

Ram Sewak Vs. Emperor

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Court : Allahabad

Decided On : Nov-12-1946

Reported in : AIR1948All17

Appellant : Ram Sewak

Respondent : Emperor

Judgement :

ORDER

Mulla, J.

1. This is an application in revision by one Ram Sewak who has been convicted by the Courts below of an offence under Section 161 read with Section 116, Penal Code. The learned trying Magistrate imposed a sentence of one year's rigorous imprisonment plus a fine of Rs. 50 which has been maintained by the learned Sessions Judge in appeal.

2. The facts of the case are quite simple. The applicant, Ram Sewak, is a resident of Cawnpore and he filled in an inquiry form and obtained a ration card on the basis of that form for himself and for other members of his family including his father Satti Prasad and his brother Ram Nath. It is admitted that his father Satti Prasad and his brother Ram Nath were employed in the J. K. Cotton Mills and had already obtained a separate ration card in their capacity as the employees of that mill. The applicant Ram Sewak was, therefore, clearly drawing a ration in excess

of that to which he was entitled in law and had committed an offence. This matter was discovered by an Inquiry Inspector of the Supply Department who made a report to the Senior Inspector in the same department named Mr. S.M. Hasnain. This happened sometime on 7-8-1945. It appears that the applicant and other persons on his behalf then approached Mr. Hasnain in order to persuade him to drop the case and even tempted him by the offer of a bribe, but he refused to accept any. On 15-8-1945, Mr. Hasnain made a written report to the Town Rationing Officer and also told him at the same time that attempts were being made to bribe him in order to induce him to drop the case and that same person might be coming to his house that day with that object in view. Thereupon, the Town Rationing Officer directed the Deputy Town Rationing Officer Mr. David, who also happened to be a Magistrate, to try and catch the offender if possible. Accordingly Mr. David along with an Assistant Rationing Officer, and a witness named Mr. Sabir Husain who is a Mukhtar by profession, entered the house of Mr. Hasnain at about 8 V. M. on 15-8-1945, and concealed themselves in a small room. Next to that room was a larger room in which Mr. Hasnain was sitting with his brother who happened to be the Inquiry Inspector who had discovered the fraud committed by the applicant. Soon after 8-30 p.m. three men including the applicant came to Mr. Hasnain's house. A servant of Mr. Hasnain brought that information to him and he was asked to show them up. The three men then came into the room in which Mr. Hasnain was sitting with his brother. One of those men, with whom we are not concerned in this case, spoke to Mr. Husnain on behalf of the applicant Ram Sewak and when Mr. Hasnain said that he could not do anything in the matter, the applicant Ram Sewak put out his hand with three currency notes in it, obviously with the intention of offering a bribe to Mr. Hasnain in order to induce him to drop the matter. Thereupon Mr. Hasnain made a signal which had been previously arranged upon between him and Mr. David, namely he started scratching his head, whereupon Mr. David and the two witnesses immediately came into the larger room from the smaller one where they were concealed in the mean time, and Mr. David immediately proceeded to arrest the applicant Ram Sewak with the three currency notes in his hand. A recovery list was prepared by Mr. David in the ordinary course. That list is an exhibit on the record and it shows the numbers of the three notes' recovered from the

possession of Ram Sewak in the circumstances mentioned above. Mr. David has been examined by the prosecution to support its case, and he has stated in the clearest possible terms that he was able to see all that was taking place in the larger room occupied by Mr. Hasnain and his brother and also to hear the conversation that took place between Mr. Hasnain and the applicant as there was only a chink suspended after the door of communication between that room and the smaller room in which he and the two witnesses were concealed. From his evidence it is clear that a companion of the applicant first proposed to Mr. Hasnain that the case against the applicant should be dropped, and when Mr. Hasnain showed his reluctance to accept it the applicant Ram Sewak offered a bribe of Rs. 25 to him. These facts have been found by both the Courts below to have been fully established upon the evidence in the case. At the trial the applicant admitted the fact that he had offered a bribe to Mr. Hasnain and when, as the record shows, a charge sheet was prepared by the learned trying Magistrate and the charge was read out to the applicant he pleaded guilty. Later on in appeal, however, it was suggested on behalf of the applicant that the trying Magistrate had never prepared any charge and had never read it out to the applicant. It was strenuously contended that the applicant had been prejudiced by the fact that he was not asked to cross-examine the prosecution witnesses. Even at that stage it was admitted that all that was intended to be achieved by means of cross-examination was that the applicant would have shown that some body else was really at the bottom of the whole affair. These contentions were rightly rejected by the learned Sessions Judge as utterly false and scandalous. The sentence imposed upon the applicant by the learned trying Magistrate, which has been referred to above, was upheld by the learned Sessions Judge.

