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SooperKanoon Citation : sooperkanoon.com/481866

Court : Allahabad

Decided On : Nov-18-1925

Reported in : 92Ind.Cas.857

Judge : Dalal and ;Boys, JJ.

Appellant : Jalal Uddin

Respondent : Emperor

Judgement :

1. Jalaluddin Excise Inspector of the Bijnor District applied to the High Court in revision to have his conviction under Section 161, Indian Penal Code, for taking an illegal gratification from a liquor contractor set aside. The learned Judge to whom the application was presented referred the matter to a Bench of two Judges and also issued a notice to Jalaluddin to show cause why the sentence passed on him should not be enhanced. The applicant was sentenced by a Magistrate of the Moradabad District, to whose Court the case was transferred from Bijnor, to simple imprisonment for one month and a fine of Rs. 500 with three month's further simple imprisonment in default.

2. The point raised in revision was that the prosecution of the applicant without the sanction of the Local Government was bad and so the trial should be set aside. The applicant is an Excise Inspector who was appointed to his post by the Local Government in 1901. Under Section 197(1) of the Cr.P.C. the sanction of the Local

Government is necessary for the prosecution of any public servant who is not removeable from his office save by or with the sanction of the Local Government or some higher authority. The appellant was appointed prior to the passing of the U.P. Excise Act IV of 1910. Under Section 10(2) of that Act the Local Government is given power by a notification to appoint an officer referred to as the Excise Commissioner vide Clause (a) and to delegate to the officer all or any of its powers under the Act except the power conferred by Section 40 of the Act to make rules. In pursuance of such authority the Local Government issued a notification under Section 10(2)(f) of the U.P. Excise Act on 8th September 1924. It is admitted that an Excise Commissioner has been duly appointed. Under the Notification No. 295-XIII-110 of 8th September 1924 (U.P. Gazette of 13th September 1924, page 1249) the Local Government has delegated to the Excise Commissioner among other the following powers:

9. Power to appoint all officers of the Excise Department below the rank of Assistant Excise Commissioner, provided that the appointment and promotion, removal or dismissal of Excise Inspectors shall be subject to the general control of the Local Government.

10. Power to censure, withhold promotion from, reduce to a lower post, suspend, remove or dismiss all officers of the Excise Department below the rank of Assistant Excise Commissioner.

3. There is a proviso added to the powers that in cases of dismissal, removal or reduction the Excise Commissioner shall follow the procedure laid down in Rule 14 of the rules made by the Secretary of State under Section 96-B(2) of the Government of India Act. According to this notification the applicant who is an Excise Officer below the rank of Assistant Excise Commissioner may be dismissed by the Excise Commissioner. He is, therefore, removeable from his office by an authority lower than that of the Local Government and without the sanction of that Government.

4. The arguments advanced by the applicant's learned Counsel were directed to the following points:

(1) That the applicant having been appointed prior to the date of the notification he could not be dismissed by the Excise Commissioner.

(2) That the notification in so far as it gave power to the Excise Commissioner to dismiss the applicant, was ultra vires to that extent.

(3) That the authority of the Excise Commissioner was delegated authority and even when he dismissed an Excise Officer it must be taken as if the dismissal was really made by the Local Government through the agency of the Excise Commissioner.

5. The authority No. 10 of the notification quoted by us above makes it clear that the Excise Commissioner has been given power of dismissal of Excise Officers below the rank of Assistant Excise Commissioner appointed even prior to the date of the notification. In our opinion the applicant could be dismissed by the Excise Commissioner.

6. By reference to various other notifications it shall be shown that the notification to the extent of the authority No. 10 was not ultra vires. Reference was made to the Government of India Act, Section 96-B(1) wherein it is enacted 'subject to the provisions of this Act-and of rules made thereunder every person in the civil service of the Crown in India holds office during His Majesty's pleasure...but no person in that service may be dismissed by any authority subordinate to that by which he was appointed.... It was argued that the applicant having been appointed by the authority of the Local Government may not be dismissed by any authority subordinate to the Local Government and if any rule is made by the Local Government to that effect it would be contrary to the provisions of Section 6-B(1). The clause, however, begins with the words 'Subject to the provisions of this Act and of rules made thereunder.' Clause (2) of the same section enacts that 'The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct. Such Rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making Rules to the Governor-General in Council or to Local Governments, or authorise the Indian Legislature or Local Legislatures to make laws regulating the

public services.'

