

Randhira Vs. the State

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Court : Madhya Pradesh

Decided On : Jan-16-1954

Reported in : 1954CriLJ872

Judge : Dixit, J.

Appellant : Randhira

Respondent : The State

Advocate for Pet/Ap. : Mr. Misra

Judgement :

Dixit, J.

1. The appellant Randhira has been convicted by the Special Judge of Gwalior appointed under Section 6, Criminal Law Amendment Act, 1952 of an offence under Section 165A, Penal Code and sentenced to four months rigorous imprisonment. The accused has appealed both against the conviction and sentence.

2. The facts of this case are very brief. It was alleged by the prosecution that a miscellaneous case, to which Randhira was a party, was pending before Mr. Joshi Naib Tehsildar of Picchore; that on 16-1-1950 when Mr. Joshi came out of his house and was proceeding to the court, the appellant Randhira offered him two

currency notes of ten rupees each and asked him to dispose of his case. Mr. Joshi at once made a report to the police against the appellant. The appellant admitted the recovery of two currency notes of Rs. 10/- each from his possession. He also admitted that he had offered the notes to Mr. Joshi. He, however, said that he intended to give the notes to Mr. Joshi as fees for a spot inspection in the case. The learned Special Judge rejected the plea of the accused and accepting the prosecution evidence convicted him under Section 165A, Penal Code.

3. Before me the main contention advanced by Mr. Misra, learned Counsel for the appellant is that in view of the provisions of Article 20, Constitution of India, the appellant could not be convicted under Section 165A, Penal Code, which was incorporated in the Penal Code on 28-7-1952, for a bribe said to have been offered on 16-1-1950, There is considerable force in this contention. Article 20 of the Constitution says that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence.

On 16-1-1950 the Indian Penal Code, as adapted by the Madhya Bharat Act No. 50 of 1949, was in force in Madhya Bharat. Under the adapted Penal Code, as under the Indian Penal Code itself, the person who offered a bribe to a public servant was punishable as an abettor under Section 161 read with Section 109. if the bribe was accepted by the public servant, and if the bribe was not accepted, the giver of the bribe was still punishable under Section 161 read with Section 116. The offering of a bribe was made a substantive offence by itself instead of a mere abetment by Section 165A which was introduced in the Penal Code by the Criminal Law Amendment Act 1952 (46 of 1952), which came into force on 28-7-1952. On 16-1-1950 the offering, of a bribe was thus punishable in Madhya Bharat only as an abetment under the adapted Penal Code. The appellant's conviction under Section 165A, Indian Penal Code for an offer of bribe on 16-1-1950 is thus in violation of the provisions of Article 20 of the Constitution and cannot be upheld.

4. This is not disputed by the learned Government Advocate. He, however, suggested that as the offer of a bribe to a public servant even under the adapted Penal Code amounted to abetment and was punishable under Section 161 read

with Section 116, if the bribe was not accepted and as in the charge framed against the appellant it was distinctly mentioned that by offering Rs. 20/- to Mr. Joshi he had abetted the offence under Section 161, it was open to this Court to alter the conviction of the appellant to one under Section 161 read with Section 116, Indian Penal Code as adapted in Madhya Bharat by the Madhya Bharat Act, 50 of 1949. I quite agree with the learned Government Advocate that Article 20, Constitution of India is no bar to the conviction of the appellant under Section 161 read with Section 116. But I do not think that the appellant can in this appeal be convicted under Section 161 read with Section 116 of the adapted Penal Code. The reason is that the Special Judge who tried the appellant, had no jurisdiction to try an offence punishable under Section 161, Penal Code as adapted in Madhya Bharat.

5. It is important to note that until the coming into force in this State on 1-4-1951 of the Indian Penal Code (Act 45 of 1860) by virtue of the Part B States (Laws) Act, 1951, the Penal Code which was in force in Madhya Bharat was an Act of Madhya Bharat Legislature. It was by reason of the enactment of 'Bharatiya Danda Sangrah, Angikaran Vidhan' Samvat 2006 (Indian Penal Code Adaptation Act No. 50 of 1949) that the Indian Penal Code with certain adaptations and modifications was brought into force in Madhya Bharat from 5-9-1949. It is true that in form and content the adapted Penal Code was substantially the same as the Indian Penal Code. But nonetheless it was an Act of Madhya Bharat Legislature and not of the Parliament.

6. Now, Section 6, Criminal Law Amendment Act, 1952 empowers the State Government to appoint a Special Judge to try 'inter alia' an offence punishable under Section 161, Section 165 or under Section 165A of the I. P. C. (Act 45 of 1880) or Sub-section (2) of Section 5, Prevention of Corruption Act, 1947. Clause (a) of Section 6 (1), Criminal Law Amendment Act 1952 refers to the above mentioned offences of the I. P. C. and not of the Penal Code as adapted in this State or in any Part B State. There is nothing in Section 6 of the Part B States (Laws) Act, 1951 or in Clause (a) of Section 6 (1), Criminal Law Amendment Act, 1952 to indicate that the reference in Clause (a) to the I. P. C., if the Indian Penal Code as an Act of the Central Legislature was not in force in Part B State on the

material date shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in; that State.

7. Section 4 of the Part B States (Laws) Act, 1951 which provides for construction of reference to laws not in force in Part B States can be of no assistance in the present case as the Criminal Law Amendment Act which came into force in 1952 is not one of the Acts specified in the schedule to the Part B States (Laws) Act which came into force in 1951. As the appellant could not be tried by the Special Judge for an offence under Section 161 read with Section 116 of the adapted Penal Code, this Court cannot clearly find him guilty of that offence in the appeal. The conviction and sentence imposed on the appellant must, therefore, be quashed.

8. In this view of the matter it is not necessary to deal with the contentions put forward by the learned Counsel for the appellant to show that the prosecution evidence on record was unreliable and insufficient to find the appellant guilty of offering any bribe to Mr. Joshi.

9. In the result I accept this appeal and quash the conviction and sentence of the appellant under Section 165A of the I.P.C. It is needless to add that the Government is at liberty to institute a fresh prosecution against the appellant in a court of competent jurisdiction in respect of an offence under Section 161 read with Section 116 of the adapted Penal Code.