

**Deewan Chand Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-09-1981

**Reported in :** 1982CriLJ720

**Judge :** P.N. Goel, J.

**Appellant :** Deewan Chand

**Respondent :** State

**Judgement :**

**P.N. Goel, J.**

1. Deewan Chand appellant, a booking clerk at Laksar railway station, Northern Railway, in the year 1964 has been convicted Under Section 5(2) read with Section 5(1)(c) of the Prevention of Corruption Act, 1947, and sentenced to undergo R. I. for 3 years by an order dated 30-3-1979, passed by Special Judge Anti-Corruption, West U. P. Lucknow.

2. The case of the prosecution very briefly stated was: There were three booking clerks at Laksar railway station. They used to work in three shifts or 8 hours each. In case the card-board tickets were not available, the booking clerks could issue paper tickets. There used to be books of blank paper tickets. There are 3 foils of each blank paper ticket. In one book there are 50 sets of blank paper tickets. The books which were issued for the railway stations of the Northern Railway are

called local blank paper tickets. The tickets which are issued for railway stations on the Railways other than Northern Railway are called foreign blank paper tickets. During the period 7-7-1964 to 20-10-1964, the appellant is said to have issued 43 blank paper tickets relating to stations of the Northern Railway as well as the stations of the other Railway. The first foil of the paper book is sent to the Accounts Officer, Delhi. The second foil is given to the passenger. The 3rd foil called record foil is maintained at the issuing railway station. The appellant issued 2nd foil to the passengers mentioning correct destination station and correct fare. But in the first and 3rd foils, he mentioned another destination and less fare. In this way the appellant is said to have misappropriated a total sum of Rupees 638.94.

3. Chetan Swarup Jain, Inspector of Accounts, P.W. 1 checked the records at Laksar railway station in October, 1964, On seeing 5 blank paper tickets Nos. 314636 to 314640, he felt suspicious. He brought the suspicion to the notice of the Accounts Officer. Thereafter he made enquiry into the paper tickets issued by the booking clerks of Laksar railway station, The matter was then brought to the notice of the C.B.I. Sri B. Nath Superintendent of Police C.B.I. Lucknow, recorded a report dated 24-3-1965 and deputed Sr. R. N, Sinha, Deputy Superintendent of Police C.B.I, to investigate into the matter. Sri R.N. Sinha interrogated Ram Prasad, P.W. 36 Chief Booking Clerk, Laksar only. The investigation was then entrusted to W. U. Farooqi, Inspector, C.B.I., P.W. 35. During investigation he obtained the admitted writings including first and third foils of the appellant as well as his specimen writing. These writings along with the disputed passenger foils were sent to Sri. S. K. Jain, P.W. 37 Government Examiner of questioned documents, Government of India, Hyderabad for examination. Sri W. U. Farooqi then obtained sanction for the prosecution of the appellant from Sri P. Sahai, General Manager, Northern Railway. The sanction was accorded on 28-4-1966, Ex. Ka-41. Thereafter the case was filed before the Special Judge.

4. The appellant did not admit the allegations. He did not even admit that the passenger foils in question were issued by him and were in his handwriting and under his initials,

5. The prosecution examined 37 witnesses. The appellant examined two witnesses.

6. The Special Judge did not accept the contention of the appellant that the sanction for his prosecution was not valid. The Special Judge believed the testimony of the prosecution witnesses and found that the passenger foils were in the handwriting of the appellant. Therefore the special Judge convicted the appellant.

7. The learned Counsel for the appellant urged:

(1) The passenger foils in question were not in the handwriting of the appellant. They did not bear his initials, The evidence of Ramanand Sharma and S. K. Jain, handwriting expert in respect of the passenger foils being in the handwriting of the appellant was not believable. There was no other evidence to fasten the guilt upon the appellant. 1982 Cri. L. J./46 IV

(2) The sanction for the prosecution accorded by Sri P. Sahai, General Manager, was not valid.

8. The learned Counsel for the State was heard on the question of the validity of the sanction. After hearing him on this point, it was not considered necessary to hear him on merits i.e. on the first point urged by the appellant's counsel.

