B. Parameswaran Vs. State

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Court : Andhra Pradesh

Decided On : Dec-28-1998

Reported in : 1999(1)ALD727; 1999(1)ALT(Cri)307; 1999CriLJ2059

Judge : Vaman Rao, J.

Acts : Prevention Corruption Act, 1988 - Sections 8 and 13(1); Prevention Corruption Act, 1947 - Sections 5(1); Indian Penal Code (IPC), 1860 - Sections 420

Appeal No. : Crl. A. No. 1022 of 1994

Appellant : B. Parameswaran

Respondent : State

Advocate for Def. : Mr. M.R. Reddy SC for CBI

Advocate for Pet/Ap. : Mr. Koka Raghava Rao, Adv.

Judgement :

1. This appeal is directed against the judgment dated 15-10-1994 in CC No.5 of 1993 on the file of the Special Judge for C.B.I. Cases, Visakhapalnam under which the appellant has been convicted for the offence under Section 13(a)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo simple imprisonment for one year and to pay a fine of

Rs.500/-, in default to undergo simple imprisonment for one month.

2. The accused, Parameswaran @ Parameswara Rao was a clerk-cum-typist inthe Divisional Audit Office, South Central Railway at Vijayawada. PW1, K.K. Venkata Ramana, had earlier worked as a cleaner under a Railway Contractor from 1987 to September, 1989 in the Vegetarian Canteen of Vijayawada Railway Station and later worked as a helper in the Vegetarian Restaurant in the Railway Canteen in Guntur Railway Station from March, 1990 to December, 1991. For appointment as casual labourers in the vegetarian restaurant of the Railways along with others, PW1 was called for a screening test which was conducted at Divisional Railway Manager's Office, Vijayawada. Due to ill-ness of his father, PW1 was unable to attend the said screening test. He gave representations to the Senior Divisional Commercial Superintendent, South Central Railways, Vijayawada under Ex.Pl and Ex.P3 for holding a screening test for him. The contractor under whom PW1 was employed also sent a representation under Ex.P2 to the same effect. But, no action was taken on these representations. PW1 visited the Divisional Railway Manager's Office, Vijayawada to enquire as to the action taken on his representations. The accused happend to meet him there and enquired about PW1 's problems. PW1 narrated to him about the screening test that he missed. The accused asked him to meet him in his office and accordingly PW1 met the accused on or about 21-1-1992. The accused told him that he knew some people in Divisional Railway Managers Office, Vijayawada and General Manager's Office, Sccunderabad. The accused told him that him that he would arrange the screening test by influencing those persons in the Divisional Manager's Office, Vijayawada and the General Manager's Office, Secunderabad. The accused further told that a sum of Rs.6,000/- would be required towards bribes for that purpose. When PW1 expressed inability to pay that amount, the accused asked him to pay the amount in instalments at the rate of Rs.1,000/-each.

3. The accused asked PW1 to go over to him on 24-1-1992 by 10.30 a.m. along with the first instalment of Rs.1,000/-. He also asked him to get the SSC Certificate, Transfer Certificate and also service certificate.

4. According to PW1, he was unwilling to pay the bribe amount and he consulted his friends. He was told by a friend that the C.B.I. Inspector was camping at Vijayawada Railway Station and asked him to tell him about this. On 23-1-.1992, PW1 went to the Inspector at about 3.00 p.m. in the retiring room at the Railway Station and narrated what all hapened. The Inspector (PW8) asked him whether PW 1 was prepared to co-operate in laying a trap against the accused. PW1 answered positively. He also expressed his willingness to bring the required money for payment to the accused as first instalment. He gave a complaint as in Ex.P4. Ex.P4A is the carbon copy of that complaint. The Inspector (PW8) asked PW1 to go over to him next day i.e., on 24-1-1992 at about 9.00 a.m. along with the money for laying the trap. PW8 sent the information to Deputy Superintendent of Police (PW6) with a request to supervise the trap and First Information Report was issued in respect of this offence. PW1 accordingly went to PW8 on 24-1-1992 along with the money to be given to the accused. PW1 was introduced to two persons i.e., PW2 and another who were introduced as employees of Income Tax Department. In their presence, PW1 narrated what all happened by then. He admitted the contents of the complaint under Ex.P4A in their presence. They signed on Ex.P4A also in token of having been read the contents. PW1 handedover seven 100/- rupee notes and six 50/- rupee notes to the Inspector of Police (PW8). The currency notes were treated with thin layer of phenolphthalein powder and PW8 demonstrated the phenolphthalein test. PW1 was searched and found that he was having no money and he was given treated currency notes which he put them in shirt front pocket. The Inspectorasked PW1 to give that amount to the accused when demanded. PW2 was asked to follow PW1 and listen to the conversation between PW1 and the accused and witness the demand of money by the accused and payment of the same by PW1. PW2 was also instructed to give a signal the moment the accused accepted the money. All these proceedings were recorded in Ex.PS which was signed by PW1, PW2-the mediator, PW8-the Inspector of Police and PW6-the Dy. Superintendent of Police. Thereafter, PW1 and others proceeded to the Divisional Railway Manager's Office, Vijayawada at 10.30a.m. PW1 and Kishore Babu proceeded ahead followed by the other members and they went to the office of the accused at about 10.40 a.m. PWs1 and 2 went to the seat of the accused but he was not there and they waited

