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Court : Madhya Pradesh

Decided On : Jul-28-1955

Reported in : 1956CriLJ227

Judge : Nevaskar, J.

Appellant : Narayan

Respondent : State

Judgement :

Nevaskar, J.

1. Accused Narayan was convicted for an offence under Section 161, I.P.C. and was sentenced to six months' rigorous imprisonment and a fine of Bs. 100 by the Special Judge in charge of corruption cases.

2. The present appeal is directed against that decision.

3. The facts as alleged by the prosecution are that accused Narayan is a Sar Panch of Gram Panchayat' at Bhichholi. The complainant Lalman is a resident of that village. He applied on 17-3-1952 to the 'Sar Panch for permission for reconstruction of his house. The accused on receipt of that application took no steps for some time. Complainant was anxious to secure permission early. He approached the accused for the purpose whereupon the latter demanded Rs. 5 for

the grant of permission.

The complainant, it is said with the intervention of some person approached the Anti Corruption Officer. An application Ex. P/6 dated 7-4-1952 was submitted by the complainant to the Police of the Anti-Corruption Department. It was decided by that Department to lay a trap. Complainant Lalman was then given five one rupee notes in order to be given to the accused as a bribe, Lalman who was called the next day went to Mr. Pawar of Anti-Corruption Department.

There he disclosed that the accused had called him in Court and that money was to be given there. Thereafter the accused and Mr. Pawar along with the witnesses went to Agarwal Radio Store. There 'Panchnama was drawn and marked five one rupee notes were entrusted to the complainant. One constable in plain dress was sent along with him. The complainant first went to find the accused in Court.

On being unable to find him there he went to the side of the gate of Gandhi Hall compound opening on the Mal Godown Road. When he reached the gate the accused was seen coming from the opposite direction. There the complainant offered him five rupees. The accused, it is said, told him that they would go to take tea and there he would accept the amount. They thereupon went to 'Ganesh Upahargraha'.

The constable who had accompanied the complainant followed them and occupied a seat nearabout them. After both of them had taken tea the accused asked him to take out his five rupees whereupon the complainant first said to him that he was poor. The accused was not pursuaded by this allegation of poverty. He Insisted on having his five rupees.

He threatened the complainant that In case the payment was not made he would not get requisite permission. The complainant thereupon gave him the marked five rupee notes. Thereafter they came out of the hotel. There the party of Anti Corruption Department arrested the accused. 'Panchnama' was made of the five rupee notes in his possession,

4. According to complainant initial demand of bribe was made in the presence of one Panna-lal.

5. On these facts the accused was prosecuted.

6. The accused admitted the recovery of marked five one rupee notes from his possession when he and Lalman came out of 'Ganesh Upa-hargraha'. He however stated that this was not as a bribe. It was a payment made by him as he was liable to pay in respect of the complaint of one Annobai. It was settled before the 'Panchas' that Lalman should pay Rs. 3-12-0 and Annobal Re. 1-4-0 and the entire amount of rupees five was to be dedicated to the temple in the village.

7. The accused alleged that Ex, P/5 produced was forged one. According to him one application dated 27-5-1952 was received by the 'Gram Panchayat1 but the same had been sent to 'Ken-dra Panchayat' who alone had right to grant permission,

8. Having regard to the case set up on behalf of the prosecution and the position taken by the accused after the prosecution evidence was over it appears that the fact of recovery of marked five rupee notes from his possession is not disputed. It is also proved by the statement of witness Prabhudayal that the application Ex. P/5 was handed over by him on behalf of the 'Kendra Panchayat' to the Police along with letter Ex. P/8 dated 8-4-1952.

9. The only question then which remained to be considered as disputed is as regards the purpose for which the notes were given by the complainant to the accused.

10. There is no doubt that the accused being a 'Sar Panch of Gram Panchayat' held an office under the provisions of the Madhya Bharat Village 'Panchayat' Act and hence is a public servant. It is provided under Section 4, Prevention of Corruption Act, that where a valuable, thing or money is accepted the same is presumed to be done as a motive or reward such as is mentioned in Section 161, I.P.C. and the burden of proving the contrary is upon the accused.

