

B.G. Goswami Vs. State

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Court : Delhi

Decided On : Oct-29-1969

Reported in : AIR1970Delhi95; 1970CriLJ667

Judge : Hardayal Hardy, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 4(1), 5(1), 5(1)(D) and 5(2);
Indian Penal Code, 1860 - Sections 161

Appeal No. : Criminal Appeal No. 103 of 1967, from order of Spl. J., Delhi, D/- 24-5-1967

Appellant : B.G. Goswami

Respondent : State

Advocate for Def. : D.R. Sethi, Adv.

Advocate for Pet/Ap. : D.R. Kaila, Adv

Judgement :

1. The appellant B. G Goswami was employed as a Storekeeper in the Sewa Kendra run by the Delhi Administration for the benefit of destitutes and beggars. He has been convicted by the Special Judge for an offence under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) and has been sentenced to 15 months' R.L. and a fine of Rs. 200/- or in default of payment of

fine to further imprisonment for a period of three months. He has also been found guilty under Section 161 Indian Penal Code and has been ordered to suffer 15 months' R.I. for the said offence. The substantive sentences of imprisonment have been ordered to run concurrently. According to the prosecution, Madan Singh complainant (P.W. 1) held a contract for the supply of vegetables to the Sewa Kendra. The accused Goswami told him that if he paid him a bribe of Rs. 50/- all sorts of vegetables supplied by him would be accepted but if he did not do so the vegetables brought by him would be rejected. The complainant promised to pay the bribe after a few days, but he had actually no intention to do so and therefore brought the demand of the accused to the notice of Shri Har Narain Singh, D.S.P., Anti-Corruption, on 7-1-1960.

A raiding party was thereupon organized by the D.S.P. who invited Kewal Ram and Ram Rikh two officials belonging to the Sales-tax Department and some policemen to join the raiding party. Madan Singh produced five currency notes of Rs. 10/- each of the numbers were duly recorded by the D.S.P. in his proceedings. The complainant was then deputed by the D.S.P. to pay the aforesaid amount to Goswami. Kewal Ram and Ram Rikh were instructed to remain close to the spot where the complainant was asked to make payment of the money to the accused and hear the talk which was to take place between him and the accused and to observe the payment of the bribe. They were also instructed to give a single immediately after the payment was made. A direction was also given to the complainant that he should make payment of the bribe within the sight of the witnesses and to convince them by his conversation that the money was changing hands as illegal gratification.

2. The raiding party then went to Anand Parbat where the Sewa Kendra is situated while the witnesses took their seats in Kiran Restaurant nearby. The complainant went to fetch the accused and brought him to the same restaurant. He ordered tea and took a seat opposite to the accused. He told the accused that he had brought the promised amount of Rs. 50/- but the accused replied that he would not take the money there. The complainant however made over the currency notes along with his bills to the accused and the latter accepted them. On receiving a signal from the witnesses, the D.S.P. entered the restaurant along with two other

policemen and disclosed his Identity to the accused. He caught hold of the accused by the arm because the accused resisted the search of his person. The D.S.P. then asked the Inspector to search the accused. The notes Exhibits P-1 to P-5 which had been put by the accused in the right pocket of his coat were then recovered from his pocket. The numbers of the currency notes were compared with those recorded previously and were found to tally. One of the notes (Exhibit P5) got torn during the course of struggle between the accused and the police at the time of search. The prosecution case is fully supported by the evidence of the complainant and the two independent witnesses Kewal Ram (P.W. 1) and Ram Rikh (P.W.5)

3. It is true that both Kewal Ram and Ram Rikh who had been directed by the D.S.P. to hear the talk between the complainant and the accused, stated that they could not distinctly hear the conversation between the two as the radio in the restaurant was being played at a very high pitch but they both deposed that they saw with their own eyes the currency notes being given by the complainant to the accused and the same being recovered by the Inspector from the same right pocket of the accused's coat in which he had put them after accepting the same.

