

Vishnu Prasad Vs. State of Utter Pardesh

Vishnu Prasad Vs. State of Utter Pardesh

SooperKanoon Citation : sooperkanoon.com/473918

Court : Allahabad

Decided On : Sep-04-1981

Reported in : 1981CriLJ1489

Judge : P.N. Goel, J.

Appellant : Vishnu Prasad

Respondent : State of Utter Pardesh

Judgement :

P.N. Goel, J.

1. Vishnu Prasad appellant, Head constable police out post Runkata, police station Achhnera, District Agra has been convicted and sentenced under Sections 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 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village Raipura Ahir. Gajodhar was in collusion with the police and used to implicate Beni in false cases. The police, therefore, used to send him to jail. On this account Beni left his village and began to work as labourer in the city of Agra. In the early morning on or about 1-5-1977 the Head constable along with three constables of police out post Runkata reached at the house of Beni in village Raipura Ahir. Beni was not at his house. Thereupon the Head constable forcibly took away his wife Smt. Kailash Pati from her house. On reaching a culvert outside the village Abadi the Head constable demanded Rs, 500/- for releasing her. She told him that she was too poor To pay Rs. 500/-. The Head constable then agreed to accept Rs. 125/-. The Head constable asked her to give him the said money at Runkata outpost on Thursday. She promised to give him the said money on the said day. Hence she was released. On 4-5-1977 Smt. Kailash Pati gave an application Ex. Ka. 1 to Deputy Superintendent of Police (C. B.), C. I. D., Agra (Sri Mohammad Rafi) Sri Mohd. Rafi marked the application to Sri Hari Prakash Sharma, Deputy Superintendent of Police, Anti-Corruption C. I. D. (P. W. 2). Smt. Kailash Pati produced currency notes of Rs. 125/-(one note of Rs. 100/-, one note of Rupees 20/- and one note of Rs. 5/-) before him. He noted their numbers and arranged to lay trap on the next day on 5-5-1977. On 5-5-1977 Hari Prakash Sharma left his office at 10 A. M. along with K. K. Singh Inspector, Prakash Chand Dixit and Manu Mai constables in a jeep driven by Hakim Singh. On reaching the Collectorate, he collected Subhash Chand Katara, a Law graduate, Nihal Singh and Kalicharan (P. W. 3). This party reached Sudhir Petrol Pump Runkata at about 10.45 A. M, Smt. Kailash Pati and her mother in law reached at the hut of Prasadi in Runkata. Leaving her mother-in-law there Smt. Kailash Pati reached the petrol pump and met Hari Prakash Sharma there. Hari Prakash Sharma made initials on the currency notes, and then gave them back to Smt. Kailash Pati. Smt. Kailash Pati along with Kalicharan and Nihal Singh then reached at the hut of Prasadi and sat under a Shisham tree. She sent her mother-in-law to call the Head constable. The Head constable sat on a cot. Hari Prakash Sharma Inspector, constables and Subhash Chand Katara took their positions at the back of the hut. Hari Prakash Sharma was able to see the Head constable, Smt. Kailash Pati and Ors., Smt. Kailash Pati then talked with the Head constable requesting him not to harass her and her and her husband then and kept them in his right hand. The constable

asked her about kalicharan and Nihal Singh. She told him that they were her relations and that she had brought money from them. Immediately then Hari Prakash Sharma and Ors. proceeded towards the place where the appellant, Smt. Kailash Pati, Kalicharan, Nihal Singh were sitting. On seeing them this appeal- the currency notes in ques- " tion on the' ground. Hari Prakash Sharma disclosed his identity to the appellant and told him that he had taken bribe. Thereafter Hari Prakash Sharma picked up currency notes Exs. I to III, kept them in an envelope, sealed it and prepared a memo Ex Ka. 3. The appellant did not disclose his name. He was, however, taken into custody by the constable Hari Prakash Sharma. With difficulty he could be taken up to the jeep. In the meantime a constable (whose name was later on found as Komal Prasad) came up and shouted as to why his Head constable Vishnu Prasad was being taken away. The constables with Hari Prakash Sharm attempted to beat the appellant in the jeep. Some people of the village lant threw the currency notes in question on the ground . Hari Prakash Sharma then reached police out post Runkata and took general diary and made an entry in the general diary of the out-post at 12.45 hours. In this entry he mentioned the entire occurrence. Thereafter Hari Prakash Sharma along with the general diary of the out-post went to police station Achhnera. On reaching there Hari Prakash Sharma lodged verbal report of the occurrence and handed over the general diary of the out-post there.