till 11.30 a.m. by then the accused had returned to his seat. The accused then asked PW1 about PW2. PW2 told that he was the uncle of PW1. Then, the accused asked PW1 to show him his certificates. PW1 accordingly showed SSC Certificate, Transfer Certificate, Conduct Certificate and his father's Service Certificate. Ex.P6 to Ex.P9 are those xerox copies. The accused then asked PW1 the service certificate from the contractor which was not with him. The accused then took the particulars of his service which PW1 wrote on a piece of paper, Ex.P10. The accused took all these certificates and kept them in his table desk. The accused then asked PW1 whether he brought the money of Rs.1,000/-. PW1 told him that he brought the money. The accused reminded him that apart from this Rs.1,000/-, PW1 was required to pay the balance of Rs.5,000/- and then asked PW1 to accompany him to the ground floor and went to the tea shop by the side of stair case. The accused ordered tea for three of them. Then the accused took them behind the building near the post-office. There the accused asked money from PW1 who handedover the sum of Rs.1,000/- to him. The accused took it with his right and kept in his right side pocket of his pants and they returned to the stair-case and in the meanwhile, PW2 gave a signal and then the entire party including PW8 and PW6 went there, and PW6 and PW8 showed their identity cards to the accused and asked whether the accused has taken money. The accused kept quiet for some time and tried to give some explanation. The accused was taken to the adjacent A.S.T.E. Office and then Phenotphthalein test was conducted and the accused was asked to dip his right hand into water having sodium carbonate and the water turned into light pink colour. This water was poured into empty bottle and sealed and all necessary steps were taken. The pant pocket was also tested for phenolphthalein and the water turned into pink colour and this water was taken into MO.3. The accused handed over the currency notes to PW8 and the numbers were verified with reference to the numbers already noted in Ex.P5. Apart from PWs.1, 2, 6-the Dy.Superintendent of Police and PW8-the Inspector of Police deposed about the trap. PW4 is the Divisional Signal and Tele-communication Engineer (Vijaya Kumar) in whose room the accused put his fingers in the sodium carbonate water and the solution turned into pink colour whereas when his left hand fingers dipped, the colour did not change. All these proceedings were recorded under the mediators report Ex.P11. The pant of the accused was seized under Ex.P14. PW5 is the Office Superintendent of D.P.O's office, South Cenlral Railway who marked the file, Ex.P 17, relating to screening of contract labourers. As stated above, PW6-the Dy.Superintendent of Police participated and supervised the trap and issued First Information Report, Ex.P19. According to him, Ex.P4 contains the endorsement of the Superintendent of Police to register the case. PW7, the Deputy Director, South Central Railway, who is the disciplinary authority has accorded sanction for prosecution under Ex.P20. As stated above, PW8 is the Inspector of Central Bureau of Investigation, who is the principal investigator in the matter. PW9 is theInspector of Police, Central Bureau of Investigation, who examined PWs.l to 6 and 8.

5. PWs. 1 to 9 have been examined on behalf of the prosecution and Exs.Pl to P20 and MOs.1 to 6 have been marked. The accused apart from answering questions under Section 313 of Cr.PC filed a written statement denying that he demanded Rs.6,000/- and that he asked PW1 to get Rs.1,000/- as first instalment. He, however, states that it was PW1 who requested him to go to Secunderabad to know the stage of the case and as to what would be the 'next cause of action' and find out whether there was any possibility for arranging screening test. On this, the accused stated that he was unable to bear the expenses to go to Secunderabad. According to the accused, on 24-1-1992 PW1 himself in his anxiety kept the money in his right side pant pocket asking him to go over to Secunderabad for finding out the position. He further stated that when both his hands were tested for phenolphthalein test, the colour of water did not change. Thus, the plea of the accused appears to be that PW1 gave the money towards his expenses for going to Secunderabad for finding out about PW1's representation.

6. On this evidence, the learned Special Judge acquitted the accused for the offence under Section 420 of the Indian Penal Code and under Section 8 of the Prevention of Corruption Act, 1988. The accused, however, has been convicted for the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him as above.

