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Mubarakali Vs. the State

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Court : Madhya Pradesh

Decided On : Nov-28-1957

Reported in : AIR1958MP157; 1958CriLJ764

Judge : A.H. Khan, J.

Acts : Prevention of Corruption Act, 1947 - Sections 5A; Code of Criminal Procedure (CrPC) , 1898 - Sections 537; Indian Penal Code (IPC), 1860 - Sections 161

Appeal No. : Criminal Revn. No. 78 of 1957

Appellant : Mubarakali

Respondent : The State

Advocate for Def. : Shiv Dayal, Dy. Govt. Adv.

Advocate for Pet/Ap. : Hamid Ali Shah, Adv.

Disposition : Revision allowed

Judgement :
ORDER

A.H. Khan, J.

1. The facts giving rise to this revision are that on 11-1-1957, one Mr. Bhalla made a report that when he went to the Railway Station Gola-Ka-Mandir to enquire whether empty boxes could be dispatched from Gola-Ka-Mandir Station to Delhi, he found that the Station Master was at first unwilling to book them. But later on, he agreed to book empty boxes, provided Mr. Bhalla paid As, 10 per box by way of gratification. Mr. Bhalla did not agree to it. The following day when Mr. Bhalla when to the Station again, he did not find the Station Master on duty. In his place the A. S. M. was working. On being told what his purpose was, the A. S. M. climbed down to a lower figure and asked Mr. Bhalla to give him only As. 8 per box. Mr. Bhalla did not agree to this proposal also and made a report giving all these facts.

Sub-Inspector Nannoram, on receiving the report laid a trap and went to the Station of Gola-Ka-Mandir from where in his presence Mr. Bhalla dispatched certain boxes. The A. S. M. on duty handed him over the Railway Receipt, and, asked Mr. Bhalla to pay him ten rupees as settled before. Mr. Bhalla thereupon took out from his pocket eight rupee-notes, and, paid the amount to the Assistant Station Master. After this, Sub-Inspector Nanooram appeared on the scene, and, asked the A.S.M. to produce the amount which he had accepted as bribe from Mr. Bhalla. The A.S.M. handed over the money to Sub-Inspector Nanooram. A memo' of recovery was made then and there, and the Sub-Inspector also obtained the railway receipt from Mr. Bhalla. Thus the investigation began in this case from 11-1-1955.

2. According to Section 5-A (c) of the Prevention of Corruption Act, no one below the rank of Deputy Superintendent Police is competent to investigate an offence punishable under section 161 I. P. C. unless an order from a Magistrate is obtained. But in the present case ten days after the investigation had started, Sub-Inspector Nanooram, presented an application to the City Magistrate Lashkar, saying that he had been deputed to investigate the case and that under Section 5-A (c), he sought permission for necessary investigation. The Magistrate without giving a moment's thought to this application wrote on it 'permission given'. After that, the case was further investigated and the Challan was put up eventually before the Special Judge on 3-10-55. This case did not however proceed till the

5th June, 1957.

As soon as the trial commenced, on 22-7-57 the accused by his application raised preliminary objections that the investigation in the case was: made by an unauthorised person, that the order given by the Magistrate to investigate the case was perfunctory in its nature, that the Magistrate did not apply his mind at the time of giving permission, and, that in consequence the court had no jurisdiction to try the case. The trial Court disallowed all these objections. It is against this order that the accused has filed this revision.

3. After hearing arguments I think that there are three questions which must be considered in this case :--

1. Whether the investigation in this case was conducted according to law?

2. If it was not a proper investigation can it be said that the Special Judge has no jurisdiction to entertain the case and that the proceedings should therefore be quashed?

3. If the proceedings pending before the Special Judge are not to be quashed, what will be the proper order to make in the case?

4. The Prevention of Corruption Act is a Special Act and a special procedure different from the one given in the Criminal Procedure Code has been laid down in Section 5-A of the Act. The relevant portion of Section 5-A reads thus :--

'No Police Officer below the rank of the Deputy Superintendent of Police, shall investigate any offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code (Act XLV of 1860) or under Sub-section (2) of Section 5 of this Act, without the order of a Presidency Magistrate or a Magistrate of the First Class, as the case may be or make any arrest therefor without a warrant.'

5. The section provides, unlike the Criminal Procedure Code that the Deputy Superintendent of Police only can investigate the case under the provisions of the Corruption Act and that if it was necessary for another Police Officer below that

rank to investigate any offence under the Act, then before commencing investigation, he should obtain an order from a First Class Magistrate for the purpose.

6. From the facts that I have given above, it is obvious that after receiving the report, Sub-Inspector Nanooram never cared to obtain an order from the First Class Magistrate for investigating the case. He honoured the law more in breach than in observance. He started the investigation as if the law did not exist. After investigating part of the case, he presented an application before the City Magistrate for orders. In this application he stated that he was deputed to investigate the case. From reading his application, it appears as if the question of granting permission by the First Class Magistrate was a mere formality. But it is not so. Their Lordships of the Supreme Court in H.N. Rishbud v. State of Delhi (S) AIR 1955 SC 196 (A), have observed

'that when a Magistrate is approached for granting permission (to investigate an offence) under Section 5-A of the Prevention of Corruption Act, the Magistrate is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine. It is an exercise of his judicial discretion, having regard to the policy underlying it.'

7. The Magistrate in the instant case did not apply his mind and passed the order mechanically. I am inclined to think that the Magistrate felt that he was bound to pass the order, because the Sub-Inspector told him that he was deputed to investigate the case. But this is not a proper approach in the matter. And it cannot be said that in the circumstances, the Magistrate exercised his judicial discretion as directed by the Supreme Court. There is one more reason for my thinking so.

