

Om Dutt Sharma, Convict Vs. State

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Court : Allahabad

Decided On : Apr-07-1959

Reported in : AIR1960All470; 1960CriLJ1050

Judge : B.R. James and ;S.K. Verma, JJ.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 4(1); [Evidence Act, 1872](#) - Sections 101 to 104

Appeal No. : Criminal Appeal No. 1901 of 1957 connected wit Criminal Revn. No. 1295 of 1958

Appellant : Om Dutt Sharma, Convict

Respondent : State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : Gyanendra Kumar, Adv.

Judgement :

S.K. Verma, J.

1. These are two connected matters. Criminal Appeal No. 1901 of 1957 has been filed by Om Dutt Sharma against his conviction under Section 161 of the Indian Penal Code and Section 5(d) of the Prevention of Corruption Act (Act II of 1947).

The appellant has been sentenced by the learned Special Judge of Rampur under Section 161 of the Indian Penal Code to pay a fine of Rs. 150/- and in default of payment of fine to rigorous imprisonment for six months, and under Section 5(d) of the Prevention of Corruption Act to pay a fine of Rs. 100/- and in default of payment of fine to rigorous imprisonment for three months. On a perusal of the Sessions statement, our brother, S. N. Sahai, J., issued notice to Om Dutt Sharma to show cause why the sentences imposed upon him should not be enhanced. This has given rise to the connected Criminal Revision No. 1295 of 1958. It will be convenient to dispose of both the criminal appeal and the criminal revision by one judgment.

2. The facts, about which there is no controversy, are as follows: Satish Chandra complainant is the proprietor of a chemists and drugists shop in Rampur, known as Satish Medical Hall, He had obtained two licences (Exs. P-2 and P-3) granted to him by the Municipal Board on 3-5-1954. One of the licences was for biological and the other for non-biological drugs. These licences were due to expire on 3-5-1956. Om Dutt Sharma, the appellant in Criminal Appeal No. 1901 of 1957, (hereinafter referred to as the appellant), was employed as the drugs clerk in the office of the Medical Officer of Health, Municipal Board, Rampur, in 1956. The appellant and the complainant, Satish Chandra, were allegedly friends. On 20-4-1956 Satish Chandra applied for renewal of his licences and along with his applications he also submitted the requisite treasury challans in respect of the fees payable for the licence. On 3-5-1956 the appellant made the following report on the applications of Satish Chandra: 'Not recommended as not being a qualified man.' Satish Chandra's application for the renewal of the licences was rejected by the licensing officer on the same date, that is, 3-5-1956. On 11-5-1956 at about 6 p. m. the appellant visited the shop of Satish Chandra and he was paid a sum of Rs. 20/- in currency notes by Satish Chandra. According to the prosecution, the sum of Rs. 20/- was paid to the appellant as illegal gratification for the purpose of securing the renewal of the licences in favour of Satish Chandra. The prosecution case, in detail, was as follows:

The appellant demanded a sum of Rs. 5/- for the renewal of the licences and he also demanded an additional sum of Rs. 15/- for the issue of 'unrestricted' licences

to Satish Chandra, After negotiations Satish Chandra, finally, agreed to pay a sum of Rs. 20/- for the renewal of and issue of unrestricted licences. Satish Chandra went to the office of the Deputy Superintendent of Police (complaints), Sri Anurudh Singh (P. W. 5), and gave him a description of what had happened. Anurudh Singh recorded the statement of Satish Chandra and also initialled six currency notes Exs. I to VI one of Rs. 10/-, one of Rs. 5/-, one of Rs. 2/- and three of one rupee each), provided by Satish Chandra. Satish Chandra was instructed to inform Anurudh Singh about the time and the date when the money would be paid to the appellant so that a trap could be laid.

