

Bechey Lal Vs. the State

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Court : Allahabad

Decided On : Jun-29-1949

Reported in : AIR1952All667

Judge : Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 161

Appeal No. : Criminal Revn. No. 83 of 1949

Appellant : Bechey Lal

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : S.D. Misra, Adv.

Disposition : Application allowed

Judgement :

ORDER

Desai, J.

1. This is an application in revision by Bechey Lal, patwari, against his conviction and sentence under Section 161, Penal Code by a Judicial Magistrate first class,

confirmed on appeal by the Additional Sessions Judge of Bahraich.

2. Plot no. 2893 was in the possession of Salik Dhobi as bila tasfiya tenant for three years when Mathura took a patta of it from the zemindar. Subsequently there was a consolidation of holdings in the village in the course of which the plots were re-distributed among the tenants. Plot No. 2893 was given in this scheme to another man and in exchange plots Nos. 875 and 876 were given to Salik. There could be two claimants for these two plots, namely Salik on the basis of his actual possession over plot No. 2893 and Mathura, on the basis of his patta. If plots Nos. 875 and 876 were to be given to the person holding a patta for the plot, Mathura was entitled to them. But they were given to Salik. These facts were within the knowledge of the applicant. He suggested to Prag, father of Mathura and P. W. Lalta, that if he paid him Rs. 200 he would pass on some valuable information to him. On the basis of this suggestion a trap was arranged to catch the applicant red-handed in the act of receiving a bribe. A Deputy Magistrate went to the house of Prag where the applicant was called by Lalta and Rs. 50 were paid to him. Just after the money was paid, the Deputy Magistrate caught the applicant and recovered the money from his possession. Then after obtaining sanction from the District Magistrate, the applicant was put on his trial under Section 161, Penal Code.

3. There is no evidence to prove the demand for a bribe by the applicant Prag, of whom the demand was made, has not been examined and whatever Lalji, his grandson, stated is nothing but hearsay. The only evidence about the purpose for which the money was paid is of the persons present when it was paid. Lalji stated that when the money was paid, the applicant told him, Lalta etc. that plots Nos. 875 and 876 were in the chak of Mathura, that they were cultivated by Bachchu Dhobi and that they were at liberty to take possession over them. He definitely stated that there was no talk of making entries in the village records in the applicant's custody. P. W. 2 Lalta stated that when he went to call the applicant before the receipt of the bribe, he told him to go with him, give information about the numbers of the plots and take his dues, and that when the money was paid the applicant disclosed the numbers of the plots, wrote them down on a piece of paper and promised that he would make an entry of their possession in his papers. P. W.

3 Sunder is another witness who was present when the money was paid. He simply stated that the applicant was asked to give the numbers and to take his dues. P. W. 4 is the Deputy Magistrate; he was not present just at the spot where the money was paid though he saw the payment from another room through a crevice in the door. He could not hear the talk between the applicant and Lalta etc. fully. He did not say anything about any promise by the applicant to make entries in his records. P. W. 5 Sipahi is the last witness; he also did not say anything about any promise by the applicant to make entries in his records. Thus there is only Lalta's evidence that the applicant promised to make entries in his records; Lalji contradicted him and the other witnesses did not support him. Neither the trial Court nor the Additional Sessions Judge has paid any attention to the question whether the applicant accepted the money as a motive or reward for an official act. The judgment written by the trial Court is not satisfactory at all. It has simply reproduced extracts from the evidence of the witnesses one by one and there is very little of reasoning in it. One cannot say what statements of witnesses it has believed and what it has disbelieved. It has mentioned Lalta's statement that the applicant had promised to make entries in his records and Lalji's statement that there was no talk about entries but it has given no finding as to which of those statements was to be accepted. This is a revision and not an appeal but when the Courts below have failed to discuss important evidence, I would be bound to go into that evidence. I do not think it could be said with certainty that the applicant promised to make entries in his records. I cannot act upon the statement of Lalta when it has been contradicted by the statement of Lalji and not corroborated by the statements of the other witnesses. So it is not proved that the applicant promised to make any entries in his papers. All that is proved is that he accepted money in order to tell Lalta etc. that they were entitled to the plots Nos. 875 and 876. This does not amount to his doing an official act. He was not bound to give this information to Lalta etc; giving this information was not part of his official duties. Had he promised to make entries in his record that would have been a promise to do an official act. But his giving certain information to Lalta etc. which he was not bound to give is not doing an official act and if he accepted any payment for giving the information, he is not guilty under Section 161, Penal Code. If he had valuable information in his possession he was entitled to sell it for a price

when he was not bound by any law or rule to give it free. It does not matter if he came across the information while performing his official duties. Simple acceptance of money is not an offence under Section 161; it must be as a motive or reward for an official act. If a person accepts money BS a motive or reward for an act which cannot be said to be an official act, he is not guilty under Section 161. The applicant is, therefore, not guilty under Section 161, Penal Code.

4. I allow this application, set aside the applicant's conviction and sentence and acquit him. The fine if paid shall be refunded. His bail bonds are cancelled.

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