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The State of U.P. Vs. Kameshwar Prasad

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Court : Allahabad

Decided On : Jul-24-1991

Reported in : 1992CriLJ1324

Judge : Surya Prasad, J.

Acts : Prevention of Corruption Act, 1947 - Sections 5(2); Indian Penal Code (IPC), 1860 - Sections 161

Appeal No. : Govt. Appeal No. 1671 of 1980

Appellant : The State of U.P.

Respondent : Kameshwar Prasad

Advocate for Def. : P.N. Misra, Adv.

Advocate for Pet/Ap. : A.G.A.

Disposition : Appeal dismissed

Judgement :

Surya Prasad, J.

1. This is a criminal appeal by the State of Uttar Pradesh against the judgment and order dated 1-5-1980 passed by the then IV Additional Sessions Judge, Bijnor Sri Ikramul Bari in Special Trial No. 14 of 1978 State v. Kameshwar Prasad under

Section 161 I.P.C. and Section 5(2) of the Prevention of Corruption Act, whereby the learned Additional Sessions Judge acquitted the accused.

2. The prosecution case briefly stated is that Dharampal Singh PW 2 received a demand notice in respect of the electricity charges relating to the tube-well. He had made representation to the Executive Engineer Hydel Division Bijnor to the effect that the tube-well had not worked during the period from October, 1974 to November, 1975 because the boring had failed. Therefore, he prayed for relief in respect of the electricity charges on that account. He had produced certain certificates in support of his contention that the tube-well had not worked during that period. Consequently, the Executive Engineer had called for a report from the Sub-Devisional Officer who had in his turn asked for the same from the accused Kameshwar Prasad, who was a Junior Engineer in charge of the Shadipur Hydel sub-section. The complainant Dharmapal Singh had approached the accused on 24th May, 1975 and had tried to persuade him to make a report favourable to him. The accused had displayed his willingness to oblige him in return of a payment of Rs. 200/- to him as illegal gratification. Dharampal Singh was not ready to pay the amount as illegal gratification. Consequently he approached Som Dutt Tyagi, who was posted as Inspector (Vigilance) at Bijnor, with a written complaint Ex. Ka. 5. That complaint was addressed to the Director of Vigilance Lucknow. It unfolded the facts preceding the presentation of the application to the Inspector Som Dutt Tyagi. It also set out the request for legal action against the accused. Inspector Som Dutt Tyagi PW 5 proceeded the same day to Lucknow, met the Director and obtained the sanction of the U.P. Administration for a trap against the accused. He returned from Lucknow on 26th May 1976. On his way he met Digvijay Singh, Deputy Superintendent of Police Vigilance Department posted at Moradabad and requested him for assistance in arranging the trap. The accused had asked Dharampal Singh to bring the aforesaid sum of Rs. 200/- on 27th May, 1976. Consequently the trap was arranged on 27th May, 1976, Digvijay Singh, Deputy Superintendent of police reached Bijnor in he morning of 27th May, 1976 and Dharampal Singh also came to the Inspector Som Dutt Tyagi in the morning of 27th. He brought two hundred rupee notes, as he was directed by the Inspector Som Dutt Tyagi. The Inspector Som Dutt Tyagi and the Deputy Superintendent of Police Digvijay Singh took Dharampal Singh to the residence of the District

