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Court : Punjab and Haryana

Decided On : Mar-22-1966

Reported in : AIR1968P& H120

Judge : H.R. Khanna, J.

Acts : Evidence Act, 1872 - Sections 27; Prevention of Corruption Act, 1947 - Sections 6(1); Constitution of India - Article 311(1); Indian Penal Code (IPC), 1860 - Sections 161; Railway Establishment Code; Discipline and Appeal Rules

Appeal No. : Criminal Appeal No. 75-D of 1964

Appellant : Vinayak V. Joshi

Respondent : The State

Advocate for Def. : R.K. Verma, Adv.

Advocate for Pet/Ap. : Manmohan Nath,; R.L. Tondon and; M.L. Bhargava, Advs

Disposition : Appeals allowed

Judgement :

H.R. Khanna, J.

1. Vinayak V. Joshi and Inder Jit were tried in the Court of Special Judge, Delhi. The learned Special Judge convicted Joshi accused under Section 5(2) read with

Section 5(1)(d) of the Prevention of Corruption Act, and under Section 161 of the Indian Penal Code, and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 200 or in default to undergo rigorous imprisonment for a further period of two months on the former count, and to undergo rigorous imprisonment for a period of one year on the latter count. Both the sentences were ordered to run concurrently. Inder Jit was convicted under Section 201 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two months. There was also a charge of conspiracy under Section 120B of the Indian Penal Code, read with Section 161 of the Indian Penal Code and Section 5(2) taken along with Section 5(1)(d) of the Prevention of Corruption Act against the two accused, but they were acquitted on that count. Joshi and Inderjit have filed separate appeals which would be disposed of by this Judgment.

2. The prosecution case is that in June 1963 Joshi accused was working as X-Ray Technician in Central Hospital Northern Railway New Delhi, while Inder Jit accused was working as an X-ray attendant with Joshi in that Hospital Shambir Singh, Mam Chand, Maha Nand and Baljit Singh (P. Ws.) were selected for recruitment as Rakshaks in the Railway Protection Force on 12th June 1963 at Saharanpur and were directed to get themselves medically examined in Delhi. They were supplied memos for that purpose on 17-6-1963. They went to the railway hospital at Delhi main railway station. The same day they along with some other candidates were asked to report to the Medical Officer X-ray unit at Central Railway Hospital, Paharganj. New Delhi. Shambir Singh and other three prosecution witnesses, accordingly went to the Central Railway Hospital and met the doctor incharge of X-ray who directed them to meet the X-ray technician. Shambir Singh and others then met Joshi accused who told them to come on the following morning.

On the morning of 18th June 1963 Sham-bir Singh, Mam Chand, Maha Nand and Bal-jit Singh (P. Ws.) along with five others attended the hospital and their X-ray was taken On enquiry they were told to come on 20th June 1963 for the X-ray result. On 20th June 1963 Shambir Singh, Mam Chand Maha Nand and Baljit Singh along with three other candidates attended X-ray Unit of the Central

Hospital. Shambir Singh, Mam Chand, Maha Nand and Baljit Singh were then told to stay for another X-ray. Another X-ray of the said four prosecution witnesses was taken by the accused. Shambir Singh and the other three prosecution witnesses, waited till about 4 p.m when Joshi accused came out of the hospital on the road and called Shambir Singh and the other three pro secution witnesses and told them that then was some defect in their X-ray and the doc-tot wanted Rs. 25 as bribe from each of them Shambir Singh and the three others were told to bring Hie money at 10 a.m. on the following day.