7. It is in the evidence of PW1 that the accused had prior acquaintance with PW1. According to PW1 in his cross-examination, even when his father was alive, the

accused was visiting their house at Rajahmundry. There is nothing improbable in this inasmuch as the father of PW1 himself was working asHead Cook in Vegetarian Railway Restaurant, Rajahmundry, and PW1 himself had worked in the Railway Canteen at Vijayawada. Under the circumstances, there is nothing intrinsically improbable and nothing has been brought out in the cross-examination of PW1 to indicate that the entire version of PW1 that the accused promised to help him was the figment of imagination of PW1. The very fact that, as seen from the evidence of PW8, certain certificates and documents pertaining to PW1 were recovered from the drawer of the accused would show that the accused did ask PW1 to bring those certificates in furtherance of what lie proposed to do to help PW1. With this back-ground, the version of PW1 that the accused told him that Rs.6,000/- would be required forgiving bribes and on PW1 expressing his inability to pay that much sum, the accused suggested that PW1 could pay the said sum in instalments at Rs. 1,000/- each appears quite probable. When this evidence of PW1 is juxtaposed with the evidence of successful trap, the version of PW1 that the accused demanded bribe of Rs.6,000/-, out of which Rs.1,000/- was to be paid as part payment as a first instalment appears quite probable. It may be mentioned that the accused has been working in the Railways and PW1 had worked in Railway Canteen, Vijayawada. The evidence of PWs.1, 2, 6, 8 and 4 as to the trap does not suffer from any infirmities. It is seen that all the precautions have been taken scrupulously for laying and conducting the trap. In fact, that the money changed from the hand of PW1 to the accused is not disputed at all. The version of the accused is that it was PW1 who thrust the money into the right side pant pocket of accused. This version does not dovetail with other circumstances. It may be mentioned that if the money was meant to be paid to cover the expenses of his visit to Secunderabad, there is no reason why a sum of Rs.1,000/- would have been given, and if it was meant for the visit of the accused to Secunderabad merely for making enquiries to find out the stage of the case of PW1 as appears to be the versiongiven in the written statement filed by the accused, there is no reason why the accused should have asked PW1 to bring all the certificates and keep them with him which is apparent from the recovery of those certificates from the desk of the accused. Nothing has been suggested to PW2 who is an independent witness as to why he would go to the extent of implicating the accused in a serious criminal case. In fact, there is no suggestion as to why PW1 who is said to have approached the accused to help would, go to the extent of fabricating a false case against the accused with the help of Central Bureau of Investigation. A careful scrutiny of the evidence pertaining to the trap and recovery of money from the accused including the evidence that phenolphthalein test proved positive when the right hand fingers of the accused were dipped in Sodium Carbonate solution, would show that the entire version given by PW1 as corroborated by the version of PWs.2, 6 and 8 is quite probable and does not suffer from any infirmities. The learned Sessions Judge has after thorough discussion of the entire evidence came to the conclusion that the prosecution version has been proved. Thus, the prosecution has succeeded in proving the facts that the accused held out that he would help PW1 in arranging a screening test for him by using his contacts and influence with some employees working in the concerned department who were known to him and on that ground asked for Rs.6,000/-lowards expenses for bribing others and during the trap accepted Rs.1,000/- as part payment.

8. The learned Counsel for the accused however contends that even assuming that these facts arc proved, the offence under Section 13(1)(d) of Prevention of Corruption Act, 1988 has not been made out. The relevant provision reads as follows:

'13. Criminal Misconduct By A Public Servant:--(1) A public servant is said to commit the offence of criminal misconduct,--

(a) xxx

(b) xxx

(c) xxx

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) xxx

The learned Counsel relies on a judgment of the Supreme Court in the case of State By Special Police Establishment v, D. Krishnamurthy, 1996 SCC (Cri) 102. This case arose out of the Prevention of Corruption Act, 1947. The equivalent provision to Section 13(1)(d) in the Act of 1988 is Section 5(1)(d) of the Act of 1947 which is extracted below:

'5. Criminal Misconduct In Discharge of Official Duty :--(1) A public servant is said to commit the offence of criminal misconduct:

(a) xxx

(b) xxx

(c) xxx

(d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(e) xxx

The learned Counsel relies on the observations in the judgment 1st cited supra to the effect that if a public servant bywhatever means, be they corrupt or illegal, obtains for himself or any other person any valuable thing or pecuniary advantage must, in any event, for doing so, abuse his position as a public servant. If such abuse of his position as a public servant, is lacking in the prosecution case, and there is evidence barely to the effect, that he has by some means, be they illegal or corrupt, obtained for himself or any other person any valuable thing or pecuniary advantage, that by itself would not be enough.

