regard to the acceptance of a ten-rupee currency note by the appellant

from her should not be relied upon unless the same is corroborated by other independent evidence. We are afraid that this contention of Sri Shamanna is untenable and cannot be accepted. P.W. 1 Dr. Mrs. K. Tarabai cannot at all be said to be an accomplice in the circumstances of the case. All that can be said is that she is an interested witness in the sense that she has paid the amount to the appellant. We should, therefore, call for some corroboration before her version in this regard is accepted.

(After discussing further evidence His Lordship proceeded:)

7. It is die case of the prosecution that the appellant received a sum of Rs. 15 in the shape of two currency notes (one of the denomination of Rs. 10 and another of the denomination of Rs. 5) from Dr. Mrs. K. Tarabai on the afternoon of 26th of August 1957 and during the trap. The fact that the two currency notes which had been treated with anthracene powder, were found in the left side pocket of the coat of the appellant, when the office of the appellant was raided; that the appellant took them out and produced them before the Assistant Superintendent of Police and the other panchayatdars who had come to lay the trap, is not disputed by the appellant.

It is the case of the appellant that Dr. Mrs. K. Tarabai was sitting on a chair on the left side of the appellant very close to him just before the incident and it is quite possible that she had surreptitiously put them in his pocket. The learned Special Judge rejected this defence of the appellant as fantastic.

8. It is the duty of the Court, when there are two rival versions one of the prosecution and another of the accused in regard to the circumstances under which the currency notes were found in the pocket of the appellant to examine them carefully for the purpose of ascertaining which of them is true. (Then after discussing further evidence His Lordship concluded.) Taking all the circumstances of the case, we are satisfied that the prosecution had established that the appellant received M.O. 1 (the two currency notes one of the denomination of Rs. 10 and another of the denomination of Rs. 5) from P.W. 1 Dr. Mrs. K. Tarabai as an illegal gratification for the early return of the gift deed presented by her for registration on 12th of August 1957 as stated by the prosecution.

9. It was strenuously urged by Mr. Shamanna the learned counsel for the appellant that the prosecution had hushed up the first complaint given by P.W. 1 Dr. Mrs. K. Tarabai to P.W. 7 Mr. K.C. Bamanna on 24-8-1957 and that they had introduced the complaint Exhibit P-4 in its place. There appears to be no substance in this contention. This argument was based on a statement made by P.W. 1 Dr. Mrs. K. Tarabai in the course of her cross-examination in which she had stated that she told Mr. Ramanna what had happened; that he asked her to give a complaint in writing; that she wrote out a complaint and handed it over to him and that they went away taking the complaint. P.W. 1 Dr. Mrs. K. Tarabai has at no stage of her evidence stated that she presented a complaint in writing on 24th of August 1957.

The statements made by her immediately after the statements relied upon by Mr. Shamanna in support of his contention make it quite clear that she presented the complaint on 26th of An grist 1957 and not on 24th of August 1957. Mr. K.C. Ramanna has denied the suggestion that such a complaint was given to him on 24th of August 1957. There Is absolutely no reason for the Police Officer to hush up the complaint given on 24th of August 1957 and get another complaint from P.W. 1 Dr. Mrs. K. Tarabai on 26th of August 1957 and introduce the same in its place. No useful purpose would be served by such an act.

10. Almost at the tail end of his argument Mr. Shamanna raised a legal ground. He contended before us that the investigation conducted by P.W. 10 Mr. Chellappa, who was an Assistant Superintendent of Police, is without jurisdiction and therefore, the investigation and the trial which followed it are both vitiated. Mr. Shamanna fairly conceded that this objection was not taken by him before the learned Special Judge. He also fairly conceded that he had not taken it as one of the grounds in the memorandum of appeal preferred by him to this Court.

There is absolutely nothing on record to indicate that P.W. 10 Mr. Chellappa is inferior in rank to that of a Dy. S.P. and is not competent to investigate into the offence without obtaining the order of the competent Magistrate under Section 5A (c) of the Prevention of Corruption Act. We informed Mr. Shamanna that we will not permit him to raise this objection before us for the first time. But yet since it is a legal point we will proceed to examine the correctness and validity of the same.

P.W. 10 Mr. Chellappa is an I.P.S. Officer and is designated as an Assistant Superintendent of Police. It is not disputed that he is a gazetted officer.

It is in evidence that he submitted the F.I.R. on receipt of Exhibit P-4 and arranged for the trap and investigated the case upto the stage P.W. 11 Mr. G.S. Mallappa, Dy. S.P. took up further investigation from him. The necessity to transfer the investigation arose as P.W. 10 Mr. Chellappa was transferred from the place. Section 5A of the Prevention of Corruption Act inter alia states that no police officer below the rank of a Deputy Superintendent of Police shall investigate an offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code or under Sub-section (2) of Section 5 of the 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.

Relying on this, it is contended that since P.W. 10 Mr. Chellappa is an Assistant Superintendent of Police and not a Dy. S.P. he was not competent to investigate into the matter and that the investigation and the trial that followed are, therefore, vitiated. When P.W. 10 Mr. Chellappa was examined as a witness no questions touching his authority to investigate the case or about his rank were put to him. It was not suggested to him that he was holding a rank inferior to that of a Dv. S.P. There is no basis to support the contention of Mr. Shamanna that he holds a rank below that of a Dy. S.P.