11. The burden then lay upon the accused to prove that he accepted rupees five as the amount which the complainant was liable to pay in respect of the matter of Annobai for being dedicated to the village temple.

12. The trial Judge on consideration of the evidence adduced both by the prosecution and on behalf of the accused held that the accused had failed to rebut the presumption which arises against him under Section 4, Prevention of Corruption Act He considered the defence to be unreliable and held that the payment of Rs. 5 in respect of Annobai's matter had nothing to do with this payment. He therefore held the accused guilty and convicted him.

13. In this appeal preferred against that decision the principal points urged are: Firstly,

that sanction obtained for the prosecution of this accused is not valid In law.

Secondly,

facts proved on behalf of the accused were not properly judged. In fact it was proved by the accused beyond reasonable doubt that the money paid by Lalman was in connection with Annobal's matter.

14. As regards the first contention Mr. Malgava submitted that the sanction-ought to have been proved by examining the sanctioning authority. He relied upon the decisions reported in - 'State v. Fulchand' AIR 1956 Madh-B 50 (A); and - 'Chandmal v. State', 1949 Madh-B LR 423 (B), in support of his contention.

15. This contention has no force. In the cases referred to above there was no proof at all regarding sanction and the person who produced what purported to be a sanction was unable to say that he had obtained the same from the appropriate authority. Such is not the case here. The original sanction is produced. It purports to be under seal and the officer who obtained it, was examined who stated that he had obtained the same from the Collector who is the sanctioning authority. In view of this the sanction cannot be said to be defective or not proved.

16. Pressing his second objection regarding the validity of sanction it was urged by Mr. Malgava that the sanction does not indicate that the necessary facts which were essential for the sanctioning authority to know to make up his mind were placed before him.

17. This contention too has no force. The sanction does state that the accused had accepted five rupee notes as a bribe for granting permission to the complainant for building his house.

18. Mr. Malgava next urged that even if sanction be held valid yet it should be held that the materials produced in the case do suggest that the money paid by Lalman to the accused was not as a bribe. He contended that the statement alleged to have been made by the accused to Mr. Acharya who was a Magistrate ought not to have been held admissible. Moreover the finding that Rs. 5 in respect of Annobai's matter had already been paid is not based on correct reading of the evidence in the case,

19. As regards admission of Mr. Acharya's statement in view of the decision of their Lordships of the Privy Council in - 'Nazir Ahmad v. Emperor' AIR 1936 PC 253 (2) (C), it is clear that such statements suggesting criminality of the accused ought not to be admitted.

20. Next question is what are the materials produced on either side as regards the merits of the defence version. Complainant Lalman in his statement suggested that the amount payable in respect of Annobai's matter was Rs. 3-12-0 consisting of Rs. 2-8-0 payable by him and Re. 1-4-0 for Annobai, However other evidence on record indicates that Rs. 5 were payable and not Rs. 3-12-0.

It is plain from the proceedings of the 'Gram Panchayat' dated 3-3-1952, Ex. D/5 that the complainant was required to pay Rs. 5 in respect of Annobai's case. This amount was, on payment, to be dedicated to temple. This was accepted by him and he was morally bound to pay this sum. The suggestion made by him therefore that the total amount was Rs. 3-12-0 is evidently wrong.

21. His contention next is that the amount was paid long before this incident This payment was made about 4 or 6 months prior to the Incident in question. This payment of Ra. 3-12-0 was said to have been made by him in the evening after the sitting of 'Panchayat' was over. It was given half an hour later in front of his own house. There was nobody present then.

22. Other evidence considered material by the trial Judge as regards this payment is the document, Ex. P/13. This contained entries in the hand of D. W. 4 Balvant. Witness at first stated that Ex. P/13 contained entries of monies received by 'Panchayat'. He then stated that Ex. P/13 indicated debits and not receipts. He also stated that this sum of Rs. 5 was not to be paid in the 'Panchayat' but was to be paid in the temple.

23. This contradictory statement of D. W, 4 together with Ex. P/13 were read by the learned Judge to mean that, that sum of Rs. 5 had already been paid long before the incident in question and the attempt on the part of the accused to connect that payment with the payment of the bribe was futile.