Magistrate. A written request Ex Ka 5 was ultimately presented by the Inspector Som Dutt Tyagi to the in charge District Magistrate. The request was for the recording of the statement on oath of Dharampal Singh and for the initialling of the two currency notes. The in charge District Magistrate by a written order on the aforesaid application for request itself referred them to the Sub-Divisional Magistrate, Bijnor. Consequently, the Sub-Divisional Magistrate, Bijnor Sri Suresh Chand Mathur PW 1 recorded the statement Ex Ka 1 of Dharampal Singh and initialled the two currency notes. Inspector Som Dutt Tyagi, Deputy Superintendent of Police Digvijay Singh and Dharampal Singh proceeded to the quarter of the Inspector Som Dutt Tyagi. On their way they picked up Aman Singh PW 3 and one Sardar Singh to witness the trap. On the quarter of the Inspector Som Dutt Tyagi a demonstration of the application of Phenolphthalein powder and sodium carbonate was made. The Inspector Som Dutt Tyagi treated the aforesaid two currency notes with the phenolphthalein powder and gave them to Dharmpal Singh who kept them in his pocket. His hands were also washed in the mixture of sodium carbonate and the mixture turned pink. The mixture was thrown away and the memo Ex Ka 6 to that effect was prepared. The Inspector Som Dutt Tyagi, Deputy Superintendent of Police Digvijay Singh, Dharmapal Singh, Sardar Singh, Aman Singh and a Vigilance constable Amar Singh proceeded to Shadipur from the quarter of the Inspector, Inspector Som Dutt Tyagi, Deputy Superintendent of Police Digvijay Singh, constable Amar Singh and Sardar Singh stayed outside the compound of the Sub-station which was enclosed by barbed wires. There was a gate fixed in the enclosure. They all took cover behind a tree and some cattle grazing there. They sent Dharampal Singh inside the enclosure. Aman Singh followed Dharmapal Singh at a short distance. Inside the enclosure the accused was standing near the transformer which was being tested. Seeing Dharmapal Singh the accused walked to him and talked to him. Dharampal Singh took out the aforesaid two notes from his pocket and placed them in the right hand of the accused and also made a request for a favourable report. The accused lifted his hand as a gesture of assurance. The accused transferred the notes to his left hand and placed them in the left side pocket of his pant. Thereafter, the accused proceeded towards south towards his adjacent office building. The Inspector Som Dutt Tyagi and others who were watching all these things, rushed to the accused

and when the accused was at a distance of two paces away from his chair, they apprehended him. The Inspector Som Dutt Tyagi disclosed his identity to the accused and demanded a search. As a result of the search the aforesaid two notes were recovered from the left side pocket of the pant of the accused. The hands of the accused were washed in the mixture of sodium carbonate which turned pink. That mixture Was collected in a plastic bottle Ex. 3 and was sealed. Memo Ex. Ka. 7 to that effect was prepared. In the right pocket of the pant a handkerchief and certain other things were found and taken into custody. These things were handed over to Sri Manmohan Rai, Sub-Divisional Officer Hydle Bijnor who had also come to the sub-station. A memo to that effect was prepared. In the office of the accused letter No. 1421-V-A. 30 kha/R-6 dated 4-5-76 relating to a consumer Hardev Singh resident of village Chatar Bhojapur Kush written by Sri Manmohan Rai, Sub-Divisional Officer was taken from the official papers of the accused. A memo Ex. Ka. 8 in that regard was prepared and was also signed by the accused. The accused was taken to the police station Bijnor where other pant of the accused was procured from his residence and exchanged for the one he was wearing at the time of the incident. It was sealed and a memo Ex. Ka. 9 to that effect was prepared. The accused along with the bundles containing the pant and the notes etc. was handed over to the police of Kotwali Bijnor.

3. The case was investigated by the Inspector Vigilance Kamal Singh PW 6. After the completion of the investigation into the case and after obtaining sanction for the prosecution of the accused, he submitted the charge sheet Ex. Ka. 15 against him.

4. The prosecution examined Sri S.C. Mathur PW 1, Dharmapal Singh PW 2. Aman Singh PW 3, Sri Kishan Behari Mathur PW 4, Inspector Som Dutt Tyagi PW 5 and constable Kamal Singh PW 6 and relied upon certain documents in support of its case.

5. The accused pleaded not guilty. He has stated that he has been falsely implicated in this case on account of enmity. He has further stated that he had submitted a report to the Sub-Divisional Officer Hydle against Dharmpal Singh as he had filed a forged and fictitious affidavit. Consequently he generated the

feelings of animosity against him and in connivance with his uncle Aman Singh, he got him falsely implicated in this case. He examined Mazharuddin DW 1, Jitendra Swarup DW 2 and Jai Kishan DW 3 and relied upon certain documents in support of his contention.

6. Having heard the learned counsel for the parties and having considered the evidence on record, the learned Additional Sessions Judge acquitted the accused of the charges levelled against him vide his impugned judgment and order. Aggrieved the State of Uttar Pradesh preferred this appeal against the same.

7. Heard the learned counsel for the parties and perused the record.

8. Sri Kishan Behari Mathur PW 4 was the then Joint Secretary of the U.P. Electricity Board, Lucknow. He has stated in his examination in chief that he had received certain papers from the Superintendent of Police (Vigilance), Bareilly against the accused and that he had placed those papers in the meeting of the Board. He has further stated that after obtaining approval from the Board he had accorded sanction for initiating the case against the accused.

9. In cross-examination Sri Kishan Behari Mathur PW 4 has stated that he was not present in the meeting of the Board. Therefore, it is not understood how he has stated that he had placed the relevant papers in the meeting.