Shambu Singh and the three others did not intend to pay the money and went to one Labh Singh and told him about the demand of money by Joshi Accused. Labh Singh advised them to stay for the night and next morning, i.e. on 21st June, 1963, produced Shambir Singh and three others before Assistant Security Officer. Assistant Vigilance Officer of the Northern Railway was then contacted and he took Shambir Singh and others to the office of the Special Police Establishment and produced them before D. S. P. Somji Mal at about 10 or 10.30 a.m. The Deputy Superintendent of Police then recorded the statements of Shambir Singh, Mam Chand, Maha Nand and Baljit Singh (P. Ws.) He sent for two witnesses, Shri S. Ghaushal, Assistant Controller of Imports and Exports, and Shri T. J. Stephen, Section Officer of the office of Chief Commercial Officer Import and Export. The statements made by Shambir Singh, Mam Chand, Maha Nand and Baljit Singh, were read over in the presence of Ghaushal & Stephen. Shambir Singh Mam Chand, Maha Nand and Baljit Singh each produced Rs. 20 in the form of two currency notes of Rs. 10 each. The numbers of the currency notes were noted and the currency notes were treated with phenol-phthalein powder and were handed over to Shambir Singh, Mam Chand, Maha Nand and Baljit Singh with instructions to give them to Joshi accused when demanded as bribe.

Thereafter all the members of the party washed their hands. At about 1-30 p.m. the party left for the Railway Central Hospital. The members of the party got down from the police van at a short distance from the hospital. Shambir Singh, Mam Chand, Maha Nand and Baljit Singh, proceeded on foot towards the hospital followed at a short distance by Ghaushal and Stephen (P. Ws.), and thereafter by D. S. P. Somji Mal and other members of the party. On arrival, at the hospital.

Shambir Singh, Mam Chand, Maha Nand and Baljit Singh found that there was a queue of persons in front of the room where the X-ray was being taken. After Joshi accused had finished with the X-ray of persons who were ahead of Shambir Singh Mam Chand, Maha Nand and Baljit Singh these four persons went to Joshi and told him that they had brought the money and they asked Joshi to hand over to them their X-ray results. On the enquiry of Joshi they told him that each of them had brought RS. 20. Joshi then remarked that he would not charge less than Rs 25. In the meantime Tnder Jit accused came there and hearing the talk told Joshi to charge Shambir Singh and his three companions Rs. 20 each as they had come from outside places.

Joshi then went into an adjoining room. When Shambir Singh followed him to that room, Joshi asked Shambir Singh to give him the money Shambir Singh thereupon handed over the currency notes of Rs. 20 to Joshi He took them in his hand and put them in the left pant's pocket. Two X-ray films were then handed over by Joshi to Shambir Singh. Thereafter Mam Chand was called by Joshi to that room and fron him also he received Rs. 20 and handed over two X-ray films to him -- Maha Nand (P W.) was then called by Joshi in that room and Rs. 20 were taken from him and he was given two films of X-ray. Lastly Baljit Singh (P W.) was called by Joshi. Joshi then told Baljit Singh that there was some defect in his X-ray and his blood would have to be tested. Baljit Singh was also told to come on the following day along with Rs. 20. Just then Inder Jit accused came inside the room and whispered something in the ears of Joshi accused. Joshi felt perplexed and asked Baljit Singh to go out immediately. Shambir Singh (P. W.) then went out of the room and told D. S P. Somji Mal that Rs. 20 had been paid by each of Shambir Singh, Mam Chand and Maha Nand to Joshi. D. S. P. Somji Mal and other members of the trap party then went inside the room. The Deputy Superintendent of Police found Joshi accused coming at that time from the dark room. The Deputy Superintendent of Police disclosed his identity to Joshi and told him that he had accepted money from three decoy witnesses Shambir Singh, Mam Chand and Maha Nand. The Deputy Superintendent of Police got solution of sodium carbonate prepared and Joshi accused was asked to dip his hands in the same. As soon as Joshi dipped his hands in the solution it turned violet. The solution was preserved in a bottle. Joshi was then asked to produce the money and it was