9. Section 6, Prevention of Corruption Act, lays down that no court shall take cognizance of an offence punishable under Sub-section (2) of Section 5 alleged to have been committed by a public servant except with the previous sanction of the Central Government or the State Government or the authority competent to remove him from his office. In the case of Mohd, Iqbal Ahmad v. State of Andhra Pradesh : 1979 CriLJ633 it was observed (para 3):

The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must, therefore, be strictly complied with before any prosecution can be launched against the public servant concerned.

In this case it was observed a little above, 'Mr. Rao vehemently argued that although the resolution Ext. P-16 does not mention the facts, the Court should presume the facts on the basis of the evidence given by P.W, 2 and the order implementing sanction which mentions these facts. This argument is wholly untenable because what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the fact constituting the offence and applied its mind for the same and any subsequent facts which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant.

10. In the present case the sanction, Ex. Ka-41 is a detailed document. In the first para it has been stated, 'Whereas it is alleged that Sri Diwan Chand while functioning as a booking clerk at Railway Station Laksar, Northern Railway, during 7-7-64 to 20-10-64 committed the following acts of commission and omission', Then there are 26 paras which mention facts. As a specimen, the first para is reproduced below:

That he prepared the passenger foil of Foreign Blank Paper Ticket No. 313587 for Howrah for Rs. 30.95 on 7-7-64, but in the corresponding record Foil, he had shown the destination station as Pilkhani and the amount of fare as Rs. 1.35 which was accounted for by him in the Daily Trains Cash Book.

The subsequent 25 paras are more or less in the same language.

11. The 28th para says that he dishonestly or fraudulently misappropriated or otherwise converted for his own use the difference of the fare amount between passenger foils and the record foils to the tune of Rs. 638.94 P.

12. Para 29 states that he by corrupt or illegal means or by otherwise abusing his position as public servant obtained for himself or for any other person pecuniary advantage to the tune of Rs. 638-94 P.

13. Then para 30 states, 'And whereas the said sets constitute offences punishable under (1) Section 409 I.P.C. 1860 (Act 45 of 1860, (2) Section 5(2) r/w Section 5(1)(c) and Section 5(1)(d) of the Prevention of Corruption Act, 1947(Act II

of 1947).'

14. Then comes para 31 which states 'And whereas, P. Sahai, General Manager, N. Rly. being the authority competent to remove the said Sri Diwan Chand from office, after fully and carefully examining the material before me in regard to the said allegations and circumstances of the case, considers that the said Sri Diwan Chand should be prosecuted in a Court of Law for the said offences.'

15. Last para 32 states, 'Now Therefore, I do hereby accord sanction Under Section 6(1)(c) of the Prevention of Corruption Act, 1947(Act II of 1947) for the prosecution of the said Sri Diwan Chand for the said offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for taking of the cognizance of the said offences by court of competent jurisdiction.'

16. The sanction which has been reproduced above clearly mentions facts and also goes to show that the sanction was accorded on a consideration of the said facts and the material produced before Sri P. Sahai. It cannot be said that the sanction is a bald one and it does not contain requisite facts. The contention of the appellant's counsel is that all the material was not before the General Manager, that the General Manager did not apply his mind to the facts of the Case, that he accorded sanction in a mechanical manner just by signing on the sanction prepared by the office. In support of his contention the appellant's counsel has referred to the statement of W. U. Farooqi, P.W. 35 Investigating Officer and C. M. Charyan, Head Clerk of the General Manager P.W. 25 W. U. Farooqi admitted that he had seized some documents from Laksar railway station. These documents must have included the record foils and the passenger foils in dispute. He then clearly stated that these documents remained with him, that then they were sent to the handwriting expert and that lastly they remained in the court of the trial Judge. It means that the record foils were not submitted to the General Manager. This fact by itself is not sufficient to indicate that the General Manager did not apply his mind because all the facts were stated in the sanction. In case he wanted to see these papers before according sanction, he could have summoned them.