10. Sri Kishan Behari Mathur PW 4 has stated at the end of his cross-examination that he was not the sanctioning authority. It is again not understood how he has stated earlier that he had accorded sanction.

11. Sri Kishan Behari Mathur PW 4 has stated that he cannot say whether or not the Board had applied its mind while according sanction because he was not present in the meeting of the Board. He cannot say whether the members of the Board has perused the relevant papers or not. There is, therefore, no evidence on record to show whether the Board had applied its mind while according sanction or not.

12. Sri Kishan Behari Mathur has further stated that the Board had passed a resolution in the meeting for according sanction. He does not, however, know

whether the item of sanction was included in the agenda of the meeting of the Board or not. He was not present in the meeting and therefore, he cannot be expected to have known as to what was actually done by the Board in its meeting.

13. From the statement of Sri Kishan Behari Mathur PW 4 it is evidently clear that there is no evidence on record to show what material was actually placed in the meeting of the Board for the purpose of obtaining sanction. It is further clear that there is nothing on record to show whether the members of the Board had actually perused the relevant papers in the meeting before according the alleged approval/sanction or not. There is also no evidence on record to show who actually accorded the alleged sanction.

14. Therefore, the above observations combined with the observations made by the learned Additional Sessions Judge on the point of sanction do not warrant to interfere with his finding with there is no valid sanction in the instant case. The contention of the learned counsel for the State to the contrary is not acceptable to me.

15. Dharampal Singh PW 2 has given his statement in such a way as if he had no concern or connection with Aman Singh PW 3 before the incident. But Aman Singh PW 3 has admitted that he is uncle of Dharampal Singh. Dharampal Singh PW 2 has stated that Aman Singh had not accompanied him to the residence of the accused on 24th of May, 1976. But Aman Singh PW 3 has asserted that he had done so. Dharampal Singh PW 2 has stated that his grand father Hardev Singh died a few days before the incident. But Aman Singh PW 3 has stated that Hardav Singh died 2-2 1/2 months before the incident. The incident is said to have taken place on 27th of May, 1976. Hardev Singh died some day in the early part of the month of March, 1976. Dharampal Singh had admittedly filed an affidavit Ex. Ka. 2 dated 1-4-76 of Hardev Singh. This affidavit, is therefore, patently forged and fictitious as Hardev Singh had died long before 1-4-76. Dharampal Singh has also tried to establish that he had not given the affidavit in the Hydle department. But his effort is fruitless. If he can get a forged and fictitious affidavit prepared of his grand father Hardev Singh even after his death, he can stoop down to any extent to do anything against any one for his purpose.

16. Aman Singh PW 3 cannot be treated as an independent witness. Dharampal Singh PW 2 and Aman Singh PW 3 both are interested witnesses. There are contradictions between their statements on material points. Their statements cannot be implicitly relied upon.

17. Dharampal Singh PW 2 has stated that he had put his signature on a fard prepared at the police station. What is that fard is not as certainable. But there appears to be something fishy on the part of Dharampal Singh and the Vigilance Inspector Som Dutt Tyagi especially when there is no independent witness to prove the prosecution case against the accused to the hilt. There were certain persons present at the Transformer. There must have been certain other employees in the office itself. But none of them was made a witness to the recovery of Rs. 200/- from the possession of the accused in particular. Why This posed question has no reply from the side of the prosecution. This also casts doubt as to the act and conduct of the Inspector Som Dutt Tyagi. There does not appear any explanation why Sardar Singh was not examined to prove the prosecution case. The learned counsel for the respondent has relied upon the case 'State of U.P. - Appellant v. Dharam Chand Jain -- respondent' 1987 CAR 339 (SC) wherein the Hon'ble Supreme Court has made the following observations :--

For non-examination of the two independent witnesses the prosecution only declared that they have been won over but there was no material produced to establish this. This was an additional circumstance considered by the learned Special Judge and in the context of these circumstances after scrutinising the evidence of the Vigilance Inspector in detail the learned Judge came to the conclusion that prosecution has not been able to establish beyond doubt their case, consequently acquitted the respondent. The High Court also refused to grant leave to the State to prefer an appeal against acquittal.

18. In view of the facts and circumstances of the case, the statement of Vigilance Inspector Som Dutt Tyagi too cannot be implicitly relied upon. The finding of the learned Additional Sessions Judge that the prosecution has proved its case against the accused is, therefore, not sustainable.

19. In the result the appeal is dismissed. The acquittal of the respondent is maintained.

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