

Pritam Singh and anr. Vs. the State

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Court : Punjab and Haryana

Decided On : Apr-01-1954

Reported in : AIR1954P& H228

Judge : Harnam Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 108 and 165A; Weights and Measures Act, 1941 - Sections 18 and 37

Appeal No. : Criminal Appeal Nos. 100 and 116 of 1954

Appellant : Pritam Singh and anr.

Respondent : The State

Advocate for Def. : Rajindar Sachar, Adv. for;Adv. General

Advocate for Pet/Ap. : K.L. Jagga, Adv.

Judgement :

Harnam Singh, J.

1. In criminal case No. 17 of 1953 the Special Judge has convicted Tarlok Nath under Section 165A of the Indian Penal Code, hereinafter referred to as the Code, and Pritam Singh under Section 165A read with S. 116 of the Code and has sentenced each of them to suffer rigorous imprisonment for six months.

2. Tarlok Nath and Pritam Singh appeal from their conviction and the sentence imposed upon them. Pritam Singh is the appellant in Criminal Appeal No. 100 of 1954 while Tarlok Nath is the appellant in Criminal Appeal No. 11C of 1954.

3. Briefly summarised the facts of the prosecution case are these: On 13-12-1952, Ghasita Ram P.W. 2 borrowed rupees 40/- from Pritam Singh accused on the security of gold rings, Exhibits P. 3 and P. 4, agreeing to pay interest at the rate of six pies per rupee per month. Pritam Singh sub-pawned rings, Exhibits P. 3 and P. 4, with Sain Das D.W. 3. On 29-7-1953, Ghasita Ram paid rupees 48/- on account of principal and interest to Pritam Singh and obtained receipts, Exhibits P.W. 1 and P.D. 12. Pritam Singh asked Sain Das to give him the rings for return to Ghasita; Ram but Sain Das told him that the rings were lying with his wife who was out of station. Going to the shop of Pritam Singh, Ghasita Ram demanded the return of the rings on the 18th of August, 1953.

On that occasion Tarlok Nath and Pritam Singh were present at the shop. Pritam Singh told Ghasita Ram that because Sain Das had not returned the rings he was prepared to pay the price of those rings. Ghasita Ram maintained that the rings weighed ten 'mashas' whereas Pritam Singh said that their weight was eight 'mashas'. That led to altercation between Ghasita Ram on the one side and Pritam Singh and Tarlok Nath on the other side. Hearing the 'raula' many persons collected at the shop of Pritam Singh. Head Constable

Gurcharan Singh P.W. 1 who was on patrol duty in Katra Kanhayan, Amritsar City, on that day came to the spot accompanied by Foot Constables Hans Raj and Gurbachan Singh. Reaching the shop Gurcharan Singh P.W.1 heard Ghasita Ram P.W. 2 saying that the rings which he had pawned with Pritam Singh and Tarlok Nath weighed ten 'mashas' and Pritam Singh and Tarlok Nath saying that the weight of those rings was eight, 'mashas'. Pointing to the weighing scale, Exhibit P. 1, Ghasita Ram said that there must be some defect in that scale which Pritam Singh had used in weighing the rings.

Gurcharan Singh P.W. 1 took weighing scale, Exhibit P. 1, into possession and found the scale to be defective. Gurcharan Singh told Pritam Singh and Tarlok Nath that he would report at the police station that the scale was defective. On this Pritam Singh gave four currency notes. Exhibits P. 2/1 to 4, to Tarlok Nath and asked him to give the notes to Gurcharan Singh P. W. 1 by way of bribe so that he should not report at the police station against them. Gurcharan Singh P. W. 1 took currency notes into possession on the foot of memo. Exhibit P. B., and took the scale into possession on the foot of memo, Exhibit P. A. 'Lambardar' Pritapal Singh P. W. 3 and Ghasita Ram P. W. 2 attested memos, Exhibits P. A. and P. B. Gurcharan Singh did not accept the bribe which was offered to him and made report, Exhibit P. C., at the police station at 7 p.m.