4. The defense of the accused was that on 7-1-1966 he and one Hira Singh were at the post office to collect the license for the radio installed at the Kendra when Madan Singh met him and asked him to take his bills. He asked Madan Singh to hand over the bills to the diarist at the office. After that he and Hira Singh went to Kiran Restaurant for taking lunch. Madan Singh also came there and requested him to accept the bills and hand them over to the diarist. On his insistence he took hold of the bills and put them in the right pocket of his coat. The bills were folded at that time. After four or five minutes a gentleman came and caught hold of his arm. He was accompanied by a Sikh gentleman. On inquiring from him as to who he was he was told that he was a D.S.P. He then told him that he had accepted only bills from Madan Singh but when the bills were unfolded on search 5 currency notes of Rs. 10/- each came out. He pleaded that he told the D.S.P., that Madan Singh had quarrelled with him in the past and had falsely implicated him on account of enmity. In support of his defense, the accused examined Hira Singh (D.W. 2) but on a close examination of his statement the learned Special Judge

came to the conclusion that the witness, being a colleague of the accused had come to his rescue and that there were serious discrepancies in his statement which clearly established the falsity of his evidence.

5. The failure of the witnesses to hear the conversation however does not seem to me to be of much consequence as it has not been denied by the accused that the currency notes of the value of Rs. 50/- were recovered by the police from his pocket. It is not the case of the accused that the amount was paid to him by the complainant on some other account. The amount can also not be regarded as forming part of the legal remuneration of the accused. The case is therefore fully covered by the presumption arising under Section 4(1) of the Prevention of Corruption Act which reads:-

'Where in any trial of an offence punishable under Section 161 or Section 165 of Section 165-A of the Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is provided that he accepted or obtained, or agreed to accept or obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.'

While it is thus true that the presumption under Section 4(1) of the Prevention of Corruption Act is attracted to the case and it stands completely unrebutted there is one other aspect of the case which has necessarily to be considered in view of the defense set up by the accused.

6. It cannot be denied that the presumption under Section 4(1) applies only if it is established that the accused had actually accepted the currency notes. On the other hand, if the prosecution evidence falls short of what is required to prove that fact or if it is found that money had either been planted or foisted on him by means of a deception or a trick then the presumption under Section 4(1) can obviously not be pressed into service for the purpose of establishing his guilt.

7. The contention urged on behalf of the accused is that he was duped into pocketing the relevant currency notes under the cover of bills and that there was as a matter of fact no acceptance of money at all. Support for this argument is sought to be found in the statement of the complainant who admitted that the accused refused to have the notes in the restaurant in the first instance, but he accepted the same when they were handed over to him along with the bills. I think this statement cannot be of any help to the accused at all. Firstly, the two independent witnesses Kewal Ram (P.W. 1) and Ram Rikh (P.W.5) did not refer to any such refusal on the part of the accused and it was not even put to them in cross-examination that any bills had been passed on to the accused along with the currency notes. Both these witnesses stated in unequivocal terms that what was passed on by the complainant to the accused was currency notes and the same were clearly visible to them.

Assuming for the sake of argument that what the complainant stated was true that too would not take away from the effect of his further statement that he had passed on the currency notes to the accused and that the latter had accepted them with full knowledge of that fact although they were passed on along with bills. The money was evidently being paid by the complainant to the accused in a public restaurant where several other persons were also present. If the accused therefore told the complainant that he would not accept the notes in the restaurant there was nothing unnatural in his conduct. His initial hesitation must have however been overcome when the complainant put those notes inside the folds of the bills. In doing so however the money must have been taken by the complainant from his pocket and put inside the bills and then passed on by him to the accused within the sight of the witnesses.

8. This circumstance therefore does not in any way militate against the evidence of Kewal Ram and Ram Rikh nor does it detract from the evidence of Madan Singh complainant who did say that the accused accepted the currency notes when they were handed over to him along with the bills

9. There is thus no escape from the conclusion that the passing of the money by the complainant to the accused was not the result of any deception or trick

practiced on him and that the currency notes were accepted by the accused with full knowledge of the fact that what was being passed on to him was money that was not legally due to him. The presumption under Section 4(1) thereforee applies to the case in full force. The guilt of the accused must thereforee be held to have been established beyond reasonable doubt.

10. The appeal is accordingly dismissed and the conviction of the accused is upheld but the sentence passed on him is reduced to one year R.I. and a fine of Rs. 200/- under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. His conviction under Section 161 Indian Penal Code is also upheld but the sentence of imprisonment is reduced to one year R.I. In default of payment of fine the accused shall undergo further imprisonment for a period of three months. The two substantive sentences of imprisonment, as ordered by the trial Court, shall however run concurrently.

11. Appeal dismissed.