stated that the money was not with him. The person of Joshi accused was then searched but no money was found with him. The lining of the left pant's pocket of Joshi accused was dipped in another solution of sodium carbonate and it turned violet and was sealed in a bottle. Inderjit accused who was coming and going out of the X-ray room, was also asked to dip his hand in another solution of sodium carbonate. This solution too turned violet. Inder Jit accused was then asked to produce the currency notes but he said that they were not with him. The person of Inder Jit accused was also searched but the currency notes were not found with him. The Deputy Superintendent of Police then sent an intimation to the Divisional Medical Officer, whereupon Dr. Khan came followed shortly by Shri Kapoor Singh. Vigilance Officer. The X-ray room and the connected chamber including the dark room were searched but the currency notes could not be found. The Deputy Superintendent of Police requested Shri Kapoor Singh for some expert so that he might search machines and X-ray film cassettes which he could not open himself. The Deputy Superintendent of Police was told by Inder Jit accused that those cassettes contained exposed films of patients and were likely to be spoiled if they were opened The persons of the four decoy witnesses were also searched but no currency notes were found with three of them. Baliit Singh had two currency notes on his person. The two accused were put under arrest and the X-ray room along with connected chamber was sealed. The two accused were then left by the Deputy Superintendent of Police in the custody of Inspector Badri Sharma and B. K. Verma for further interrogation. At about 10 or 10-30 p.m. the Deputy Superintendent of Police was informed that Inder Jit accused was prepared to point out the place where the currency notes had been concealed. The Deputy Superintendent of Police then came to his office and interrogated Inder Jit and was satisfied about the correctness of the information received by him. The Deputy Superintendent of Police then requested on telephone Vigilance Officer Kapoor Singh to arrange for two independent witnesses. The party then proceeded to the Central Hospital where the presence of Shri H. L. Bhalla and Shri Rajinder Singh was arranged by the Vigilance Officer Kapoor Singh. Inder Jit accused was interrogated in their presence and he stated that he had concealed the currency notes in one of the cassette in the dark room. Memo Exhibit P. 17 with regard to the statement of Inder Jit accused was prepared. The room was then got opened.

Inder Jit accused led the party to the dark room and picked up a cassette from which six corrency notes in question of Rs. 10 each were produced. The currency notes were taken into possession and their numbers were found to tally with those which had been earlier noted. Recovery memo was prepared After sanction. Exhibits P. 24 and P. 25, had been accorded by Dr. D. R. Bhasin for the prosecution of Joshi and Inder Jit accused respectively, the two accused were sent up for trial.

3. At the trial Shambir Singh (PW3), Mam Chand (PW 4), Maha Nand (PW 5) and Baljit Singh (PW 17) deposed about the demand of money by Joshi accused and about the payment of Rs. 20 by each of Shambir Singh, Mam Chand and Maha Nand to Joshi accused. Shri S. Ghaushal (PW 1) and Shri T. K. Stephen (PW 2) were two of the panch witnesses who were ioined by DSP Somji Mal (PW 21) as members of the raid party. These non-official witnesses could not, however hear the talk between Joshi accused and the decoy witnesses nor could they see the passing of the money.

4. The two accused in their statements under section 342 of the Code of Criminal Procedure admitted that Joshi accused was X-ray technician and Inder Jit was X-ray attendant in the Central Railway Hospital in June 1963 Joshi accused admitted that the four decoy witnesses had attended the hospital on 17th, 18th, 20th and 21st June 1963, in connection with their X-ray examination, and denied all the other allegations including those relating to his having demanded and received money from the decoy witnesses. According to Joshi accused he had been falsely implicated in this case because there had been a quarrel between him and the decoy witnesses on 20th June 1963 regarding the non-delivery of the X-ray films to them. Inder Jit accused likewise denied all the allegations against him including those relating to disclosure statement having been made by him. According to Inder Jit, he only told the police that he was prepared to help them to make the search. Inder Jit added that he was on leave from the hospital on 17th and 18th June 1963. Defence evidence was produced to show that there had been quarrel between Joshi and the decoy witnesses on 20th June 1963.

5. The learned Special Judge held that the charge of conspiracy against the two accused had not been proved. In other respects the prosecution allegations were held to have been substantiated and the two accused were, accordingly, convicted and sentenced as above.

6. I have heard Mr. Madan on behalf of Joshi accused, Mr. Tondon on behalf of Inder Jit accused and Mr. Verma on behalf of the State, and am of the view that the conviction of Inder Jit accused for the offence under section 201 of the Indian Penal Code cannot be sustained, and the conviction of Joshi accused is liable to be set aside because sanction for his prosecution has not been accorded by a duly competent authority.