3. Learned Counsel for the applicant contended that, in view of the fact that Mr. Hasnain had already made a report against the applicant to the Town Rationing Officer on 15-8-1945, prior to the incident in question out of which the charge against the applicant arises, it must be held that Mr. Hasnain had no power in the exercise of his official functions to show any favour to the applicant and hence no offence was committed by the applicant. Learned Counsel sought to support this contention by a reference to two cases: one reported in *Shamsul Haq v. Emperor* ('21) 8 A.I.R. 1921 Cal. 344 and the other reported in *Venkatarama Naidu v.*

Emperor ('29) 16 A.I.R. 1927 Mad. 756. In the former case Shamsul Haq a taxi driver had been prosecuted for some offence under the Motor Car Act by a police Sergeant and the case against him was dismissed by the trying Magistrate on a certain date. Five days after that he gave a rupee to the same police Sergeant in the hope that the charge against him would be withdrawn. It was clearly found in that case, and indeed it was alleged by Shamsul Haq himself in his defence, that he had knowledge of the fact that the case against him had already been discharged. In these circumstances, the learned Judges who heard the case held that there was no abetment of the offence of bribery, inasmuch as the police Sergeant had no power to show any favour to Shamsul Haq. In the latter case a man offered himself for selection as a police constable and a Reserve Inspector who examined him rejected him on the ground that he was below the minimum height. It must again be emphasised that the person knew that he had been rejected when, later on, he offered a bribe to the Reserve Inspector. It was held by the learned Judges who decided the case that there was no offence of abetment of bribery, inasmuch as the Reserve Inspector was functus officio so far as the transaction in question was concerned.

4. I do not think that these two authorities can support the applicant's contention in the circumstances of the present case. There is absolutely no suggestion in the present case that the applicant Ram Sewak had any knowledge of the fact that Mr Hasnain had already made a report against him to the Town Rationing Officer. He obviously offered the bribe with the intention of inducing Mr. Hasnain not to make any report against him. If the argument of learned Counsel for the applicant is accepted certain absurd results will follow. In the first place, it is evident that the applicant Ram Sewak would have been clearly guilty under Section 161 read with Section 116, I.P.C. if the incident in question had taken place at about 8-30 p.m. on the night of 14-8-1945, instead of 15-8-1945. It is obviously unreasonable to suggest that the very act which would have clearly amounted to an offence if it had been committed on 14-8-1945, was rendered innocuous not by anything done by the applicant himself or by any knowledge or intention on his part but by the fact that Mr. Hasnain had in the meantime made a report to the Town Rationing Officer of which the applicant did not have any knowledge at all. Again, it would appear upon the argument advanced on behalf of the applicant that no offence could be

committed and so Mr. Hasnain could have accepted the money offered by the applicant with impunity. In my view the applicant was clearly guilty of an offence under Section 161 read with Section 116,1. P.C. in the circumstances of the present case and the same view was taken by Dalai, J. in *Emperor v. Ajudhia Prasad* : AIR1928 All752 .

5. I, therefore, see no reason to interfere with the conviction of the applicant, but must point out that the sentence imposed upon the applicant in the present case will be illegal. Section 116, part 1, provides only for a sentence 'which may extend to one-fourth part of the longest terms provided for that offence,' which in the present case was three years for the offence under Section 161, I.P.C. The learned Sessions Judge seems to have been of the opinion that the case fell within the purview of the second part of Section 116,1. P.C. which provides for 'imprisonment of any description provided for that offence for a term which may extend to one-half of the longest terms provided for that offence'. It is, however, to be noted that the second part of Section 116 applies only when the abettor or the person abetted is not merely a public servant but a public servant 'whose duty it is to prevent the commission of such offence'. It can hardly be suggested that Mr. Hasnain was a public servant whose duty it was to prevent any offence or the offence of bribery with which we are concerned in this case. It may have been his moral duty not to accept the bribe and to prevent any bribe being offered to him, but he certainly was not enjoined by law to prevent any offence, and no duty was cast upon him by the law to prevent the offence of bribery. I am therefore clearly of the opinion that the applicant could not have been legally sentenced to a period of imprisonment extending beyond nine months, which is one-fourth of the longest term provided by Section 161, I.P.C. Learned Counsel for the applicant has also pointed out to me that this application in revision was presented in this Court on 6-12-1945, and the learned Judge to whom it was presented called for the record of the case, but for some reason or other the record was not received in this Court until about September 1946, and the case was put up for hearing for the first time on 6-9-1946. In the meantime the applicant was released on bail by an order of this Court on 29-4-1946. He was convicted by the trial Court on 27-9-1945. It would appear therefore that he has undergone about six months' rigorous imprisonment. In all the circumstances of the case I think that period of

imprisonment is sufficient to meet the ends of justice.

6. The result, therefore, is that I dismiss this application in revision and uphold the appellant's conviction but reduce the sentence of imprisonment imposed upon him to the period already undergone. The sentence of a fine of Rs. 50 is maintained. In default of payment he shall undergo two months' rigorous imprisonment.

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