

Om Prakash Vs. State

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Court : Allahabad

Decided On : Jan-22-1957

Reported in : AIR1957All388; 1957CriLJ695

Judge : Chowdhry, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 423, 423(1), 535 and 537; [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 161 and 165A; [Constitution of India](#) - Article 20; Criminal Law (Amendment) Act, 1952 - Sections 3; [Evidence Act, 1872](#) - Sections 24 and 65

Appeal No. : Criminal Appeal No. 252 of 1954

Appellant : Om Prakash

Respondent : State

Advocate for Def. : S.C. Asthana, Adv.

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

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.

1. This is an appeal by one Om Prakash who has been convicted by a learned Special Judge, acting under Section 6 of the Prevention of Corruption Act, 1947, for an offence punishable under Section 165A, I. P. C., and sentenced to rigorous imprisonment for one year. The appellant had also been charged under Section 468, read with Section 109, I. P. C., but of that offence he has been acquitted.

2. Permits for supply of bricks and certain other things used to be issued from the office of the Mechanical Inspector of the Agricultural Engineering Department in Bulandshahr to agriculturists. It is said that there was a lot of corruption prevailing in that office in that connection. One such form of corruption was that officials employed in that office used to prepare permits in the names of fictitious persons and then issued them to persons not entitled to the same.

The prosecution case is that five such permits in favour of fictitious persons were prepared on 11-11-1948 by one Roshan Lal, a Unit Clerk in that office, and that the present appellant obtained those permits on payment of Rs. 300/- as illegal gratification to Roshan Lal. Sri Kant Sharma P. W. 4, Assistant Agriculture Engineer at Aligarh, within whose jurisdiction was the office of the Mechanical Inspector at Bulandshahr, came to know of the corruption in December, 1948 and thereupon he issued directions to owners of brickkilns not to supply bricks on the basis of permits issued from that office.

The appellant was therefore unable to obtain bricks on the basis of the aforesaid permits. He therefore sent a complaint to the Assistant Agriculture Engineer by post on 17-1-1949. The Engineer started an enquiry on the basis of that complaint and went and saw the appellant in that connection at Khurja, the appellant having given his address in Khurja in the aforesaid complaint dated 17-1-1949. When the Engineer made enquiries from the appellant at Khurja on 7-5-1949, the appellant gave a further written complaint to the Engineer.

A copy of the first complaint which the appellant had sent to the Engineer is Exh. P3 and that of the written complaint handed over by him on 7-5-1949 is Exh. P4. In these two writings the appellant purports to have admitted having committed the offence in question. Raj Narain P.W. 1, a clerk in a Magistrate's court, has deposed that Roshan Lal was prosecuted separately and convicted. The appellant

denied having either obtained the permits in question from Roshan Lal or having paid Rs. 300/- or any sum to Roshan Lal, as alleged by the prosecution. He also denied having made the aforesaid complaints Exs. P3 and P4.

He produced two witnesses, one to show that the appellant had in fact quarrelled with some of the officials of the said office, and the other, who was also named Om Prakash, to show that it was he and not the appellant who had been approached by the Assistant Agriculture Engineer Section K. Sharma P. W. 4. The testimony of both these defence witnesses does not appear to have been accepted by the learned Special Judge, and there was no attempt at a resuscitation of their evidence in this Court.

The learned Sessions Judge has convicted and sentenced the appellant under Section 165A but acquitted him of the offence under Section 468/109, I. P. C. on the finding that there was no evidence as to the appellant himself having had any hand in the matter of the preparation of the permits in question in favour of fictitious persons.

3. There was a legal plea put forward by the learned counsel for the appellant and that was to the effect that the alleged offence having been committed in the year 1948, the appellant could not be convicted under section 165A, I. P. C., since this section was introduced for the first time in the Penal Code by section 3 of the Criminal Law Amendment Act (XLVI of 1952), which came into force on 28.7.1952. The argument was that such a conviction would be an infringement of Article 20 of the Constitution which provided, inter alia, that no person shall be convicted of an offence except for violation of law in force at the time of the commission of that act charged as an offence.

And in support of this argument the learned counsel cited a decision of the Madhya Bharat High Court reported as *Randhira v. State*, AIR 1954 M.B. 83 (A). The legal objection of the learned counsel is no doubt valid; but the defect pointed out by him would not, in my opinion be a bar to the conviction of the appellant on the same facts under Section 161, read with Section 109, I. P.C. If it be otherwise permissible, it would be open to this Court in exercise of its appellate jurisdiction under Section 423 Cr. P. Code, to alter the finding as to the appellant's liability

from one under Section 165A to that Under Section 161/109, I. P. C.