7. So far as Inder Jit accused is concerned, the prosecution has sought to bring the case against him under Section 201 of the Indian Penal Code, because it is alleged that he caused disappearance of the evidence of the offence of receiving illegal gratification by Joshi accused by concealing the currency notes in cassette Exhibit P 18. In order to show that the currency notes had been concealed hi the cassette by Inder Jit accused and not by Joshi accused or anyone else, the prosecution has primarily relied upon the disclosure statement, which is alleged to have been made by Inder Jit accused to DSP Somji Mal in the presence of Shri H. L. Bhalla (PW6), Shri Rajinder Singh (PW 8) and Shri Kapoor Singh (PW 12) that he had placed the currency notes in a cassette lying in the dark room and that he could produce the same. Memo Exhibit P. 17 about this statement was then prepared. The six currency notes were thereafter recovered from the cassette. The important question, which arises for consideration, is whether the statement, which is alleged to have been made by Inder Jit accused to DSP Somji Mal and which was embodied in memo Exhibit P. 17, is admissible in evidence under section 27 of the Indian Evidence Act according to which when any fact is discovered in consequence of information received from a person accused of an offence, in the custody of a police officer, so much of such information, whether it amounts to the confession or not, as relates distinctly to the fact thereby discovered, may be proved. In this connection I find that the evidence of DSP Somji Mal (PW 21) goes to show that at about 10 or 10.30 p.m. on the day the trap was arranged he was informed by SI Bajaj that Inder Jit accused was prepared to point out the place

where he had concealed the money. The Deputy Superintendent of Police then went to the Special Police Establishment office and personally interrogated Inder Jit accused and was satisfied about the information conveyed to him by SI Bajaj. The Deputy Superintendent of Police then went with Inder Jit and others to the hospital where other witnesses were also joined Inder Jit then made the disclosure statement embodied in Exhibit P. 17 and thereafter got recovered the currency notes, it is, however, clear from the testimony of DSP Somji Mal that, before recording the statement embodied in memo Exhibit P. 17 of Inder Jit accused, the Deputy Superintendent of Police recorded another statement of Inder Jit which is on the police file and was not placed on the record of the case. There is nothing to show that the place, where the currency notes had been placed, had not been indicated by Inder Jit accused in the said statement to the Deputy Superintendent of Police. It is significant that the said statement was recorded by DSP Somji Mal in the context of the information received by him on telephone that Inder Jit was prepared to point out the place where the currency notes had been concealed and it was with a view to satisfy himself about the correctness of the information conveyed to him that the Deputy Superintendent ol Police interrogated Inder Jit and recorded his statement. The aforesaid statement having not been placed on the record, the learned counsel for Inder Jit has with plausibility argued that it cannot be said that it was the statement embodied in Exhibit P. 17 and not the earlier statement of Inder Jit which gave information about the cassette wherein the currency notes were lying. It is well settled that it is the first statement made by an accused leading to a recovery which is admissible in evidence. If the police already knows the place where an incriminating article is lying as a result of interrogation of the accused, the repetition of that statement by the accused, after witnesses are called, would not make the statement before witnesses admissible in evidence I may in this context refer to Public Prosecutor v. B. Subba Reddy AIR 1939 Mad 15. In that case a Circle Inspector knew beforehand what the accused was going to say, but finding it necessary to have more trustworthy persons present as witnesses when the information should be disclosed, he sent for two witnesses and on their arrival examined the accused. The statement of the accused was then embodied in a panchayatnama and was signed by the witnesses The discovery of certain Instruments was made in pursuance of the

satement. It was held by a Division Bench of Madras High Court (Burn and Lakshmanna Rao JJ.) that it was impossible to say that nothing was discovered in consequence of the statement made by the accused to the Inspector in the presence of the witnesses, and hence the evidence regarding the statement of the accused embodied in the Panchayatnama and spoken to by the witnesses was wholly inadmissible. In Re: K. Chenna Reddy, AIR 1940 Mad 710, a Division Bench of the Madras High Court held that it is the first statement of the accused to whomsoever made, that leads to the discovery of the fact, if a fact is discovered and as such is admissible in evidence under Section 27 of the Evidence Act. In Dasu Ram v. State, AIR 1952 Raj 20, the evidence of the sub-inspector was that the accused had already told him that he would recover the ornaments from his house and that the accused repeated that statement for a second time in the presence of witnesses who were not present when the first disclosure was made tu the sub-inspector. A Division Bench of the Rajasthan High Court held that it could not be said that the ornaments were discovered on the information given to the sub-inspector in the presence of the witnesses and that the only statement that could be said to have led to the recovery was the information given to the sub-inspector when he was alone. The evidence of the witnesses about the accused having shown his readiness to recover the property was held to be not admissible.

