

Gopal Minz Vs. State

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Court : Orissa

Decided On : Jun-17-1991

Reported in : 1991(II)OLR565

Judge : S.C. Mohapatra, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2)

Appeal No. : Criminal Appeal No. 146 of 1986

Appellant : Gopal Minz

Respondent : State

Advocate for Def. : H. Kanungo, Addl. Govt. Adv.

Advocate for Pet/Ap. : S.K. Mund, T.N. Senapati and U.C. Mohanty

Disposition : Appeal allowed

Judgement :

S.C. Mohapatra, J.

1. This is an appeal by the accused convicted Under Section 5(2) read with Section 5(1) (d) of the [Prevention of Corruption Act, 1947](#) (hereinafter referred to as 'the Act') and Section 420/46 and 471 IPC,. and convicted to undergo rigorous imprisonment for three years on each count with a direction that the sentences

shall run concurrently.

2. Prosecution case, in short, is that from 21-1-1975 till 1-1-1980, accused was posted as Amin in the office of Tahasildar, Sundargarh. During that period, by corrupt and illegal means and by otherwise abusing his position as a public servant, he obtained pecuniary advantage from Smt. Lal Badaik daughter or PW 6 by issuing false patta (record-of-right) in her favour. During vigilance enquiry, it was revealed that Etwala Badaik (PW 6) applied for settlement of a piece of Government land in his possession in name of his daughter Lal Badaik. When accused came to his village, 2 to 3 months after, he identified the Government land in favour of daughter of PW 6 and took Rs. 100/- from PW 6. After a few days, PW 6 went to Sundargarh Tahasil Office and received a patta for land in favour of his daughter from the accused after paying Rs. 100/- to him as bribe as per his demand. This patta was issued in respect of Ac. 1. 97 decimals in reference to encroachment case No 89//76 of the office of Tahasildar which contained seal of the Tahasildar and purported to have been signed by PW 11, the then Additional. Tahasildar. On enquiry it was found that in the number referred to in the patta (Ext, 5), no case has been initiated against Lal Bodaik. Signature of PW 11 was found to be forged. Accordingly, charge-sheet was submitted on the basis of which accused was charged and prosecuted for. the offence. Accused denied the charges and pleaded his innocence.

3. Prosecution examined 13 witnesses and proved 25 documents to bring home guilt of the accused in respect of three instances. In defence, though no witness was examined, statement of PW 6 Under Section 161, Cr. P. C., was marked as Ext. A to contradict the statement of that witnesses. Trial Court has held that prosecution has not been able to bring, home the guilt

respect of patta granted to Jana Behera (PW 2) and Nilambar Behera (PW 3). It, however, convicted the accused so far as patta (Ext. 5) granted in the name of Smt. Lal Badaik daughter of PW 6

4. PW 6 is the only witness in support of prosecution case that he paid Rs. 200/- to appellant and got Ext. 5 in favour of his daughter. Case number mentioned in Ext.5 is wrong which relates to another person. PW 11 denied his signature on

Ext. 5. This is all the material evidence in this case. If evidence of PW 6 would be accepted, it can be found that he paid Rs. 200/- to appellant and received Ext. 5 where signature of PW 11 is not genuine as stated by PW 11.

5. PW 6 having given money to a public servant which he was not required to pay to get advantage of settlement of land in favour of his daughter stands in position of accomplice. This principle finds support from the decisions of Supreme Court in AIR 1979 SC 1191 (Panalal Damodar pathi v. State of Maharashtra) and AIR 1980 SC 1558 (Qulam Mahmood A. Malck v. The State of Gujarat). This Court has also relied on these two decisions of the Supreme Court in the decision reported in (1991) 4 OCR 53 (Panchanan Bout v. State of Orissa). It is always prudent to seek for corroboration in material particulars for accepting evidence of an accomplice. This has been held in AIR 1979 SC 1191 (supra).

6. Trial Court held that there being no other person at the time of payment of money to appellant by PW 6 on both the occasions, there is no scope for corroboration. It may be that corroboration by oral evidence is not possible. Neither prosecution nor Court in such matters would be helpless. Circumstances, can be proved which would lead to the irresistible conclusion that accused has received the amount. On that basis accused can be convicted.

7. In this case, measurement of land by accused, writing material portions of Ext. 5 by accused and handing over the patta (Ext. 5) by accused to PW 6 are the circumstances sought to be proved by prosecution to draw inference that accused has received money as stated by PW 6.

8. PW 6 stated that he applied for settlement of land in name of his daughter. Prosecution has led no evidence to prove that PW 6 did not make any application. If application is made and accused went to village being Amin in Tahasildar's Office there is nothing unnatural in this action on part of accused. It is goes without saying that Amin measures land. If prosecution would have led evidence that Amin requires order of higher authority and no such order was given, suo motu measurement by accused would be a suspicious circumstance. Prosecution has failed to adduce any evidence in this regard. Accordingly, merely from measurement of land by accused which is well proved, there is no scope to draw

an inference that PW 6 paid money. If other witnesses saw the Amin going to village and measuring the land, they could have also in normal circumstances seen that accused and PW 6 were in one station although they were not present to note the conversation. No acceptable evidence has been led in this regard.

9. Next circumstance is that accused wrote a portion of Ext. 5 which is proved by PW 8 the handwriting expert and has also been accepted by accused in his statement Under Section 313 Cr. P. C.. If some evidence would have been led that is not the objection of accused to write out the patta or that there was no order to that effect, the conduct of accused would have been suspected. Procedure of grant of a patta when applied for by a person as followed in that Tahasil has not been proved. If accused who is a member of the staff of the Tahasil Office and who measured the land has filled up the proforma in those matters, the same cannot be a suspicious or abnormal circumstance. If it would have been proved that accused has written the case number and has also fabricated or forged the signature of PW 11, it would have been a circumstance against the accused unless explained, Prosecution has not made any attempt to prove the same. It is not the case of prosecution that the form in which Ext. 5 is written is not the official form. If evidence would have been led by the custodian of the form that he had not issued it to accused, explanation from accused as to how he could get the form to write on it would have been sought for and in absence of cogent explanation it might have been a circumstance against the accused. No such evidence has been led by prosecution.

10. Evidence of PW6 that accused gave him Ext. 5 had never been disclosed by him earlier to any person. In the circumstance, though some doubt is created that accused might have given it, it is not possible to come to a definite conclusion that it is accused who gave Ext 5 to PW 6.

11 All the circumstances proved do not lead to the irresistible conclusion that accused has given Ext. 5 an invalid document on receipt of money from PW 6 though a suspicion lurks in mind that accused might have done it. Although it is not possible to convict accused on these materials, since there is doubt, disciplinary proceeding can be initiated against the accused where further probe can be made.

12. If the witnesses would have stated on oath what has been recorded to be stated by them Under Section 161 Cr. P. C. possibly accused could have been convicted. In respect of some witnesses, learned Public Prosecutor prayed to cross-examine the witnesses. In respect of others, I do find any cause why learned public prosecutor decided not to cross examine them. However, the acquittal of accused being mainly because the witnesses resiled from their statements, I direct trial Court to initiate a proceeding Under Section 341 Cr.P.C. against those witnesses who denied to have made statements Under Section 161, Cr.P.C.

13. With the aforesaid direction, appeal is allowed and accuse is acquitted.

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