7. Obviously the notification of the Local Government referred to above was made under the Rules referred to in Clause (2). The argument that such rules can be framed with respect to officers to be appointed in future cannot hold when we consider the provision to Section 96-B(2) which safeguards the existing or recurring rights only of persons appointed by the Secretary of State prior to the commencement of the Government of India Act, 1919. There would not have been such a proviso if it was intended that the existing or recurring rights of all public servants appointed prior to the commencement of the Act were to be retained. In the notification itself reference is made to rules made by the Secretary of State in Section 96-B(2) of the Act. The Secretary of State for India has framed Rules under Section 96-B(2) of the Government of India Act, 1919, regulating the classification of the civil servicer in India, their conditions of service, discipline and conduct. Those Rules also provide for delegation of powers. They are published in the Gazette of India of 21st June 1924 at page 552 (No. F 472-11-23). By Rule I the following classification is made of officers of the Local Government:

1. The all India services,
2. The Provincial services,
3. The Subordinate services.
4. Officers holding special posts.

8. An Excise Inspector may come under class 2 or 3. The definition of Provincial services given in Rule III proves that he comes under class 3. The Provincial services of every Local Government -are detailed in a schedule to the Rules and the schedule relating to the United Provinces includes an Assistant Excise Commissioner and no officer lower in rank in that Department. The applicant, therefore, is a member of the subordinate services, which are defined in Rule IV as consisting of all minor administrative, executive and ministerial posts to which appointments are made by the Local Government or by an authority Sub-ordinate to the Local Government. Under Rule XV a Local Government is empowered to

delegate to any subordinate authority subject to such conditions, if any, as it may prescribe any of the powers conferred by Rule VIII in regard to officers of the subordinate services. Proviso to this Rule relates to an appeal to the Local Government. Rule XII lays down:

without prejudice to the provision of any law for the time being in force, the Local Government may for good or sufficient reasons.

(5) remove or

(6) dismiss

any officer holding a post in a...subordinate service....

9. The Excise Act does not interfere with the Local Government's power of removal or dismissal; in fact, it gives such power and the power of delegation of authority over again. We are of opinion, therefore, that the authority No. 10 granted by the notification is not beyond the power of the Local Government to grant.

10. Coming to the question of delegation, once the Local Government has delegated its power the authority which actually removes the public servant from office is not the authority of the Local Government but the authority to whom the power is delegated. To take an instance, the Hon'ble Chief Justice of this Court has been authorised and empowered under Section 6 of the Letters Patent of this Court by the Crown acting in pursuance of an Act of Parliament to appoint officials of this Court and to dismiss them. If the argument of the applicant's learned Counsel is to prevail it may with equal cogency be argued that every official down to an orderly peon of this Court is appointed and removed by the Crown through the agency of the Chief Justice and for his prosecution under Section 161 the sanction of the Local Government would be necessary. We do not think that such an argument would be accepted. There is no mention made in Section 197(1) of the Cr.P.C. of any delegated authority. Obviously the intention was to simplify the law regarding sanction in the new C.P.C., and the circle of public servants for whose prosecution for bribery sanction was necessary under the previous Code

has been narrowed. Under the former Code sanction of some authority (other than the Local Government) to whom the power was delegated by the Local Government to grant sanction, was necessary for the prosecution of certain public servants. Any sanction for prosecution in their cases is no longer necessary.

11. Two rulings were quoted in support of the contention put forward on behalf of the applicant that the dismissal by the Excise Commissioner really meant dismissal by the Local Government. In re Abdul Khadir Saheb 33 Ind. Cas. 648 : (1916) 1 M.W.N. 384 : 17 Cr.L.J. 168, Emperor v. Khan Chand 72 Ind. Cas. 523 : A.I.R. 1922 Lah. 337 : 24 Cr.L.J. 411, The first case which is a Madras case contains merely the opinion unsupported by reasons of a Single Judge of that Court. With all respect we do not feel justified in following it. In the second case which is of the Lahore High Court and of date 24th March 1922, no rule had been framed to provide for cases of officers appointed previous to the date of the notification. We have already indicated that the notification of the Local Government in the present case provides for the dismissal of Excise Officers appointed prior to the date of the notification. The ruling of the Lahore High Court, therefore, has no application here.