8. Mr. Verma on behali of the Slate has referred to Public Prosecutor v. India China Lingiah AIR 1954 Mad 433, wherein Ramaswami J. observed that it has become the practice for Police Officers, when they expect the accused to make a confession, either on information received or from deduction from surrounding circumstances to take with them or procure respectable mediators and to prepare a panchayatnama in writing containing the information given by the accused It does not, in my opinion however, follow from that that where the police officer knows the exact place as a result of interrogation of the accused where the incriminating articles are lying and subsequently gets the same information by recording the statements of the accused in the presenct of witnesses, the subsequent statement becomes admissible. It would indeed depend upon the circumstances of each case It the information derived as a result of interrogation was merely vague and the precise information was received as a remit of the statement made by the accused in the presence of witnesses the subsequent

statement would be admissible in evidence. Likewise, if the previous statement made to the investigating officer merely indicated a willingness of the accused to disclose where the incriminating articles were lying and the actual information about that place was given in a subsequent statement made in the presence of the witnesses, the subsequent statement would be admissible if the incriminating articles are recovered In pursuance of the statement. Where, however, the accused has already disclosed the plact where, the incriminating articles are lying in the course of his interrogation to the investigating officer and the latter gets the statement repeated in the presence of the witnesses in order to incorporate it in a memo and to give it greater authenticity. the subsequent statement, in my view, would not be admissible. There is nothing to show that the case against Inder Jit accused does not fall in the last category. Indeed, the circumstances, which have been referred to above, lend colour to the contention advanced on behalf of Inder Jit that his case in fact falls under the last category. It was for the prosecution to show that the recovery of the six currency notes was made in pursuance of the disclosure statement embodied in memo Exhibit P.17 and not in pursuance of the earlier statement. The prosecution has, however, failed to prove this fact by satisfactory evidence. Section 27 engrafts an exception to the general rule which renders the statement made by an accused to the police inadmissible, and in case the prosecution wants to bring a case within the exception it has to discharge the onus by clear and cogent evidence. This onus has not been discharged in the present case I would therefore, hold that the statement of Inder Jit embodied in Exhibit P 17 is not admissible in evidence.

9. Inder Jit accused in the course of his statement under section 342 of the Code of Criminal Procedure has stated that he did not make any disclosure statement and merely offered to assist the police in searching the currency notes. This statement of Inder Jit finds support in the evidence of Shri Rajinder Singh, Assistant Engineer (PW 8), who has deposed that it is correct to suggest that Inder Jit fold the police party that he was ready to help the police in makine a search for the money.

10. Excluding the statement of Inder Jit embodied in memo Exhibit P. 17, the other evidence adduced in the case is hardly sufficient to show that it was Inder Jit

accused who had concealed the currency notes in the cassette The fact that he got the currency notes recovered from the accused is quite consistent with his knowledge that the currency notes were lying in the cas-sette without his having placed them there himself. The further fact that the solution of sodium carbonate turned violet when the hands of Inder Jit were dipped in that solution, would, at the best, go to show that some bit of phenolphthalein powder was on the hand of Inder Jit but it would not necessarilv lead to the conclusion that it was Inder Jit who concealed the currency notes in cassette Exhibit P. 18. It is equally possible that Inder Jit might have been handed over those currency notes by Joshi accused and then he returned the same to Joshi and thereby Inder Jit's hands got stained with phenolphthalein powder. Likewise, the possibility cannot be ruled out that the hands of Inder Jit came in contact with those of Joshi as a result of which they got the stains of phenolphthalein powder. It is in the evidence of Stephen (PW) that when the fingers of Inder Jit were dipped in the solution its colour turned slightly violet. I am, therefore, of the view that the prosecution has failed to prove that the currency notes in question had been concealed by Inder Jit accused. I would, accordingly, accept his appeal, set aside his conviction and acquit him. He is discharged from his ball bonds.