The application to the Magistrate for orders was unaccompanied by any papers, on the basis of which he could have considered the matter. In the absence of any papers, the magistrate as a matter of routine put down 'permission given'. This aspect of the matter was clearly brought out and emphasised in a decision of the Madhya Bharat High Court Cri Revn. No. 168 of 1955 (B). The following observations made in the case would bear repetition:

'It is a Police Officer of the Rank of Deputy Superintendent Police that provides a guarantee against the frivolous and vexatious prosecution, and in the case of an officer below his rank, it is the Magistrate who guarantees against such an eventuality. In granting permission to an officer below the rank of Deputy Superintendent Police, the Magistrate has to see whether there are good and sufficient reasons to carry on the investigation.'

The position before me today is that the permission was granted mechanically and the investigation in this case was conducted partly before the so-called order of the Magistrate, and, partly after the order. This is undoubtedly an illegality and a defect, but as illegality committed in the course of investigation does not affect the competence and jurisdiction of the Court. See (S) AIR 1955 SC 196 (A); Parbhu v. The Emperor, AIR 1944 PC 73 (C) and Lumbhardar Zutshi v. The King, AIR 1950 PC 26 (D). Such a defect being an irregularity is curable under Section 537 of the Criminal Procedure Code.

8. The question of curability under Section 537, Cr. P. C. arises where the trial has proceeded to conclusion. But where the trial has not been completed, different considerations would prevail. Their Lordships of the Supreme Court in para 10 of the decision referred to above ((S) AIR 1955 SC 196 (A)) have observed;

'It does not follow, however, that invalidity of the investigation is to be completely ignored by the Court during trial.

When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take necessary steps to get the illegality cured and the defect rectified by ordering such reinvestigation as the circumstances of an individual case may call for ..... To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused.'

9. In this decision there were three such cases before the Supreme Court. Out of which, one was dismissed and the appeal in the other two cases (Nos. 96 and 97

of 1.954) was allowed and the cases were sent back to the Special Judge for reconsidering the matter in the light of the observations of their Lordships.

10. The learned Deputy Government Advocate submits that along with the application presented to the Magistrate all papers concerning investigation were placed before the Magistrate and that the prosecution would examine the Magistrate on this point. But this does not appear to be correct. The reason is that in the list of witnesses given with the challan, the name of the City Magistrate does not appear as a witness anywhere. Besides this, there is no mention in the application itself about presenting papers to the Court on the basis or which an order was sought. The Magistrate did not even have an F. I. R. made by Mr. Bhalla on 11-1-55 before him and the order he passed was without looking at F. I. R., which is the basis of the case. As I have already stated, to me it seems that the Magistrate passed the order mechanically and this is manifestly against what their Lordships of the Supreme Court have observed in (S) AIR 1955 SC 196 (A) supra. The learned Deputy Government Advocate has tried to fortify his submission by referring to Nishan Singh Harnam Singh v. State, AIR 1955 Punj 65 (E). But the cited, case is not to the point, because there is no discussion in it of Section 5-A of the Prevention of Corruption Act.

11. The learned Deputy Government Advocate contends that the report lodged by Mr. Bhalla in this case was only about the attempt to obtain illegal gratification, which is different from an offence under Section 161, I. P. C. and the offence is not completed till the bribe is accepted. But I am afraid his contention is not acceptable to me. On referring to Section 161, I. P. C., I find that mere demand or solicitation by a public servant amounts to the commission of an offence under Section 161 of the Indian Penal Code. Here according to the report lodged with the Police, the Assistant Station Master is alleged to have asked for a bribe of annas 8 per box from the complainant. If this fact is true, the accused has committed an offence under Section 161, I. P. C. which runs thus :

'Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or

reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.'

12. According to the report of Mr. Bhalla, the Station Master of the Gola-Ka-Mandir (the accused in the present case is only A. S. M.) asked Mr. Bhalla to give him annas ten per box. If this statement is found to be true, then the Station Master too has committed an offence under Section 161 of the Indian Penal Code because of his solicitation. But I find that no investigation was carried on about this by Sub-Inspector Nanooram. Why the investigation was not carried on against the Station Master is not clear from the record. This lends force to the necessity of the reinvestigation of the case by a proper authority.

13. After considering the matter in all its entirety, my answers to the three questions I had set above are as follows :

1. With regard to question No. 1, whether the investigation in this case was conducted according to law or not, I hold that the investigation was not conducted according to law.

2. With regard to the second question; namely, if the investigation was not proper, can it be said that special Judge had no jurisdiction to entertain it, my reply is that a defect in investigation has no bearing on the competence of the Court, and, that the Special Judge despite these defects has jurisdiction to try the case.

14. My answer to the third question, as to whether in these circumstances, the entire proceedings should be quashed, I am of the opinion that in the light of the observations of the Supreme Courts the matter should be reinvestigated by a competent authority and the proceedings should not be quashed.

15. Having regard to the slip-shod manner in which both the Sub-Inspector and the City Magistrate acted in the case it would be proper to order reinvestigation of the

case by the Deputy Superintendent of Police and the proceedings need not therefore be quashed.

16. For reasons stated above, I wouldallow the revision and send the case back tothe Special Judge with a direction that in orderto rectify the defects and cure the illegality, heshould order the Deputy Superintendent ofPolice to carry on the investigation himself whilethe case remains pending on his file.

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