

Ram Charan Bhatt Vs. State

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Court : Allahabad

Decided On : Aug-14-1964

Reported in : AIR1967All321; 1967CriLJ835

Judge : C.B. Capoor, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Prevention of Corruption Act, 1947](#) - Sections 5(2)

Appeal No. : Criminal Appeal No. 221 of 1963

Appellant : Ram Charan Bhatt

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : S.K. Subedar and ;P.C. Chaturvedi, Adv.

Disposition : Appeal allowed

Judgement :

C.B. Capoor, J.

1. This appeal by Ram Charan Bhatt is directed against an order of the learned Special Judge, Allahabad whereby the appellant was found guilty of the offences under Section 161 of I. P. C. and Section 5(2) of the Prevention of Corruption Act

and was sentenced to undergo R. I. for a period of one year and each of the aforesaid offences. The appellant was further sentenced to pay a fine of Rs. 100 and, in default of payment of fine, to undergo further R. I. for a period of two months. The sentences of imprisonment on the two counts were ordered to run concurrently.

2. The appellant was the Secretary of the Nyaya Panchayat of village Purkhas at the material date. One Balai P. W. 5, a maternal cousin of Bhairodin, P. W. 2, had applied for being granted a loan for the digging of a well in village Benpur Kataiya, P. S. Sarai Aqil. A sum of Rs. 750 was ordered to be advanced as a loan to the aforesaid Balai and a cheque for Rs. 400 as the first instalment of the aforesaid loan was issued to the Block Development Officer, Newada for being handed over to the applicant. Bhairodin, P. W. 2, who was also interested in the aforesaid loan, along with Balai went to the Block Development Officer, Newada on 30-3-1962 for taking delivery of the cheque. The Block Development Officer wanted identification of the applicant either by the Gram Sewak or by the Secretary, Nyaya Panchayat. The Gram Sewak happened to be present at that time but he did not know the applicant and declined to identify him. Balai and Bhairodin, accordingly, went to the appellant who demanded 15 per cent, of the amount of the cheque as his remuneration and ultimately the bargain was struck at 10 per cent of the amount of the cheque and the applicant agreed to pay a sum of Rs. 40 to the appellant. The appellant went to the office of the Block Development Officer and identified the applicant. The Block Development Officer handed over the cheque for Rs. 400 to the applicant on 1-4-1962. It was agreed that the appellant will also be present at the time when the applicant will present the cheque for being cashed.

On 3-4-1962 the, applicant and the appellant left for Tahsil Chail at Allahabad. Bhairodin, P. W. 2 approached the District Magistrate, Allahabad and apprised him of the fact that the appellant was demanding a sum of Rs. 40 as illegal gratification. Sri Mahabir Saran Das, P. W. 1, the then District Magistrate of Allahabad took four currency notes of the value of Rs. 10 each from the aforesaid Bhairodin and after noting down their numbers handed them over to Sri Shyam Sanahi P. W. 9 the then Dy. S. P. (Complaints), Allahabad and instructed him to

accompany Bhairodin and to search the person of the appellant if the sum of Rs. 40 was accepted by him and to submit his report thereafter. Accordingly Sri Shyam Sanehi returned the aforesaid currency notes to Bhairodin with the direction that he should signal to him as soon as payment had been made. Bhairodin went to Tahsil Chail and learnt that the cheque had been encashed. The appellant was also present there along with the applicant. Bhairodin returned from there and informed Sri Shyam Sanehi that the payment would be made at Kedar's hotel opposite the Tahsil compound.

Thereafter he went to the Tahsil Office and in the company of the applicant and the appellant went to Kedar's hotel and paid a sum of Rs. 40 to the appellant. On a signal given by him Sri Shyam Sanehi went inside the aforesaid hotel and enquired of the appellant if he had accepted any sum as bribe. The appellant denied having done so and thereafter Sri Shyam Sanehi searched the appellant's person and recovered from the pocket of the shirt which he was wearing four Government currency notes of the value of Rs. 10 each. The numbers of those notes tallied with the numbers of the currency notes noted down by the District Magistrate. A recovery memo was prepared and the recovered currency notes were initialled by Sri Kulshreshtha and Sri Kali Prasad Srivastava as witnesses to the recovery. A copy of the recovery memo was handed over to the appellant. Sri Shyam Sanehi submitted his report to the District Magistrate, investigated into the case and submitted a charge sheet against the appellant.

3. The appellant pleaded not guilty. He admitted that four currency notes of the value of Rs. 10 each were recovered from his possession by Sri Shyam Sanehi. The case put forward by him was that Bhairodin had borrowed a sum of Rs. 40 from him in the month of March last and had promised to repay the same on the following day. On the next day, the appellant demanded repayment of the loan but Bhairodin said that he would repay it later on. About six days prior to the incident under consideration a quarrel took place between the appellant and Bhairodin as the latter had not repaid the loan till then. As a result of intervention by some persons of the village Bhairodin agreed to repay a sum of Rs. 40 out of the sum of Rs. 400 which was to be paid to Balai as loan. On 3-4-1962 Bhairodin informed the appellant that his brother will get the cheque encashed at Allahabad and out of

the proceeds of the cheque he would repay the loan. The appellant, accordingly, accompanied the applicant Balai to Allahabad and was repaid the amount of the loan.