On the other hand it was submitted by Mr. Santosh, the learned High Court Government Pleader that officers of the Police Department who pass the I.P.S. competitive examinations and who are posted to the State are designated as Assistant Superintendents of Police and hold a gazetted rank and those officers, who are recruited to the State Police Service either by direct recruitment or by promotion from the rank of Police Inspectors are designated as Deputy Superintendents of Police. The question as to whether, the posts of Dy. S.P. and A.S.P. are equivalent came up for consideration before this Court in State of Mysore v. Anniah, AIR 1957 Mys 38. After examining this question Padmanabhiah J. made the following observations :

'The post in this State corresponding to the post of the Deputy Superintendent of Police referred to in Section 5A(c) is that of Assistant Superintendent of Police. What that clause means is that no police officer below the rank of a Deputy Superintendent of Police (who is the same as Assistant Superintendent of Police in this State) can investigate into offences coming under Sections 161, 165 and 165A of the Indian Penal Code without an order of a Presidency Magistrate or a Magistrate of the First Class as the case may be. According to this provisio, a Deputy Superintendent of Police or an Assistant Superintendent of Police need not obtain permission of any Magistrate to investigate into offences coming under these sections.'

This question as to whether an A.S.P. is competent to investigate into a case under Section 5A of the Prevention of Corruption Act came up for consideration before a Division Bench of the Travancore-Cochin High Court in Ouseph Varkey v. State, AIR 1954 Trav-Co 492. Their Lordships rejected the contention similar to the one that was advanced before us that the investigation conducted by the A.S.P. was invalid and observed in the course of their judgment as follows :

'The question therefore is whether the investigation in the present case was conducted in violation of the directions in Section 5A, Prevention of Corruption Act. It is seen that the investigation was taken up and completed and the case charge-sheeted by P.W. 7 who was at that time the Assistant Superintendent of Police within whose jurisdiction the alleged offence was committed. It is urged on behalf of the petitioner that an 'Assistant Superintendent of Police is an officer below the rank of Deputy Superintendent of Police.

Excepting the mere assertion in that direction, there is no basis to support it. It has also to be mentioned that the objection was not raised at the trial. In the evidence given by P.W. 7 he has stated in so many words that he took up the investigation of the case because the matter was within his competency and not of the officers subordinate to him. The statement was left unchallenged. It is not disputed that his rank as a Police Officer is just below that of a District Superintendent of Police and definitely above the Inspector of Police. His designation as Assistant Superintendent does not and will not by itself make out that he is an officer inferior

in rank to a Deputy Superintendent.

It appears that an officer holding the rank or a Deputy Superintendent of Police is designated in some jurisdictions as Assistant Superintendent. All that the Legislature has intended is that the investigation under Section 5A without the warrant of a Magistrate should not be left to an officer inferior in rank to that of a Deputy Superintendent of Police. In the absence of any evidence in this case to support the contention that the rank of the Assistant Superintendent of Police is Inferior to that of a Deputy Superintendent, it cannot be said that the investigation by P.W. 7 was in violation of Section 5A.'

Sri Santhosh, the learned High Court Government Pleader brought to our notice a Notification issued by the State which makes it quite clear that an A.S.P. and Dy. S.P. are of equal status and are both gazetted officers. The notification runs as follows :

'Government are pleased to order the junior officers appointed to the I.P.S. cadre on the results of the competitive examinations held under the I.P.S. (Recruitment Rules 1954) are to he designated as Assistant Superintendents of Police and that the Police Officers who are recruited to tile State Police Service either by direct recruitment or by promotion from the rank of the Police Inspectors may he designated as Deputy Superintendents of Police.'

It is clear from the above that the contention urged by Mr. Shamanna that the investigation conducted by P.W. 10 Mr. Chellappa is in violation of Section 5A of the Prevention of Corruption Act is without any substance. Even if we assume that P.W. 10 Mr. Chellappa was holding an office interior to that of a Deputy Superintendent of Police and the investigation conducted by him is in viola-Lion of Section 5A of the Prevention of Corruption Act the question remains as to whether the trial that followed 15 vitiated. In H.N. Rishbud v. State of Delhi, : 1955 CriLJ526 , this question was raised and came up for consideration before their Lordships of the Supreme Court.

After examining the provisions of the Code of Criminal Procedure their Lordships of the Supreme Court held that a defect or illegality in investigation, however

serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. In the course of the judgment their Lordships observed thus :

'If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can he no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu v. Emperor, and Lumbhardar Zutshi v. The King, AIR 1950 PC 26.'

We are, therefore, of the opinion that there is no substance in this legal contention raised by Sri Shamanna, the learned counsel for the appellant.

11. Having re-examined the entire evidence in the light of the arguments advanced by Sri Shamanna, the learned counsel for the appellant, we are satisfied that the conclusions reached by the learned Special Judge that the appellant received illegal gratification from P.W. 1 Dr. Mrs. K. Tarabai on 12th of August 1957 and on 26th of August 1957 has been established beyond all reasonable doubt and the appellant is guilty of the two charges levelled against him, are correct. The learned Special Judge has sentenced the appellant to suffer simple imprisonment for three months and to pay, a fine of Rs. 500 on each of the counts. He has directed the sentences to run concurrently.

We are clearly of the opinion that the sentences awarded to the appellant are very lenient. Cases of the type before us are much too common and they are brought to light very rarely. We are of the opinion that infliction of any lenient sentence in such type of cases will defeat the very object of the Prevention of Corruption Act. However, that State has not preferred any application for enhancement of the sentence. The conviction against the appellant was entered on 11th of October 1958. No notice to show cause why the sentence should not be enhanced had been issued to the appellant by this Court. In these circumstances we feel it is not necessary to probe into the matter further.

12. In the result, therefore, for the reasons stated above this appeal fails and the same is dismissed. The appellant is on bail. He will surrender to his bail and undergo the sentence of imprisonment awarded to him and also to pay the fine and in default of the payment of fine to suffer the imprisonment awarded to him in lieu thereof.

13. Appeal dismissed.

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