4. Shanker Singh, Head constable (P. W. 5) wrote out the check report on the dictation of Hari Prakash Sharma and made entry in the general diary at 2.30 P. M. in the evening at 7.30 P. M. the general diary of the out-post was returned through constable Banhchan Singh.

5. Yadupal Singh Inspector, C. I. D (C. B.) P. W 6 investigated the case froin 13-6-1977, and ultimately submitted charge-sheet against the appellant and Komal Prasad constable.

6. At the time of occurrence the appellant was the only Head constable post- ed at police out-post Runkata. Hari Prakash Sharma came to know of the name of the appellant and that of Komal Prasad at out-post Runkata,

7. The appellant, did not admit the allegations of the prosecution He asserted that Smt. Kailash Pati and her husband were in the habit of committing thefts, dacoities, house-breaking and manufac- turing illegal liquor, that he used to receive warrants for the arrest of of Beni, husband of Smt. Kailash Pati and Chenu, brother of Beni, that Kailash Chand Katara, son of a history sheeter was on good terms with Beni, and Chainu, Berias, that Kailash Chand Katara had fabricated this false case against him, that on 5-5-77, the date of occurrence he along with Komal Prasad and Jaibir Singh constables had gone to execute summonses and warrants to village Runkata, Nagla Murli, Arrsena and Roipura, that after having executed the said processes they returned to the police out-post, that then he learnt that the general diary had been taken away by the officers of the C. I. D. to the police station, that then he sent Bachchan Singh constable to bring the general diary. He further asserted that on 5-5-1977 he went to Raipura Ahir to arrest Beni and Chainu, that they were not present at their house, that Smt. Kailash Pati met him, that he asked her the whereabouts of Beni and Chainu, that, Smt, Kailash Pati offered to give him money and that fie rebuked her.

8. Komal Prasad constable denied to have released Vishnu Prasad appellant from the custody of the constables of Hari Prakash Sharma,

9. The prosecution examined Smt. Kailash Pati, Hari Prakash Sharma, Kali-charan and Subhash Chandra (P. Ws. 1 to 4) besides Shanker Singh, Head constable and Yadupal Singh Investigating Officer. The trial Judge examined Jaibir Singh as Court witness (C. W. 1). The appellant and Komal Prasad did not examine any witness in their defence.

10. On an appraisal of the entire material before him the Special Judge (Additional Sessions Judge) Agra, convicted the appellant and for good reasons acquitted Komal Prasad of the offence punishable under Section 225, I.P.C.

11. learned Counsel for the parties have been heard, and record has been examined carefully with their assistance.

12. Smt. Kailash Pati has narrated the prosecution version. She clearly stated that the appellant (Diwan ji i. e. Head constable) demanded Rs. 500/- from her for

releasing her that ultimately the appellant agreed' to take Rs. 125/-, that then she approached the officers of the Anti-Corruption Department, that on the date of occurrence she paid the currency notes which were initialled by Hari Prakash Sharma to the appellant, that the appellant counted the currency notes and kept them in his right hand. She further stated that as soon as Hari Prakash Sharma and other persons came up the appellant threw the currency notes on the ground under a cot. These notes were picked up by Hari Prakash Sharma. She has then stated that the appellant ran away from the custody of the constables which were with Hari Prakash Sharma.

13. Kalicharan (P.W. 3) has Corroborated the testimony of smt. Kailash Pati on the point of giving the currency notes to the appellant and the appellant's accepting the same. He has further corroborated her testimony on the point that on seeing Hari Prakash Sharma and Ors. the appellant threw the currency notes which were picked up by Hari Prakash Sharma. Lastly, he has stated that the appellant ran away from the custody of the police of the anti-corruption department. Hari Prakash Sharma has fully corroborated the testimony of Smt. Kailash Pati. Subhash Chand Katara has also corroborated her testimony.