12. For these reasons we decide that no sanction was necessary for the prosecution of the applicant and that his trial in the Court of the Magistrate was a legal trial.

13. We now come to the facts of the case. As notice has been issued to the applicant to show cause why the sentence passed on him should not be enhanced, he is entitled under the provisions of Section 439(b) to show cause against his conviction. We have been taken through the entire evidence on the record. We have studied it and can discover no reason to disagree with the judgment of the learned Sessions Judge in appeal. The evidence does not rest here merely on the testimony of witnesses who depose to the paying of the bribe. There have been other incidents in the case which convince us of the appellant's guilt. The complainant Kailash Chander was a contractor for the retail sale of liquor at a shop in village Jhalu. There was a complaint made against him to the Police by one Karhira Chamar on the 14th May 1924 and the applicant Excise Inspector went to

the spot to hold an inquiry on 15th June. It appears to be the practice of the Inspector to receive certain sums described as an annual fee from the contractors in order to save them from petty prosecutions under the Excise Act. With this lever of a complaint the Excise Inspector demanded his annual fee from Kailashr Chander. His demand was of Rs. 200 and it was finally settled at Rs. 160. Kailash Chander stated that on June 10th he paid Rs. 60 to the Inspector at his house at Bijnor. Two witnesses to the payment were produced, Baldeo Singh the contractor's uncle, who also has a drug shop four miles away from Jhalu at Haldaur and Dalchand. Apparently the applicant was not satisfied with this part-payment and Kailash Chander had not the means to pay more. The Inspector kept on demanding the balance. In July there was another complaint against Kailash Chander brought by one Lallu and Kailash Chander was sentenced to a short term of imprisonment but acquitted on appeal. He believed that the Inspector was at the bottom of this complaint. While he was attending to his defence in this case the Inspector reported his absence from his liquor shop and had him prosecuted in the Court of the Excise Officer. This case was fixed for hearing on the 24th September 1924. The incidents of that date and the following day the 25th September are important. The Magistrate Thakur Phul Singh has deposed that on the 24th September the applicant Excise Inspector appeared in the forenoon and stated that Kailash Ohander accused of that case and the prosecution witnesses were absent and that the hearing had better be postponed. The Magistrate had to attend to treasury work and at about 1-30 p. M. when he took up the case and had Kailash Chander called, Kailash Chander appeared in Court. The Magistrate then inquired of the Inspector why he had given wrong information about the accused and the witnesses. There is no evidence that the Inspector at the time gave any reply. Kailash Chander explained that he had been present since the forenoon but that there had been a talk between him and the Inspector of a compromise and withdrawal of the charge. Thakur Phul Singh has stated that the same day he heard in the Treasury Office that the Excise Inspector's orderly had taken a currency note for Rs. 100 to be cashed but that before it could be cashed the case had been called and the peon was called back by the Excise Inspector Babu Lal Assistant Treasurer had deposed to this incident of a currency note being brought to the Treasury for encashment. Kailash Chander's story is that the Excise

Inspector had consented to refund the sum of Rs. 60 and it was on this account that the currency note of Rs. 100 was taken to the Treasury lo he cashed. It is certain that the note was taken to the Treasury. The appellant did not explain the reason for this proposed encashment of the note but falsely denied having sent any note to the Treasury that day. This denial and the absence of explanation, which it was the duty of the appellant to give under the circumstances of the present case, support the testimony of Kailash Chander. On the 25th September the excise case was taken up again and when the statement of Kailash Chander was recorded as an accused person he gave the reason for his prosecution to be his inability to pay the balance of the bribe of Rs. 160 to the Inspector.