9. The contention of the learned Counsel is that in this case the accused himself was working as a clerk-cum-typist in Divisional Audit Office at South Central Railway Vijayawada whereas the work relating to PW1 was in the office of Divisional Railway Manager, South Central Railway, Vijayawada and that PW1 approached the accused not as a railway employee but as a personal acquaintance and as such even if the accused had obtained by corrupt or illegal means, a sum of Rs.1,000/-from PW1, there is no question of the accused abusing his position as public servant in obtaining the said pecuniary advantage of Rs.1,000/- from PW1. The argument appears plausible but on a close examination it does not stand scrutiny. It is pertinent to mention here that PW1 believed the accused when he offered to help him for the reason that the accused himself was an employee of the South Central Railways though working in a different department, on the basis of claim by the accused that he had friends and acquaintance in the Divisional Manager's Office. The simple test is would PW1 have approached the accused for help had the accused not been an employee of the South Central Railways? A careful reading of the evidence of PW1 would leave no manner of doubt that PW1 approached the accused simply because he happend to be an employee of the South Central Railways. Under the circumstances, there is material to show that the accused sought to abuse his position as a public servant in trying to induce PW1 topart with money. Thus, the requirement of Section 13(1)(d) Clause (ii) is satisfied. The requirement of Section 13(1)(d)(i) is also satisfied inasmuch as there can be no difficulty in holding that in obtaining the amount of Rs.1,000/- from PW1, the accused reported to corrupt and illegal means. It is a corrupt means because the accused sought to obtain that money in the name of expenses for bribing the other officials. It is illegal for the reason that the accused was not lawfully entitled to receive that money. Taking any view of the matter, the ingredients of Section 13(1)(d) have been satisfied in this case.

10. Further, there appears to be a substantial change in the comparable provisions under the Prevention of Corruption Act, 1988, namely, Section 13(1)(d) of the Act of 1988 from the provision under Section 5(1)(d) under the Prevention of Corruption Act, 1947. Clause (d) of Section 5(1) mandates that for constituting the offence under that clause, the accused must have used corrupt or illegal means or

otherwise abused his position as public servant to obtain for himself or for any other person valuable thing or pecuniary advantage. The words 'or by otherwise abusing his position as public servant' go to indicate that use of corrupt or illegal means is considered as one of the modes of abusing official position. Thus, there is only one concept involved here, namely, abusing one's official position to gain valuable thing or pecuniary advantage. Adoption of corrupt or illegal means is mentioned illustratively as one of the means of abuse of official position. Thus, the concept of use of corrupt or illegal means has inextricable nexus with abuse of official position. Abuse of official position appears to be central to the concept of misconduct and adopting corrupt or illegal means is merely one of the ways and not unrelated to abusing official position. It is for this reason, the Supreme Court held in that case (supra) that mere use or adoption of illegal means to obtain valuable thing or pecuniary advantageunrelated to abuse of official position does not satisfy the ingredient of the offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947. But, in the Act, 1988, this nexus between adoption of corrupt or illegal means and abuse of official position has been severed as can be seen by examining the relevant provision:

'13. Criminal Misconduct By A Public Servant:--(1) A public servant is said to commit the offence of criminal misconduct:

(d) if he -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

Sub-Clause (d) of Section 13(i) which is equivalent to Sub-Clause (d) of Section 5(1) of the Act, 1947 has been divided into three distinctive parts as extracted above.

11. A reading of this provision would make it amply clear that all the three wings of Clause (d) of Section 13(1) are independent and alternative and disjunctive for constituting the ingredients for the offence under Section 13(1)(d) as is clear from the use of the word 'or' at the end of each sub-clause. Thus, under Section 13(1)(d)(i) obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would satisfy the requirement of Criminal misconduct under Section 13(1)(d) of the Prevention of Corruption Act, 1988. On the same reasoning 'obtaining a valuable thing or pecuniary advantage merely byabusing official position' as contemplated under Section 13(1)(d)(ii) in itself would satisfy the ingredient of Criminal Misconduct under Section 13(1)(d) without any nexus with the adoption of the illegal means as contemplated under Section 13(1)(d)(i) of the Act, 1988. Thus, it would appear that there is definite change as to the ingredients of offence of Criminal Misconduct under Section 13(1)(d) of Act, 1988 as distinct from Section 5(1)(d) of the Prevention of Corruption Act, 1947. The Judgments of the Supreme Court rendered while interpreting the provisions of Prevention of Corruption Act, 1947 have to be appreciated taking into account the changes incorporated in the relevant provisions in the Prevention of Corruption Act, 1988. For this reason also, the facts in this case must be held to be sufficient to constitute 'Criminal Misconduct' within the meaning of Section 13(1)(d) of the Prevention of Corruption Act 1988.

12. In the result, the appeal is dismissed and the conviction and sentence imposed by the trial Court confirmed.