There is no doubt that the appellant was not charged under Section 161, read with Section 109, I. P. C., but for the offence punishable under Section 165A of the Code; but, in view of the provisions of Section 537, Criminal Procedure Code, there would be no ground for setting aside the conviction of the appellant merely on the ground of this irregularity in the charge unless the irregularity has in fact occasioned a failure of justice, Now, a reference to the charge framed in this case shows that all the facts which it would have been necessary for the prosecution to prove for a conviction of the appellant under Section 161/109, I. P. C., were mentioned there. The charge reads as follows:

'That you paid Rs. 300/- on or about 4th December, 1948, to Roshan Lal Gupta, a Unit Clerkin M.I.'s office Bulandshahr to issue to you fictitious permits for bricks' and which were Issued to you to wit permits Nos. 19, 23, 24, 25 and 26 of Indent Book No. 59 which were later on detected and order was issued for not crediting them and they were cancelled and thereby committed an offence punishable under Section 165A of the Indian Penal Code and within my cognizance as Special Judge.'

The above facts mentioned in the charge gave clear notice to the appellant of the fact that he had paid Rs. 300/- as illegal gratification to Roshan Lal for the issue of fictitious permits. And these were the facts which it was necessary for the prosecution to establish whether the conviction was to be for the abetment of the offence under a 161 with the help of Section 109, I. P. C. or for the substantive offence created by Section 165A, I. P. C. The same facts were also put to the appellant in his examination under Section 342, Cr. P. Code.

Furthermore, the Special Judge had the jurisdiction under Section 6 of the Anti-Corruption Act to try and punish the appellant for the offence under Section 361, and therefore of that offence read with Section 109, I. P. C., as well. In these circumstances, it could not be said that the mention of Section 165A instead of Section 161/109, I. P. C., in the charge had occasioned a failure of justice in the present case. It is noteworthy further that under the Explanation to Section 537 the Court shall have regard, in determining whether any error, omission or irregularity

in any proceeding under the Code had occasioned a failure of justice, to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

The objection which is now raised could and should have been raised on behalf of the appellant before the Special Judge; but as this was not done. that would be a further ground for holding that the defect pointed out now had not occasioned a failure of justice. True, in the aforesaid Madhya Bharat case the High Court was unable to find the appellant guilty under Section 151, read with Section 116, I.P.C. but that was in view of the fact that the Special Judge who tried the appellant in that case would have had no jurisdiction to try him for an offence punishable under Section 161 of the Indian Penal Code as adapted in Madhya Bharat.

As pointed out already, no such difficulty exists in the present case. I am therefore of the opinion that, if the facts alleged by the prosecution be held to have been established, the conviction of the appellant could validly be altered from one under Section 165A to one under Section 161/109, I. P. C.

4. Coming now to the merits of the case, it appears that the appellant has been convicted mainly upon his extra-judicial confession embodied in the aforesaid writings Exs. P3 and P4. The questions that arise for determination are; (1) Whether the aforesaid writings Exhibits P3 and P4 were the writings of the appellant? (2) If they were his writings, whether they amounted to a confession of guilt in respect of the offence for which the appellant has been convicted (3) Did that confession, which was retracted before the Special Judge, require corroboration and (4) If so, whether there was corroboration of any material particulars of that confession?

5. The originals of Exhs. P3 and P4 were not produced before the Special Judge but only their copies. The originals are said to have been filed in the other case against Roshan Lal, and it is said that they were lost from the records of that case. That the originals did in fact exist has been proved by the testimony of Section K. Sharma P.W. 4, who has deposed that he had received the original of Exh., P3 by post and that the original of Exh. P4 was handed over to him by the appellant at Khurja. The loss of the originals has been proved by the testimony of Raj Narain

P.W. 1, a clerk of the court of the Magistrate where Roshan Lal was tried. The existence and loss of the originals having thus been satisfactorily established, secondary evidence of their contents became admissible under Section 65(c), Indian Evidence Act, Under the same section any secondary evidence of the contents of the originals would be admissible.

The Assistant Agriculture Engineer Section K. Sharma P. W. 4 has deposed that he himself had prepared the copy Exh. P3 from the original, and that he had the copy Exh. P4 prepared from the original, compared it with the original and attested it as true copy. He has further stated that he had handed over the originals, to the investigating police officer. It has thus been proved that the copies Exhs. P3 and P4 were true copies of the originals. It is further proved from the statement of the Engineer that it was the appellant himself who had handed over to him the original of Exh. P4 at Khurja.