17. C. M. Charyan stated in chief examination that he could recognise the signature of Sri P. Sahai, General Manager, because papers signed by him used to come to him in the course of official business. Then he stated that the sanction Ex. Ka-41 had the signature of Sri P. Sahai. In chief examination he did not state anything else. In cross-examination he stated that the C.B.I, demanded order of sanction that so far as he remembered the C.B.I, had sent a model form of the sanction, that then he prepared a draft sanction on the basis of the model form, that he sent the draft prepared by him to Sri P. Sahai for signature through a messenger. He clearly stated that he had prepared the draft of sanction, Ex. Ka-41 and sent it to Sri P. Sahai for signature. Lastly he stated that it was possible that the man of C.B.I, remained in his office and he handed over the draft (sanction) after obtaining the signature of Sri P. Sahai to him,

18. The above statement no doubt shows that draft sanction was prepared by C. M. Charyan and that Sri P. Sahai simply signed on it. It means that no portion of the order of sanction was dictated by Sri P. Sahai after having carefully examined the facts stated in the draft and the material if any produced before him. By this I mean to say that even paras 31' and 32 of the sanction are the creation of C. M. Charyan and not that of the General Manager.

19. It will be noticed that the Investigating Officer submitted chargesheet against the appellant Under Section 5(2), Prevention of Corruption Act. The appellant was tried for the said offence. It is, therefore, obvious that the Investigating Officer desired sanction Under Section 6(1)(c), Prevention of Corruption Act. Therefore, there was no question of the appellant being tried under any other provision of law. In this aspect of the matter it is not understood as to why the words 'and other offences punishable under other provisions of law in respect of the acts aforesaid' were added towards the end of para 32. Sri P. Sahai being the senior-, most authority/officer of the Northern Railway would not have added the said words. He would have simply accorded sanction Under Section 6(1)(c) of the Act, The addition of the said words clearly indicates that Sri P. Sahai did not dictate the relevant portion of the sanction and that he merely signed on the draft prepared by the head clerk C. M, Char-yan.

20. The learned Counsel for the State has referred to 4 cases.

(1) Dharam Sarup v. State : AIR1953 All37 :

Dharam Sarup, a Patwari, was prosecuted for an offence of criminal misconduct denoted in Section 5, Prevention of Corruption Act. A short statement of fact was submitted to the District Magistrate for obtaining sanction. The District Magistrate ordered 'prosecute, Judicial Officer, Bijnor will please try this case'. No objection on the ground of defect in the sanction was taken before the District Magistrate or the Sessions Judge. The objection about the validity of the sanction was raised before the High Court. The Court did not accept the contention and observed as follows (paras 9, 13):

In the present case a definite request was made to the District Magistrate to accord the sanction to prosecute. The District Magistrate considered the matter and in definite terms accorded the sanction.... The law does not lay down that minimum facts must be brought to the notice of the sanctioning authority. The object of requiring sanction to be obtained before a public officer is prosecuted is to prevent the unnecessary harassment and to safeguard the larger interests of the State, The discretion to sanction prosecution is vested solely in the sanctioning authority and is absolute. Its exercise cannot be questioned in a Court of law. The satisfaction of the sanctioning authority is entirely subjective. He is the judge of the materials that should be placed before him for enabling him to accord the sanction. If the facts placed before him are not sufficient to enable him to exercise his discretion properly, he will ask for more particulars, but it is for him and him alone to determine this matter. The Courts are concerned only with one matter to find whether sanction for the particular prosecution was in fact accorded by the proper authority. If the record shows that the sanction was in fact accorded and the sanction was in respect of the particular transaction which is the subject matter of the charge against the accused, the requirements of law are fully satisfied. No hard and fast rule can be laid down as to what facts are necessary to be brought to the notice of the sanctioning authority.(2) Madan Mohan Singh v. State of Uttar Pradesh : AIR 1954 SC637 .

In this case Madan Mohan Singh, appellant an Excise Inspector was prosecuted under the Prevention of Corruption Act. Sanction for the prosecution was accorded by the Excise Commissioner. The sanction was contained in a letter addressed to the Collector. Mr. R. Dixit, personal Assistant to the Excise Commissioner was examined. He was asked whether material facts were brought to the notice of the Excise Commissioner. This question arose because the order of sanction did not indicate facts and that it was not a speaking sanction. The personal assistant replied that a details of the case was sent to the Excise Commissioner, that the said details were in the confidential file and that he did not want to show the said details. It was held that the appellant was right in contending that the prosecution instead of proving what facts were placed before the Commissioner deliberately withheld them from the Court and that therefore the sanction must be said to be defective. The conviction of the appellant was set aside,(3) Shiv Raj Singh v. Delhi Administration : 1969 CriLJ1 .