On 11-5-1956 at about 12 noon Satish Chandra informed Anurudh Singh that the appellant would visit his (Satish Chandra's) shop the same evening at about 5-30 p. m. Anurudh Singh accompanied by his stenographer, Suresh Prakash (P. W. 4), went to Satish Chandra's shop. The stenographer was instructed to pose as a customer while Anurudh Singh concealed his presence behind an almirah from where he could hear and see the transaction through a crevice in the almirah. At 6-15 p. m. the appellant visited Satish Chandra's shop. Satish Chandra asked the appellant to give him an assurance that he would get licences for unrestricted drugs. The appellant promised to speak to some persons and also to make a favourable report Satish Chandra thereupon gave him the currency notes of the value of Rs. 20/- (Exs. I to VI). Just as the appellant was about to leave the shop, Anurudh Singh emerged from his hiding place and arrested the appellant with the money. Two persons, namely, Dr. Rajkumar (P. W. 3) and Jagdish Chandra (P. W. 6), were called from a neighbouring shop and recovery memo, Ex. P-10 was prepared by Anurudh Singh. These notes (Exs. I to VI) bore the initials of Anurudh Singh.

3. Anurudh Singh lodged a first information report at Police Station Kotwali, Rampur, on 11-5-1956 at 7-20 p. m. The sanction for the prosecution of the appellant (Ex. P1) was obtained from the Director of Medical and Health Services, Uttar Pradesh, and thereafter the appellant was prosecuted, tried, convicted and sentenced as mentioned above.

4. In his statement recorded under Section 364 of the Code of Criminal Procedure on 19-1-1957, the appellant denied the prosecution allegations and stated that Satish Chandra was responsible for his, 'false prosecution.' He also stated that he would file a written statement. In his statement under Section 342, Criminal Procedure Code, recorded on 25-10-1957 the appellant stated as follows:

'Satish Chandra and Jagdish Chandra are responsible for the present false prosecution. I had made an adverse report on the application of Satish Chandra which was rejected by the Health Officer on 3-5-56. On 5-5-56 I told him that his application had been rejected and he could not get a licence for unrestricted drugs. The same day he asked me to clear off the dues of a dealer at Moradabad as I was going there. I had friendly relations with him. I could not meet Satish Chandra on 6-5-56 as his shop was closed. I paid Rs. 20/- on his behalf at Autar Medical Store, Moradabad. I got the receipt Ex. D-I. I told him on 8-5-56 that I had made the payment on his behalf. He expressed his displeasure to me regarding the adverse report made by me on his application. I told him that I did my duty. On 11-5-56 he asked me to take my money in the evening. So I went there to take back my money. I also informed the police about that matter at the time of my arrest.'

15. The appellant examined two witnesses in defence, namely Suresh Prakash Agarwal, son of Autar Krishna, the proprietor of Autar Medical Hall, Moradabad, and Mohammad Ali, Clerk of the Public Health Department.

6. The receipt of the sum of Rs. 20/- having been admitted by the appellant, the question that arises for our determination is whether- the same was paid to the appellant as illegal gratification, or, it was the repayment of the debt owed by Satish Chandra to Autar Medical Store, Moradabad, which debt had been paid by the appellant on behalf of Satish Chandra.

7. With regard to the conversation that took place between the appellant and Satish Chandra at the latter's shop before the money was handed over, we have the statements of Satish Chandra himself (P. W. 2) Suresh Prakash (P. W. 4) & Anurudh Singh (P. W. 5). From the statements of these three witnesses it is clear that Satish Chandra paid the money to the appellant after the latter had given an

assurance that licences for unrestricted drugs would be issued. With regard to the handing over of the money, two other witnesses were also examined by the prosecution, and they were Dr. Rajkumar (P. W. 3) and Jagdish Chandra (P. W. 6). The learned trial Judge has not relied upon the testimony of these two witnesses with regard to the actual giving of the bribe.

The learned Judge came to the conclusion that these two witnesses were merely witnesses of the recovery memo, and that they could not have seen the passing of the money. In our opinion the learned trial Judge was justified in his conclusions with regard to these two witnesses. Satish Chandra has, no doubt, made some confusion with regard to the date when the amount of the bribe to be paid was settled. The confusion in the dates may have been due to lapse of memory and, in any event, it is not of much consequence, as the evidence with regard to the conversation that preceded the handing over of the money is perfectly clear and consistent.