There is no reason whatsoever not to accept that statement of the Engineer. In this Exh. P4 there is a clear admission of the appellant about his having submitted the previous application to the Agriculture Engineer. The Contents of the latter portion of Exh. P4 also appear to refer to facts which had been mentioned in Exh. P3. From all this evidence it was fully established that the writings Exhs. P3 and P4 were the writings of the appellant himself.

6. Now, as regards the second of the four questions posed above, there is a clear admission of the appellant in the writings Exhs. P3 and P4 about his having paid Rs. 300/- to Roshan Lal clerk for the issue of the permits in question. As no payment was necessary to be made for obtaining the permits, the payment of the sum of Rs. 300/- to Roshan Lal should be interpreted as payment by way of illegal gratification.

This inference is confirmed by the contents of the second writing Exhs. P4 since reference to issuance of the permits in question on payment of Rs. 300/- to Roshan Lal was made after citing other cases of payments of illegal gratification to Roshan Lal. There is no doubt therefore that there is a clear confession of the appellant in the two writings Exhs. P3 and P4 with regard to the commission of the offence for which he has been convicted. True, this was merely an extrajudicial,

and not a judicial, confession; but that should really make no difference.

The only material difference between a judicial and an extra-judicial confession is that whereas the former is recorded by a Magistrate with all the formalities provided by Section 164, Cr. P. Code, in order to facilitate ascertainment of the confession having been given voluntarily, the aid of these formalities and the evidence of the Magistrate are not available in the case of an extrajudicial confession. All the same, it could otherwise be ascertained that the extrajudicial confession; had been made voluntarily and it was true, its probative value would be the same as that of a confession duly recorded under Section 164, Cr. P. Code.

There could be no doubt about the appellant having set down facts in Exhs. P3 and P4 voluntarily; he himself of his own accord sent the first complaint Exh. P3 to the Engineer and subsequently confirmed it by the writing Exh. P4 which he handed over to the Engineer when the latter went to him in connection with the enquiry on 7-5-49. That the contents of those writings were true cannot be doubted since, firstly, there is no reason why the appellant should have stated facts incorrectly in those writings, and, secondly, a material portion of the contents of those writings finds corroboration from other evidence produced in this case.

That evidence consists of the counter-foils Exhs. P6 to P10 of the permits mentioned in the application Exh. P3. The prosecution also produced three of the four persons in whose favour of the aforesaid permits purport to have been Issued, Chunni P. W. 3, Umarao Singh P.W. 5 and Bhanta P. W. 7. They have denied that they obtained the permits or affixed their signatures on the back of the counter-foils of the permits.

Their evidence has been supported by the testimony of handwriting expert witness produced by the prosecution, Sri S.N. Sen P. W. 8, Examiner of Questioned Documents Government of India, Simla. The confession of the appellant contained in the aforesaid writings having been found to be both true and voluntary, there would, strictly speaking, be no bar to his conviction on the basis of that confession alone even though it was retracted by the appellant subsequently. But, as noticed already, there is corroboration of the retracted confession in this case in the evidence of the persons named already in whose favour the permits in question

purport to have been issued.

Their statements would show that Roshan Lal had prepared the permits in question in the names of fictitious persons. That would be a strong circumstance supporting the prosecution case that the appellant had paid illegal gratification to Roshan Lal; for obtaining the permits. True, it would appear from the statement of the appellant that he was an agriculturist, and it might therefore be said that it was not necessary for him to have obtained forged permits.

That may be so, but the fact remains that the appellant did in fact pay Rs. 300/- as illegal gratification to Roshan Lal for obtaining the permits in question. It will appear from the above evidence therefore that the guilt of the appellant under Section 161/109 I. P. C., had been fully brought home to the appellant.

7. The last submission made by the learned counsel for the appellant was that the sentence passed in this case erred on the side of severity. The learned Sessions Judge has expressed no opinion in regard to the sentence passed by him; but It is to be remembered that the offence in question has become a much graver one under the provisions of the Prevention of Corruption Act II of 1947 since the punishment for its commission has under Section 5 of that Act been enhanced from three to seven years rigorous imprisonment.

That being so, it could not justifiably be urged that a sentence of only one year's R.I. was too severe. On the contrary, taking into consideration the large sum paid as illegal gratification by him the appellant appears to be particularly dangerous person of his class. The sentence passed on him would therefore appear rather to err on the side of leniency.

8. In the result, the appeal is dismissed and the conviction and sentence of the appellant are maintained. The appellant, who is on bail, shall surrender and serve out the sentence; his bail bonds are cancelled.