14. It will be noticed that Kalicharan was a young man and out of employment on the date of occurrence. After the occurrence he was employed as a teacher in primary school Garhi. Subhash Chand Katara had passed the examination of law. Kalicharan and Subhash Chand Katara both are residents of Nagla Aman. These two persons had absolutely no connection with Smt. Kailash Pati or her husband. These two persons were also not under the influence of the police officers. Prior to the date of occurrence Kalicharan had got his name registered in the Employment Exchange Agra. On the date of occurrence, he came to Agra to find out the action, if any, taken by the Employment Exchange on his application. Subhash Chand Katara had promised to make query in the Employment Exchange. Therefore, Kalicharan was with him. Subhash Chand Katara came to Agra for having talks with Sri Panna Lai Sri-vastava Vakil in connection with his enrolment. Kalicharan and Subhash Chand Katara came by city bus and got down at bus stand near Collectorate. They happened to meet Hari Prakash Sharma who was proceeding in a jeep to lay the trap. It will thus appear that both these witnesses are quite

independent and reliable.

15. The appellant's counsel pointed out that Smt. Kailash Pati and her husband Beni were bad characters, It will appear that Smt. Kailash Pati stated in cross-examination that Gajodhar had involved her husband Beni in criminal cases 2-4 years before the occurrence. She has then admitted that Beni was wanted in a dacoity case 4 or 5 years ago and that warrants for her husband's arrest also came 3 years ago from police stations Allahpur and Fatehpur Sikri. She then stated that Gajodhar was murdered and her husband was impleaded for his murder. She then admitted that she was also implicated in liquor manufacturing cases prior to the occurrence and that she was not convicted in any case. These facts go to show that Beni husband of Smt. Kailash Pati is a bad character and that she was also implicated in liquor manufacturing cases but she was perhaps not convicted. These facts go to show that there can be truth in her assertion that the Head Constable of police out-post Runkata used to harass her and her husband.

16. There appears no infirmity in the statement of Hari Prakash Sharma. The appellant's counsel pointed out that he took position in a pit and that the appellant would have seen him. This contention is not correct because the back of the appellant was towards the pit in which Hari Prakash Sharma took position.

17. Reference may now be made to the testimony of Jaibir Singh constable (C W. 1). He has stated that on 5-5-1977 at 9. A. M. he left Runkata police outpost along with the appellant and Komal Prasad, that they went together to villages Runkata, Nagla Murli, Arsena and Raipura Ahir, that in all these villages they served summonses and that after having served the summonses they reached at the police out-post at 3.42 P. M., that they found Matlopob Ahmad and Ram Gopal constables at the police out-post, that the appellant asked Mat-loob Ahmad to produce the general diary, that Matloob Ahmad told him that the general diary had been taken away by the officers of the C. I. D. and then the appellant sent Bachan Singh constable to bring the general diary. In cross-examination he stated that they remained in village Runkata up to 9.30 A. M, that then they reached Nagla Murli at 10.30 A. M., that Nagla Murli is 4 kilometers from. Runkata, that they,

stayed in Nagla Murli for half an hour, that in Nagla Murli notices under Section 107/117, Cr, P. C. were served on 5-6 persons, that he made no writing on the said notices, that the appellant wrote reports on the said notices in village Arsena which is 3 kilometers from Nagla Murli, that they reached Arsena from Nagla Murli within 40-45 minutes, that they stayed in Arsena for half an hour, that one notice summons was served at the Chabutra of Ramji Lai Mukhia in Arsena, that the appellant wrote report about its service, that he did not remember if signature or thumb mark of Ramji Lai was taken or not, that Raipura Ahir is 4-5 kilometers from Arsena, that they went from Arsena to Raipura Ahir, that processes were served upon Sunder Singh and Gajodhar Singh of village Raipura, that the Head constable wrote reports on their summonses, that they stayed in Raipura Ahir for about 50 minutes and that from Raipura Ahir they straightway returned to the police out-post. Then he stated that Raipura Ahir via Arsena is 8-9 kilometers from Runkata out-post and that this distance was covered in about 1 1/2 hours.