14. There is no evidence to show, nor was it alleged before us, that when this charge was openly made by Kailash Chander the Inspector gave vent to any explanation or denied the charge immediately, as any honest man would have done. After the statement of Kailash Chander was recorded the case was postponed for defence evidence. The parties to the case went out and there was a quarrel between the Inspector and Kailash Chander, who from words came to blows and closed in with each other. The witnesses for the prosecution support Kailash Chander's account that on going out of the Court he again demanded the refund of Rs. 60 whereupon the Sub-Inspector promised to pay it at his house and he retorted that he was constantly being put off by alternative promises of payment in Court or at home The two witnesses Har-kishen Das and Mathura who are men of respectable position in life have supported Kailash Chander's story. On behalf of the defence certain Pleaders came forward and deposed that at the time of the quarrel there was no mention of a bribe and Kailash Chander simple threatened to settle with the Inspector before he himself was punished by Court. During the quarrel another Deputy Magistrate B. Budh Sen appeared on the scene and to him also Kailash Chander spoke about the bribe and the Inspector's refusal to refund the sum of Rs. 60.

15. We have already made reference to the absence of any explanation of the currency note having been taken to the Treasury. In the matter of the quarrel on the 25th also, the probability is all in favour of the prosecution. It is certain that in the Court of Thakur Phul Singh the complainant Kailash Chander charged the

Sub-Inspector with taking a bribe and as soon as B. Budh Sen, another Magistrate, appeared outside the Court during the quarrel between Kailash Chander and the Inspector the former again made mention of the bribe. We, therefore, refuse to believe the defence witnesses who state that during the intervening quarrel between the Inspector and the contractor no reference whatsoever was made to the taking of the bribe by the Inspector. In our opinion the defence witnesses are purposely concealing the words that passed between the parties with respect to the bribe.

16. It was argued that Baldeo Singh and Dalchand who depose to the actual payment of the bribe are unreliable witnesses because Baldeo Singh is uncle of the complainant and the other witness Dal Chand was not mentioned as a witness by the complainant when his statement was first recorded on the 4th October. As rightly pointed out by the learned Sessions Judge, whatever value may be attached to this testimony standing by itself, the incidents of the 24th and 25th September supported by other incidents can leave no doubt in any one's mind as to the payment by Kailash Chander to the applicant of Rs. 60 in June 1924.

17. Some contradiction was pointed out between the complaint in which it was stated that the bribe was paid in Jhalu and the complainant's statement on oath where he stated that the bribe was paid in Bijnor. The complaint, however, was not written by the complainant himself and it is evident that the petition writer wrote it without carefully understanding the allegations of the complainant. We are satisfied that the appellant was rightly convicted.

18. We have also to consider the question whether the sentence should be enhanced. The accused has been sentenced under Section 161 of the Indian Penal Code to one month's simple imprisonment and a fine of Rs. 500 or in default three months' simple imprisonment. When he applied in revision against this conviction and sentence the matter came before Mr. Justice Kanhaiya Lal who on the 31st August concluded his order as follows:

If the facts found by the Courts below are true the sentence passed on the accused also requires to be examined with a view to determine its adequacy to meet the ease of a systematic or annual levy alleged in this case. Let the case be,

therefore, referred to a Bench of two Judges and let notice also go to the accused to show cause why the sentence should not be enhanced in case his revision is rejected.

19. The learned Sessions Judge, when hearing the appeal, was invited, as we are informed, to refer the case to this Court for enhancement of sentence. He concluded his judgment as follows:

I am not inclined to press for an enhancement of sentence. Imprisonment even for one month is a very serious matter for a man in the position of, an Excise Inspector and the expenses of the case in addition to the fine will probably ruin him. His conviction of itself is enough to debar him from further Government service. I, therefore, dismiss the appeal and uphold the conviction and sentence.

20. We appreciate the considerations stated by the learned Sessions Judge but there can be no question as to the gravity of the offence committed by the accused. It is obvious that this type of offence can be very easily committed without much risk of exposure in view of the great unwillingness of victims to run the risk of failing to establish a perfectly true charge if they make it. In the present case if the evidence is to be believed and we have said that we believe it, it is clear that the incident which has been the subject of the present trial was not a solitary lapse on the part of the accused. He had established a regular system by which he levied a toll annually upon these licence-holders. Believing this evidence as we do, we find ourselves in agreement with Mr. Justice Kanhaiya Lal that the sentence inflicted was wholly inadequate to the offence.

21. We, therefore, while dismissing the application in revision enhance the sentence of one month's simple imprisonment to a sentence of six months' rigorous imprisonment and maintain the fine and the alternative sentence in default of payment of the fine. The applicant will surrender to his bail.