8. This brings us to a consideration of the correctness or otherwise of the defence set up by the appellant. Anurudh Singh has stated that at the time of his arrest the appellant alleged that the sum of Rs. 20/- had been paid to him as he had cleared certain dues on behalf of Satish Chandra. The appellant offered to produce a document but he never mentioned that it was a receipt of Autar Medical Store, Moradabad. The appellant took Anurudh Singh to his house but said that he could not find the purcha and that he would file it afterwards. Anurudh Singh also stated that a certified copy of a receipt (Ex. D-1) was filed before him by the appellant as late as 17-6-1956. The defence set up by the appellant cannot be accepted for a moment.

Admittedly, the relations between the appellant and Satish Chandra were strained and it is scarcely likely that Satish Chandra would have asked the appellant to clear the debt that he owed to Autar Medical Store or that the appellant would actually do so. He failed to produce Ex. D-1 before Anurudh Singh the same day or even within a reasonable time. The receipt itself is on a piece of plain paper signed by Suresh Prakash Agarwal (D. W. 1). Suresh Prakash Agarwal is the son of the proprietor of the Autar Medical Store. He admitted that he v/as a student and was

twenty years of age. At the trial he stated as follows:

'Register of accounts is maintained at the shop. But there was no account in the name of Satish Chandra. Satish Chandra had issued a voucher for the goods supplied to him. After the payment was made by the accused on his behalf, that voucher was destroyed. The payment made by the accused under the receipt Ex. D-1 was never entered in the account books of the shop.'

It is impossible to believe that any business-man would allow credit to anyone without entering the transactions in an account book. If there had been a voucher, the same would not have been destroyed but would have been handed over to the appellant. Moreover, if there had been any substance in the version put forward by the appellant, we should have thought that the receipt (Ex. D1) and the voucher would have been handed over to Satish Chandra at the time of the payment of the sum of Rs. 20/- by him to the appellant. Ex. D-1 is not a regular cash memo, but a chit of paper which, bears the seal of Autar Medical Store and the signature of Suresh Prakash Agarwal (D. W. 1). Such a document can be brought into existence at any time and, as we have pointed out above, it did not see the light of day till 17-6-1956. The second defence witness, namely Mohammad Ali, has been produced, not in support of the defence version, but to prove certain inspection notes relating to Satish Chandra's shop. His statement can be of no help to the appellant. We are, therefore, of the opinion that the defence set up by the appellant and the evidence produced by him in support of that defence are false.

9. The learned counsel, appearing for the appellant, contended that even if an accused is notable, affirmatively, to establish the defence set up by him, he should be given the benefit of doubt, if there is a reasonable possibility of his defence being true. Section 4(1) of the Prevention of Corruption Act (Act II of 1947) reads as follows:

'Section 4 (1).

Where in any trial of an offence punishable under S. 161 or S. 165 of the Indian Penal Code it is proved that an accused person has accepted or obtained, or

has agreed to accept or attempted to obtain, for himself or for

Presumption where public servant accepts gratification other than legal remuneration. any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.'

This section raises a presumption of law, and it is for an accused person, positively, to disprove the facts which the court has to consider as proved by virtue of that presumption. This matter came up for consideration in *State of Madras v. A. Vaidyanath Iyer*, AIR 1958 SC 61 and their Lordships of the Supreme Court, after quoting Section 4(1) of the Prevention of Corruption Act, observed as follows:

'Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume,' the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e. g. presumptions, and therefore should have the same meaning. 'Shall presume' has been defined in the Evidence Act as follows: 'Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.' It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because, unlike the case of presumption of fact, presumption of law constitute a branch of jurisprudence.'