24. Having regard to the nature of Ex. P/13 it is difficult to spell out a definite meaning out of the entries therein. If Balvant's version about that document is uncertain that cannot go to prejudice the accused. The version that Rs. 5 were paid by the complainant to the accused was put up by the prosecution, it was for them to establish the same. This is not done by saying that D. W. 4 Balvant puts up a contradictory version as regards the contents of Ex. P/13. Ex. P/13 is not a memorandum kept regularly in the course of business.

The writer does not say anything definite about it. There is no date put against the entry. Entry by itself does not indicate whether it is one of debit or credit. According to Balvant money of 'Panchayat' is with Babulal. Babulal is not examined. Complainant himself does not say he paid Rs. 5. According to him he paid Rs. 3-12-0 in respect of Annobai's matter and that at that time there was nobody.

25. It is therefore difficult to attach any importance to Ex. P/13 or even to accept the same as admissible against the accused. There is therefore no evidence in

support of the fact that the complainant paid Rs. 5 to the accused in respect of Annobai's matter long before beyond the word of Lalman.

26. We have therefore the statement of Lalman that he paid Rs. 3-12-0 to the accused in respect of Annobai's matter and the statement of the accused that he received Rs. 5 on 7-4-1952 In the 'Ganesh Upahargraha' in respect of Annobai's matter. The statement of complainant suffers from this defect that according to Ex. D/5 he was liable to pay Rs. 5 while he says that he was liable to pay Rs. 3-12-0 and paid the same. Version of the accused is consistent, with this.'

The complainant moreover says that he had paid the amount about 4 or 6 months prior to the incident in question. Learned Deputy Government Advocate, Mr. Patel contended that much weight should not be attached to this laxity on the part of the complainant in his estimation of time. He suggested that P. W. 4 Balwant is equally lax. There is some difference between the position of Balvant and the complainant.

But even keeping aside this latter statement there is no doubt that the evidence about the fact of prior payment of Rs. 5 in respect of Annobai is not established beyond reasonable doubt. Initial burden resting upon the accused is displaced by his case set up by him that the payment was for Annobai's matter. This is not further displaced by the evidence of the complainant.

27. Under Section 4, Prevention of Corruption Act the burden no doubt is upon the accused to prove that he came by the amount innocently. But that burden is unlike the burden resting upon the prosecution, not so heavy. That burden is like one in a civil proceeding discharged by indicating the balance of probabilities.

28. The complainant's version has gone weak in this case because he put forth the case that he had to pay Rs 3-12-0 and not Rs. 5. He stated that he paid' off that amount long before and this was about 5 and 6 months before the incident in question. He admitted that the payment was not made in the presence of anybody. As against this the accused stated that the complainant was liable to pay Rs. 5 in respect of Annobai's matter. He is corroborated by 'Panchayat' record Ex. P/6. He stated that it was this payment which was made at the tune of the incident,

29. There is no particular reason in view of the above fact to give preference to the statement of the complainant.

30. As regards the evidence of Pannalal who is said to be present when the accused demanded the bribe all I can say is that his evidence is unnatural. The complainant says that the demand was' made by the accused in the presence of the witness and he showed his righteous indignation and left the place. Pannalal does not say about his being indignant and leaving the place. It is unnatural to expect that the accused would demand a bribe in the presence of a person about whom he was not sure. Reliance placed upon this witness is not justified.

31. It may be observed that the practice of supplying the decoy witness with Government money for bringing about the completion of an offence was deprecated by their Lordships of the Supreme Court in - 'Shiv Bahadursingh v. State of Vindhya Pradesh' : 1954 CriLJ910 . In para 27 of the report at page 334 their Lordships say:

It may be that the detection of corruption may some times call for the laying of traps, 'but there is no justification for the Police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the Police authorities to prevent crimes being committed. It Is not part of their business to provide the Instruments of the offence.

32. For the reason stated above the prosecution case against the accused is not proved beyond doubt. The accused ought, therefore, to be acquitted.

33. He is hereby acquitted. He shall be released at once if he be in Jail.

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