18. The statement of Jaibir Singh goes to support the version of the appellant, but for the reasons set out below the statement of Jaibir Singh does not help the appellant:

(1) The appellant did not get summoned notices/summonses which were served in Runkata, Nagla Murli and Arsena. In this way, there is no corroboration of the statement of Jaibir Singh in respect of effecting service of notices in these three villages, Jaibir Singh has not given out the names of the persons who were served with notices/summonses in villages Runkata, Nagla Murli and Arsena.

(2) Yadupal Singh, investigating officer stated that he inspected (he record of the case of Sheocharan and Ors. in the court of Additional Chief Judicial Magistrate and found that no summons of this case was served in Arsena, that he inspected records relating to Nagla Murli and that he could not find any case in which summons was served in this village, that he found that summonses were served upon Sunder Singh and Gajdhar in village Raipura Ahir on 5-5-1977, and that Raipura Ahir is 6-7 kilometers from police out-post Runkata. His statement shows that no service was actually effected by the appellant along with Jaibir Singh and Komal Prasad in village Nagla Murli and Arsena and that process was served in

Raipura Ahir only.

(3) Distance between Raipura Ahir and Runkata out-post can easily be covered in about 1/2 hour's time. In case the appellant left the out-post on the date of occurrence at 9 A. M. to serve processes in Raipura Ahir, the appellant could easily return from Raipura Ahir to Runkata by 12 O'clock.

19. In view of the above, it cannot be said on the basis of the testimony of Jai-bir Singh that the appellant could not have been present in Runkata at about 12 O'clock noon. In this way the testimony of Jaibir Singh is not of help to the appellant.

20. It has been indicated above that Kalicharan and Subhash Chand Katara are quite independent persons and it does not appear that they have perjured themselves against the appellant.

21. Taking into consideration the evidence on record it is apparent beyond doubt that the prosecution proved its case against the accused.

22. The appellant's counsel urged that the appellant was not guilty of the offence punishable under Section 161 I.P.C. and that the appellant could only be guilty of the offence of extortion. There is force in this contention. It will be noticed that the appellant had not gone to arrest Smt. Kailash Pati. He had gone to arrest her husband. Her husband was not available. Therefore, to harass Smt. Kailash Pati he carried her to a place outside the village Abadi of Raipura Ahir. The appellant demanded money just for 'releasing' 'Ke Section 161 C.R.P. C. envisages the case of a person who obtains or accepts any gratification 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 attempt-ning to render any service or disservice to any person. In the present case the act of the appellant in taking away Smt. Kailash Pati from her house to a place outside the village Abadi was not an official act. Correctly speaking it was an abuse of the official position of the appellant. In this way it can easily be said that the appellant did not demand or obtain or accept the illegal gratification as a motive for forbearing to do any official

act or for showing any favour to Smt Kailash Pati in the exercise of his official functions.

23. The view expressed above gets support from the case of Dalpat Singh v. State of Rajasthan 1968 Cri App R 29 (SC): (1969 Cri LJ 262) cited by the appellant's counsel. In this case the appellant No. 1 was Havaldar and appellant No. 2 Subedar in Rajasthan Armed Constabulary. They were posted at Sajan-Ka-Par police out-post, a border out-post, 2 miles from Pakistan Border. The appellant compelled one Mohammad to give them Rs. 100/-. A trap was laid and the first appellant only was apprehended because the second appellant on account of being unwell could not come and take the money. It was held that the appellants had committed no offence, under Section 161, X, P. C. because The gratification was not obtained as a motive or reward for doing or forbearing to do an official act or for showing or forbearing to show favour or disfavour to the person in question in the exercise of their official functions and that the appellants had simply extorted the money.