The appellant a police officer was prosecuted under the Prevention of Corruption Act. The D.I.G. police accorded sanction for the prosecution. The sanction stated that after fully and carefully examining the material, the sanction was accorded. A Sub-Inspector who was examined at the trial stated that all the papers in a sealed cover were sent to the D.I.G. In view of this statement it was held that the sanction was not bad in law.(4) State of Rajasthan v. Tarachand Jain : 1973 CriLJ1396 .

In this case the respondent was a member of the Rajasthan Administrative Service and posted as S.U.M. He was prosecuted for taking bribe Under Section 161, I.P.C. The sanction was accorded by the Chief Minister. In fact the sanction was shown to have been accorded by the Governor. It was held that in accordance with the rules of business, the Chief Minister was competent to accord sanction, Reference was made to the case of Gokul-chand Dwarkadas Morarka v. The King . The reference was also made to the case of Madan Mohan Singh (1954 Cri LJ 1656)(supra). It was then observed (Para 18 :It is no doubt true that no independent evidence was led by the prosecution to prove that the relevant facts had been placed before the Chief Minister before he accorded sanction but that fact, in our opinion, introduces no fatal infirmity in the case. Sanction P-34 has been reproduced earlier in this judgment and it is manifest from its perusal that the

facts constituting the offence have been referred to on the face of the sanction. As such it was not necessary to lead separate evidence to show that the relevant facts were placed before the Chief Minister.

21. It is evident from the above cases ;hat at the time of according sanction, the facts constituting the offence should be before the sanctioning authority. In the present case no doubt the sanction in question contains all the relevant facts. The question, however, is whether General Manager had applied his mind to the facts or not. The facts of the present case are quite distinct from the facts of the 4 cases referred to by the learned State counsel. It is further evident that in none of the 4 cases cited by the State counsel, it was held that if the draft sanction is prepared by an official and the sanctioning authority simply signs the same, it is a valid sanction indicating that the sanctioning authority had applied his mind to the facts of the case. In the present case it is apparent from the statement of C. M. Charyan that the entire body of the sanction was prepared by him on the basis of the model supplied to him by an officer of C.B.I. The draft prepared by C. M, Charyan was sent to the General Manager just for the sake of signature. It has been indicated above that no part of the sanction was dictated by the General Manager. Then1 the sanction contains a wholly irrelevant matter towards the end of the sanction. In case the General Manager had really applied his mind to the facts of the case, he would not have added irrelevant matter at the end of the sanction. Taking into consideration the statement on oath of C. M. Charyan and the sanction itself, it is apparent that the General Manager simply signed on the sanction without applying his own mind to the entire facts and material, if any, before him, in other words the General Manager accorded sanction in a mechanical manner. Therefore, such a sanction cannot be considered valid and legal.

22. The special Judge while finding that the sanction was valid did not fully comprehend the statement on oath of C. M. Charyan.

23. At this stage reference may be made to the case of Kishan Lai v. State, 1978 All Cri R 265:1978 Cri LJ NOC 201). In this case the Medical Officer of health accorded 'sanction for the prosecution of the appellant Under Section 20, Prevention of Food Adulteration Act, 1954. The sanction was accorded on a form.

Some dates were filled in the blank. These dates were not correct. It was observed :

The Medical Officer of health while granting sanction should have noticed this discrepancy, if he had really applied his mind to the facts of the case.

It was held that the sanction was not valid. Consequently the conviction of the appellant was set aside. In my opinion the facts of this case lend support to the view expressed above.

24. For what has been found above, the conviction of the appellant cannot be sustained on the technical ground of the validity of the sanction. Therefore, this Court will not be justified in going into the merits of the case and in determining the first point raised by the appellant's counsel. The State will, however, be at liberty to launch the prosecution afresh after obtaining a valid sanction.

25. The appeal is, therefore, allowed and the conviction and sentence of the appellant Under Section 5(2), Prevention of Corruption Act, recorded by the special Judge are set aside. The appellant is on bail to which he shall not surrender. His bail bonds are discharged,

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