In support of the aforesaid version the appellant examined two witnesses, Mohammad Yaqub and Chhedi Lal. The former is the Sarpanch of Purkhas Nyaya Panchayat. He stated that about 9 1/2 months back Bhairodin and the appellant went to his place and the latter complained that Bhairodin had not repaid the loan which he had incurred about three months earlier although he had promised to repay it on the day following the incurring of the loan. The appellant also told him that although he had advanced a sum of Rs. 40 as loan Bhairodin admitted to have received a sum of Rs. 30 only. He enquired of Bhairodin if he had borrowed a sum of Rs. 40 but the latter admitted to have borrowed a sum of Rs. 80 only. He asked Bhairodin to state on oath but he declined to take oath and thereat he told Bhairodin to repay a sum of Rs. 40 and to that he agreed and stated that repayment would be made out of the loan which would be advanced to his cousin Balai. Chhedi Lal, D W. 2 is a resident of village Purkhas. He stated that about 9 1/2 months back he had gone to the office of the Sub-Registrar for getting a document registered and came across Bhairodin at the Tahsil who told him that he had to return a sum of Rs. 40 to the appellant and requested him to be a witness to the payment. Thereat he and Yaqub went with Bhairodin under a Neem tree near the Tahsil and there Bhairodin paid a sum of Rs. 40 to the appellant. The learned Special Judge was not impressed well with the aforesaid testimony mainly on the grounds that the witnesses were of a partisan character and the statement made by Chhedi Lal D. W. 2 that the sum of Rs. 40 was paid by Bhairodin to the appellant under the Neem tree ran counter to the admission made by the appellant that the said sum was paid inside Kedar's hotel. The learned Special Judge accepted the prosecution version of the incident and convicted and sentenced the appellant as indicated in the foregoing portion of this order

4. It has firstly been contended on behalf of the appellant that the learned Special Judge erred in discarding the defence version. I have been taken through the statements made by Yaqub and Chhedi Lal and I am in agreement with the learned Special Judge that reliance could not be placed in them. The evidence led

on behalf of the prosecution which consisted of the testimony of Sri Mahabir Saran Das, the then District Magistrate, Allahabad P. W. 1, Bhairudin, P. W. 2, S.P. Kulshreshtha, P. W. 3, Kali Prasad Srivastava, P. W. 4, Balai, P. W. 5, Munni Lal, P. W. 6, the then cashier, Tahsil Chail, Allahabad and Sri Shyam Sanahi, the then Dy. S. P. (Complainants) P. W. 9 established beyond doubt that the applicant approached the appellant and made a request to identify him before the Block Development Officer, Newada, that the appellant at first demanded 15 per cent, of the amount of the cheque as his remuneration but later on the bargain was struck at 10 per cent, and the applicant agreed to pay a sum of Rs. 40 to the appellant. It has further been established that the appellant identified the applicant Balai before the Block Development Officer and that a cheque for Rs. 400 was handed over by the Block Development Officer to Balai. The evidence on record further discloses that the appellant accompanied Balai to Allahabad for being present at the time of the encashment of the cheque and for receiving the sum of Rs. 40 out of the proceeds of the cheque as agreed upon previously. It has also been proved that the sum of Rs. 40 in four currency notes of Rs. 10 each was paid to the appellant by Bhairudin in Kedar's hotel and soon afterwards the aforesaid amount was recovered from the person of the appellant by Shri Shyam Sanahi, the then Dy. S. P. (Complainants).

5. It may at this stage be observed that it was not a part of the duty of the appellant to identify person before the Block Development Officer and that there is nothing in the prosecution evidence to indicate that the appellant approached the Block Development Officer either directly or indirectly to prevail upon him to get the loan applied for by the applicant sanctioned or to hand over the cheque for Rs. 400 to the applicant or that the appellant had induced the applicant erroneously to believe that the Block Development Officer will accept and act on the identification of the applicant by the appellant.

6. It has, however, not been disputed that the appellant was a public servant and so was the Block Development Officer

7. It has lastly been contended on behalf of the appellant that even if the prosecution version of the incident were to be accepted no offence is made out

either under Section 161 of I. P. C. or under Section 5 (2) of the Prevention of Corruption Act. The relevant portion of Section 161 of I. P. C. reads as below:

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

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

On the prosecution version of the case the only question with regard to the application of the aforesaid section that arises for consideration is as to whether the appellant had rendered any service to the applicant with the Block Development Officer as such. The words 'as such' connote that the service rendered must be connected with the discharge of the official duties of the other public servant. In other words, the offending public servant should have contacted the other public servant either directly or indirectly in order to prevail upon him to do or forbear to do any official act or to show, in the exercise of his official functions, favour or disfavour to any person. In the instant case it has already been noticed that the appellant did not approach the Block Development Officer either directly or indirectly to prevail upon him to show any favour to the applicant in the exercise of his official functions. What the appellant did was to have appeared before the Block Development Officer and identified the applicant. The appellant thus rendered a service to the applicant before and in the presence of a public servant but did not render any service to the applicant with the public servant.