4. On the 19th of August, 1953, 'Sardar' Kuldip Singh, Magistrate permitted Assistant Sub-Inspector Prem Singh P. W. 6 to investigate the case.

5. Tarlok Nath was arrested on the 19th of August, 1953. Pritam Singh absconded and was arrested on the 7th of September, 1953.

6. In the investigation rings, Exhibits P. 3 and P. 4, were recovered from Sain Das D.W. 3 on the 12th of September, 1953.

7. Gurcharan Singh P.' W. 1, Ghasita Ram P. W. 2 and 'Lambardar' Pritpal Singh P. W. 3 gave evidence for the prosecution.

8. In examination under Section 342 of the Code of Criminal Procedure Pritam Singh pleaded that he maintained no shop in Katra Kanhayan and that the scale, Exhibit P. 1, was not his property. In that examination Pritam Singh stated that Ghasita Ram p. W. 2 borrowed Rs. 40/- from him on the 13th of December, 1952, and pawned gold rings, Exhibits P. 3 and P. 4, with him as security for that debt and that he had sub-pawned rings, Exhibits P. 3 and P. 4, with Sain Das D.W. 3. Pritam Singh then stated that some time after the 13th of December, 1952, Ghasita Ram paid him rupees 40/- on account of principal and rupees 8/- on account of interest in full satisfaction of his claim but rings, Exhibits P. 3 and P. 4 were not returned to Ghasita Ram on the discharge of the debt for the rings were with Sain Das.

Pritam Singh did not admit that the currency notes, Exhibits P. 2/1 to 4, belonged to him or that he gave currency notes, Exhibits P. 2/1 to 4, to Tarlok Nath for passing them on to Gurcharan Singh by way of bribe. In statements under Section 342 of the Code of Criminal Procedure the defence of the accused was denial 'simpliciter', Pritam Singh pleading that he was in village Rajla in Pepsu State on the day of the occurrence.

9. Lal Chand D.W. 1, Sant Singh D.W. 2 and Sain Das D, W. 3 gave evidence in defence,

10. From a perusal of the record it appears that Tarlok Nath accused did not cross-examine the prosecution witnesses.

11. In answer to a question put by counsel for Pritam Singh; Gurcharan Singh, P. W. 1 stated:

'It is incorrect to suggest that I was quarrelling with Tarlok Nath accused when Pritam Singh accused asked the co-accused to offer bribe to me. I did not have any quarrel with any of the two accused.'

12. 'Lambardar' Pritpal Singh P. W. 3 belongs to village Gumtala, situate at a distance of one and a half miles from Amritsar town. 'Lambardar' Pritpal Singh was in Katra Kanhayan in Amritsar town on 18-8-1953 as he

had gone to the town to make purchases. That 'Lambardar' Pritpal Singh was convicted in a dacoity case and sentenced to three months' rigorous imprisonment does not show that the evidence given by him is false.

13. Not a syllable of evidence appears on the record to show that Head Constable Gurcharan Singh P. W. 1, Ghasita Ram P. W. 2 and 'Lambardar' Pritpal Singh P. W. 3 had any 'animus' to falsely implicate Pritam Singh and Tarlok Nath. Ghasita Ham and 'Lambardar' Pritpal Singh were not known to Head Constable Gurcharan Singh before the 18th of August, 1953.

14. Lal Chand D.W. 1 gave evidence that on the 15th of August 1953 Pritam Singh had told him that he was to go to village Rajla, Pepsu State, to see his parents-in-law and that he remained absent from Amritsar for eighteen or twenty days. To similar effect is the evidence given by Sain Das. That on the 15th of August, 1953. Pritam Singh mentioned to Lal Chand and Sain Das that he was to go to village Rajla does not show that he was at Rajla on the 18th of August, 1953. No evidence from Rajla was examined.