10. The learned counsel for the appellant next contended that before the presumption under section 4 (1) of the Prevention of Corruption Act can arise the prosecution must establish something more than mere payment of money. His

contention is that 'gratification' means something more than mere payment of money and that it means payment of money as reward or recompense or gratuity. Learned counsel has relied upon *Pandurang Laxman Parab v. State of Bombay*, AIR 1959 Bom 30. In this case of the Bombay High Court there is no reference to the decision of the Supreme Court mentioned above. It is also in conflict with a Division Bench decision of our own Court. In *Promod Chandra Shekhar v. Rex*, AIR 1951 All 546 a Bench of this Court considered the meaning of the word "gratification" in Section 4(1) of the Prevention of Corruption Act and observed as follows:

'(13) The second question concerns the meaning of the word 'gratification' in Section 4 of the Act. It has been argued that before the presumption referred to in that section can arise it is necessary (when the allegation is that the gratification has been accepted) for the prosecution to prove not only the acceptance of the thing, tangible or intangible, constituting the gratification but also that such thing was accepted as a reward or recompense, and reliance was placed on that definition of 'gratification' in Webster's dictionary as a 'reward', recompense or gratuity.'

(14) We have no doubt that this contention is not well founded. It is difficult to understand how the prosecution could ever prove, for example, that the acceptance of a sum of money was a 'reward' without further proving the service or act which was the motive or consideration for such reward, and in that case there is no presumption left to be drawn. It is true that gratification may mean a reward or recompense, but that is only one of its meanings. The primary meaning of the word, as defined both in, *Murray's Dictionary* and in *Webster's Dictionary*, is the giving of pleasure or satisfaction, and we are clearly of opinion that it is as satisfaction that the word is used in this section. That this is so is, in our opinion, made clear when the section is read as a whole, for it is not only the acceptance of a 'gratification' which may give rise to the presumption referred to therein but also the acceptance of 'any valuable thing.' It is indeed a little difficult to understand what it is which can be so defined which is not included in the general term 'gratification,' but be that as it may, in the case of a valuable thing the presumption arises, if it arises at all, as soon as the prosecution proves the

acceptance by the accused person (in the circumstances referred to in the section) of that thing. We cannot think that it was the intention of the legislature that the initial burden of proof imposed upon the prosecution be higher in the one case than in the other.'

11. The learned Judges of the Bombay High Court dissented from the view expressed by the Division Bench of our own Court. We find ourselves in respectful agreement with the views expressed in AIR 1951 All 546, particularly, as they are in conformity with the law laid down by their Lordships of the Supreme Court in AIR 1958 SC 61. In the Supreme Court decision their Lordships appear to have considered the mere payment of money as 'gratification' within the meaning of Section 4(1) of the Prevention of Corruption Act.

11a. We have considered the legal arguments advanced by the learned counsel for the appellant, although they are purely of academic interest .so far as the present case is concerned. On the findings arrived at by us, the question of law, really, does not arise, as on a consideration of the prosecution and defence evidence, our findings are, firstly, that the prosecution evidence has affirmatively established in this case that the appellant accepted the sum of Rs. 20/- as illegal gratification, and, secondly, that the defence version is unworthy of credence.

12. We now take up the Criminal Revision No. 1295 of 1958. The only reasons given by the learned trial Judge for taking a lenient view are that the accused was a young man, that the amount of bribe accepted was quite small and that the accused would lose his job. The accused, on the date of the occurrence, was twenty-five years of age. He was old enough, to realise the seriousness of what he was doing. The smallness of the amount of the bribe and the loss of employment are no grounds for imposing only a sentence of fine, though they may be considerations for not imposing a long term of imprisonment. Such cases are much too common and they are brought. to light very very rarely. There has been no indication of penitence or remorse on the part of the accused. We are firmly of opinion that the learned Judge's leniency to him was unwarranted -- he would be well-advised to study the judgment of this Court in Dulla v. State, AIR 1958 All 198, to which one of us was a party, wherein the principles governing punishment

for criminal offences have been laid down. We consider that the accused should be awarded a sentence of imprisonment, in addition to the fines imposed upon him by the learned trial Judge.

13. In the result we dismiss Criminal Appeal No. 1901 of 1957, allow Criminal Revision No. 1295 of 1958 and sentence Om Dutt Sharma to rigorous imprisonment for six months under Section 161 of the Indian Penal Code and to rigorous imprisonment for three months under Section 5(d) of the Prevention of Corruption Act. The sentences shall run concurrently. He will surrender and serve out the sentences awarded to him. The sentences of imprisonment imposed by us shall be in addition to the sentences of fines and the imprisonment in default of payment of fine awarded by the learned trial Judge.

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