To take an example, supposing a public servant is required to give evidence in a Court of law in a matter unconnected with his official duties and he charges remuneration for appearing as a witness and thereafter he does appear as a witness can it be said that in doing so he has rendered a service with the Court? Medical officers in Government service sometimes appear as witnesses at the instance of a non-official in a matter unconnected with their official duties and in so appearing they do not render any service to that person with the Court. They merely render service to him before the Court. There is a vital difference between rendering service to one before and in the presence of a public servant and rendering service to him with a public servant as such. I am, therefore, of the opinion, that in identifying the applicant before the Block Development Officer the appellant did not render any service to the applicant with the Block Development Officer in the discharge of his official duties, particularly when there is nothing to show that the appellant had held out a representation to the applicant that he would get the work done by the Block Development Officer or that the appellant either directly or indirectly contacted the Block Development Officer with a view to prevail upon him to show any favour to the applicant.

Learned counsel for the parties did not invite my attention to any case that may be on all fours with the present one. In the case of *Afzalur Rahman v. King Emperor* the accused persons had received a bribe in consideration of rendering service to one Achhey by persuading the other public servant, the Excise Inspector to let him off and it was held by the Federal Court that the case fell within the last part of the body of the main Section 161 of I. P. C. It will have been observed that in that case the offending public servant had persuaded another public servant to let off a person accused of an offence and, if I may say so with respect, there can be no doubt that service was rendered by one public servant with another. I am, therefore, of the opinion that the offence under Section 161 of I. P. C. was not made out.

8. Now I advert to Section 5 of the Prevention of Corruption Act. Relevant portion of that section runs as below:

(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty-

(a).....

(b).....

(c).....

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

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.'

The prosecution evidence does not indicate that the appellant had adopted any corrupt or illegal means in obtaining the sum of Rs. 40 from the applicant Balai. The question for consideration is if the appellant had abused his position in obtaining the aforesaid amount. The Rules of Conduct governing a Secretary, Nyaya Panchayat have not been placed before me. It was, however, not urged on behalf of either party that such rules, if they exist, prohibited the holder of the post of Secretary, Nyaya Panchayat from identifying another person before another public servant. Indeed, if there were any such prohibition the Block Development Officer would not have Insisted that the applicant should get himself identified, Inter alia, by the Secretary, Nyaya Panchayat, Purkhas. In the absence of any such prohibition the appellant could not be said to have abused or debased his official position in identifying the applicant.

9. The next question is as to whether the appellant had abused his official position in accepting gratification for identifying the applicant before the Block Development Officer. It has not been brought to my notice that there is anything in the Rules governing the conduct of a person holding the post of Secretary, Nyaya Panchayat prohibiting the acceptance of any gratification by him for identifying a person before another public servant. The office of the Block Development Officer was not

located in the village in which the appellant resided and it cannot be gainsaid that in going to village Newada for identifying the applicant the appellant must have been put to inconvenience and sometime of his also must have been wasted. The question for consideration is as to whether acceptance of a pecuniary advantage by him for going to Newada in order to identify the applicant was an abuse of his official position. It appears to me that in the absence of any specific rule prohibiting the holder of the post of Secretary, Nyaya Panchayat from identifying another before another public servant in a matter unconnected with the official duties of the identifier and from accepting pecuniary advantage for identifying it cannot be said that the act of identification and the acceptance of pecuniary advantage will be an abuse of the official position of the identifier.

The sum of Rs. 40 demanded by the appellant for identifying the applicant was apparently exorbitant considering the nature of the service rendered and was reprehensible. The question, however, is whether it was also criminal. What is reprehensible may not necessarily be criminal. There is nothing to show that the appellant approached the applicant and offered to identify him before the Block Development Officer. There is again no evidence showing that the appellant had advertised or broadcast that he is available for identifying persons before the Block Development Officer or, for the matter of that, before any other public servant. It was the applicant who approached the appellant and requested him to identify the former before the Block Development Officer. The appellant agreed to do so provided a sum of Rs. 40 was paid to him as remuneration. The applicant agreed to pay the aforesaid sum and thereafter the appellant identified him before the Block Development Officer. It appears that the Block Development Officer had told the applicant that he should get himself identified either by the Gram Sewak or by the Secretary, Nyaya Panchayat and that the Gram Sewak had declined to identify the applicant. Thus a situation was created at the instance of the Block Development Officer in which the appellant could dictate his terms. The appellant had thus taken advantage of a situation created by the Block Development Officer rather than of his official position. On a consideration of the facts and circumstances of the case I do not think that the appellant had obtained the sum of Rs. 40 by abusing his official position.

10. For the foregoing reasons I hold that the appellant was neither guilty of the offence under Section 161 of I. P. C. nor of the offence under Section 6 (2) of the Prevention of Corruption Act.

11. In conclusion the appeal is allowed, the order of conviction and sentence is set aside and the appellant is acquitted. He is on bail and need not surrender to his bailbonds which are discharged. The fine, if paid, shall be refunded to the appellant.

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