15. Lal Chand D.W. 1 gave evidence that Pritam Singh and Tarlok Nath work as jewellers and that his shop in Katra Kanhayan. Amritsar City, adjoins to the shop of Pritam Singh.

16. Sain Das D.W. 3 gave evidence that he could not say if the scale. Exhibit P. 1, belongs to Pritam Singh accused. In answer to Court question Sain Das stated that the police visited the shop of Pritam Singh accused and took into possession scale, exhibit P. 1. Clearly, the evidence examined in defence does not rebut the prosecution case.

17. Mr. K. L. 'Jagga' urges that there can be no abetment of the offence punishable under Section 165A of the Code.

18. Explanation 4 to Section 108 of the Code provides that the abetment of an offence being an offence, the abetment of such an abetment is also an offence. That being the position of matters I repel the argument raised.

19. Basing himself on Sections 18 and 37 of the Punjab Weights and Measures Act, 1941, Mr. K. L. Jagga then urges that on the facts found by the Special Judge the case did not fall within Section 165A of the Code. The argument raised is that Head Constable Gurcharan Singh was not in a position to show any favour to Pritam Singh and Tarlok Nath by doing any official act as desired by them.

20. Assuming that Head Constable Gurcharan Singh was not in a position to take action under Ss. 18 and 37 of the Punjab Weights and Measures Act, 1941, that would not affect the guilt of the appellants.

21. Section 161 of the Code provides :

'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 functions, 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.'

From a perusal of Section 161 of the Code it is plain that all that is necessary for the application of the section is that 'gratification' should have been offered to a public servant 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 functions, favour or disfavour to any person. Section 161 of the Code does not require that the public servant must in fact be in a position to do the official act, favour or service at the time.

22. In -- 'Emperor v. Phul Singh', AIR 1941 Lah 276 (A), Bhide J. said:

'It is indeed difficult to see any principle on which a distinction should be made between cases in which the public servant is in a position to do the official act, or favour or service and those in which he is not in a position to do so, but is erroneously believed to be in that position. The heinousness of the act obviously lies in the intention of the bribe-giver to corrupt the public servant and I see no good reason, why the act should be considered to be less heinous merely because the public servant does not happen to possess the necessary power to do the required favour or service.'

23. In -- 'Mahadeo Daunappa v. State', AIR 1952 Bom 435 (B), Chainani J. (Bavdekar J. concurring) said :

'It (Section 161, Indian Penal Code) does not require that the public servant himself must have the power or must himself be in a position to perform the act, to show favour or disfavour or to render service or disservice for doing, showing or rendering which the bribe has been paid to him.'

24. Illustration (c) to Section 161 of the Code reads:

'A, a public servant, induces Z 'erroneously' to believe that A's influence with the Government has obtained a title for Z and thus induced Z to give A money as a reward for this service. A has committed the offence defined in this section.'

25. In a case under Section 161 of the Code the state of mind of the person who offers 'gratification' has nothing to do with the question whether the public servant to whom illegal gratification is offered is or is not in a position to do the act for doing or for not doing which the amount is offered to him. In illustration (c) to Section 161 of the Code A who was convicted was not in a position to exercise influence with the Government to obtain a title. Indisputably, there can be no public servant 'whose official duty it is to exercise influence with the Government to obtain a title'.

26. No other argument was raised in Criminal Appeals Nos. 100 and 116 of 1954.

27. For the foregoing reasons, I find that Pritam Singh and Tarlok Nath have been rightly convicted.

28. Having regard to the circumstances of the case, I reduce the sentence imposed upon Pritam Singh and Tarlok Nath to the period of imprisonment already suffered by them.

29. In the result, while maintaining the conviction of Tarlok Nath under Section 165A of the Code and that of Pritam Singh under Section 165A read with Section 116 of the Code, I reduce the sentence of imprisonment imposed upon the appellants to the period of imprisonment already suffered by them.

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