24. The appellant's counsel conceded, that the appellant on the facts of this case was guilty of criminal misconduct defined 'Section 5 (1) (d) of the Prevention of Corruption Act, 1947. Section 5 defines 'Criminal misconduct' on the part of a public servant. Clause (d) of Sub-section (1) reads, 'if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.' In the instant case it is evident that the appellant took money from Smt. Kailash Pati by abusing his position as Head constable of Runkata Police out-post. There, the appellant is undoubtedly guilty of Criminal misconduct.

25. At this stage it may be mentioned that from the beginning Smt. Kailash Pati was complaining against the Dewanji (Head constable) of Runkata out-post. She did not know his name. At the time of occurrence the appellant was the only Head constable posted at the out-post Runkata. Therefore, there is no doubt about the identity of the appellant who demanded illegal gratification from Shri-mati Kailash Pati. The appellant was arrested by Hari Prakash Sharma but the appellant ran away. No doubt the appellant was not got identified by any of the prosecution

witnesses. But in view of the facts stated just above this lacuna does not help the appellant,

26. The appellant's counsel lastly urged that the sentence was severe, that the appellant would lose job and that fine only be imposed on him. The punishment provided in Section 5 (2) for the offence of criminal misconduct is imprisonment for a term which shall not be less than one year but which may extend to 7 years and shall also be liable to fine provided that the Court may for any special reasons recorded in writing impose a sentence of imprisonment of less than one year. The appellant's counsel referred to the case of B. C. Goswami v. Delhi Administration : 1974 CriLJ243 . In this case the appellant was storekeeper of Sewa Kendra run by Delhi Administration for the benefit of beggars and Madan Singh complainant was Thekedar of supply of vegetables to the Sewa Kendra. Appellant demanded bribe from Madan Singh saying that if he paid the money then all sorts of vegetables supplied by him would be acceptable and that if he did not pay no vegetable brought by him would be received. On the complaint of Madan Singh a trap was laid. Rs. 50/- were paid as illegal gratification and recovered. The appellant was sentenced to undergo R. I. for one year and to pay a fine of Rs. 100/- under Section 161 I.P.C. and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act. The occurrence took place in January 1966. The Supreme Court heard the appellant's appeal after 7 years. The Supreme Court reduced the sentence to imprisonment already undergone and increased fine from Rs. 200/- to Rs. 400/- and observed (at p. 1460):

In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the facts that to send the appellant back to jail now after 7 years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment...

27. It will be noticed that B. G. Goswami was simply a storekeeper of Sewa Kendra run for the benefit of beggars. The appellant was holding a responsible post of Head constable and he was in charge of a police out-post. The occurrence took place in May 1977. The appellant was aged about 38 years at the time of occurrence. The special Judge recorded conviction in September, 1979. The appeal has been heard by this Court in August 1981 i. e. about 4 years after the occurrence. As a Head constable, the appellant must have come in contact with quite a large number of persons, specially villagers. The present case indicates that the police officers of the rank of a Head constable harass uneducated poor village people. The officers of the police department every day come in contact with the public. It is the duty of the police officers to maintain law and order. It is their duty to protect the people. They are not expected to harass and trouble the people. Considering all these circumstances I am of the opinion that it is not at all a fit case in which the appellant is not made to suffer imprisonment.

27A. The special Judge sentenced the appellant to undergo R. I. for two years under Section 5 (2) of the Prevention of Corruption Act. Taking into consideration the facts that the appellant would lose his job it would not be unjust if the sentence awarded by the special Judge is reduced to R. I- for one year, the minimum provided in Section 5 (2).

28. The appellant has been convicted under Section 224, I.P.C. This offence against the appellant has been proved by the evidence of the prosecution witnesses. The special Judge has awarded one year's imprisonment to the appellant under this section. This sentence requires no interference.

29. Appeal is, therefore, partly dismissed and partly allowed. Conviction and sentence of the appellant under Section 161, IPC. recorded by the special Judge are set aside. Conviction of the appellant under Section 5 (2) of the Prevention of Corruption Act, 1947 is affirmed but the sentence of two years' R. I. awarded by the special Judge is reduced to R. I. for one year. Conviction and sentence of the appellant under Section 224, I.P.C. are affirmed. The sentences of imprisonment shall run concurrently. Appellant is on bail. He shall be taken into custody to serve out the sentence.