11. So far as Joshi accused is concerned, his conviction has been assailed inter alia on the ground of the invalidity of the sanction which was accorded for his prosecution. According to Sub-section (1) of Section 6 of the Prevention of Corruption Act.

'(1) No Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code, or under Sub-section (2) of Section 5 of the Prevention of Corruption Act, except with the previous sanction.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government:

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government:

(c) in the case of any other person, of the authority competent to remove him from his office'

It is the common case of the parties that the case of Joshi accused is covered by Clause (c) and not Clauses (a) and (b) of the above sub-section and that sanction in this case was required of the authority competent to remove him from office Exhibit P 24 is the sanction which was accorded by Dr. D. R. Bhasin, Divisional Medical Officer, for the prosecution of Joshi accused. It is in the testimonv of S R Nahal (PW 191 that Joshi accused who is admittedly a Class III em-ployee was appointed by the Senior Per-sonnel Officer of the Northern Railway, Dr. D R Bhasin Divisional Medical Officer who gave sanction has been examined as PW 23 and according to him he is equal in rank with the Senior Personnel Officer and is competent to remove Joshi accused from service. It has been argued by the learned counsel for Joshi that Dr. Bhasin was not legally competent to remove Joshi accused from service. In my opinion, there is force in the above contention According to Schedule II appended to revised Discipline and Appeal Rules which were in force at the time of the present occurance, it is the appointing authority or other higher authority which can dismiss from service a Class III railway employee. My attention has been drawn by Mr. Verma on behalf of the State to Schedule 'C' of letter dated 14th April, 1955 containing the delegation of power by the General Manager to other officers. According to this Schedule, the power to appoint all non-pensionable Class III employees has been delegated by the General Manager to the Divisional Personnel Officer, and it is apparently in pursuance of this or similar delegation of power by the General Manager to Divisional Personnel Officer that Joshi accused, who is a Class III employee, was appointed by the Divisional Personnel Officer. Question, which arises for consideration, is as to whether the Divisional Medical Officer is competent to remove from service Joshi accused who is a Class III employee. It is no doubt true that the Divisional Medical Officer and the Divisional Personnel Officer are officers of the equal, rank, but the difficulty which arises in the present case is that when the Divisional Personnel Officer appointed Joshi he did so as an officer who had been delegated with the powers of a General Manager. There is nothing to show that the powers of the General Manager in this respect have also been delegated to the Divisional Medical Officer. In the circumstances the Divisional Medical Officer, in my view

cannot be held to be competent to remove from service Joshi accused. Mr. Verma has referred tc the case of Mahesh Pershad v. State of Uttar Pradesh, AIR 1955 SC 70 wherein it has been held while dealing with the sanction for the prosecution of the accused, that it is enough that the removing authority is of the same rank or grade as the appointing authority. This case would have been of help to the State if the Divisional Personnel Officer had been competent to appoint a Class III officer without delegation of powers by the General Manager. As things are I find that Joshi was appointed by the Divisional Personnel Officer in his capacity as an officer delegated with the powers of General Manager while no such delegation of power has been shown to have been made in favour of the Divisional Medical Officer. The above authority in circumstances, can be of no avail to the State.

12. Mr. Madan has also argued that the delegation of the power of appointment would not necessarily go to show the delegation of power to remove from office. Reference in this connection has been made to the case of K Stone v. Kresmanik AIR 1958 Assam 111. Reference has further been made to the case of Mohan Lal Keshav Lal v. The State AIR 1956 Bom 504, wherein Gajendragadkar J (as he then was) speaking for the Division Bench held in the context of Rules 1704 and 1705 of the Indian Railway Establishment Code 1951, that in the case of a Class III railway servant it is the General Manager who is the appointing authority and he and not Traffic Superintendent can grant sanction for the prosecution under the Prevention of Corruption Act. Mr. Verma on behalf of the State, however, points out that there has been some change in the rules and the case was decided in the context of certain concessions which were made during the course of arguments. In view of my finding given above, it is not necessary to go into this aspect of the matter.

13. I would, therefore, accept the appeal of Joshi accused and set aside his conviction. He is discharged from his bail-bonds.

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