

Gurbachan Singh Vs. State

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Court : Delhi

Decided On : Mar-20-1969

Reported in : AIR1970Delhi102; 1970CriLJ674; 6(1970)DLT361

Judge : Hardayal Hardy, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5-A and 6; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 196A and 197; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 161, 162 and 163; [Evidence Act, 1872](#) - Sections 114

Appeal No. : Criminal Appeal 33 of 1967, from order of Spl. J., Delhi, D/- 3-2-1967

Appellant : Gurbachan Singh

Respondent : State

Advocate for Def. : R.L. Mehta, Adv.

Advocate for Pet/Ap. : D.D. Sharma and; Tarlochan Singh Sodhi, Advs

Judgement :

1. The appellant in this case was charged with offences under Sections 161, 162, and 163. I.P.C. for attempting to obtain for himself and other persons illegal gratification from two postal employees from Jullundur and Kapurthala, namely Kewal Krishan and P.L. Sachdeva, for getting their names included in the merit list which was to be prepared as a result of the postal examination held in September

1962 by exercising his influence with some other public servants dealing with the matter. He was also charged with conspiracy with some other unknown person or persons and also for attempting to cheat the afore-mentioned Kewal Krishan and P.L. Sachdeva by trying to obtain Rs. 500 from each of them by falsely holding out that he would get their names included in the merit list as aforesaid.

2. Learned Special Judge who tried the case found the appellant guilty of an offence under Section 120-B, I.P.C. and Section 161, I.P.C. only by his order dated 3rd February, 1967 and sentenced him to two years R.I. and a fine of Rs. 500 under each of the two counts. In the event of default in the payment of undergo further rigorous imprisonment for a period of three months for each default. The substantive sentence of imprisonment were however ordered to run concurrently. The appellant being aggrieved by the order of conviction and sentence has come up in appeal to this Court.

3. The main and if I may say so the only real contention urged on behalf of the appellant is that his trial was vitiated for want of a valid sanction.

4. In order to appreciate the argument of the learned counsel. It is necessary to refer to the sanction order (Ex.P.1) and the evidence produced by the prosecution in that behalf. It is common ground that at the time when the appellant is alleged to have committed the offence of which he has been found guilty, he was working as a receptionist in the office of the Directorate General Post and Telegraphs, under the Ministry of Home Affairs at New Delhi. Ordinarily therefore, cognizance of an offence under Section 161 I.P.C. could be taken against him on a sanction accorded by a competent authority in the Ministry of Home Affairs. In the present case however, the sanction (Ex. P.1) has been granted by the Controller of Printing and Stationery Punjab (hereafter to be referred to as the Controller) by his order dated 13-8-1964.

5. The argument of Mr. Sharma, learned counsel for the appellant, is that there is no evidence on record to establish any connection between the appellant and the office of the Controller.

6. The question for consideration therefore is as to who is the authority competent to remove the appellant from his office as envisaged in Section 6(1)(c) of the Prevention of Corruption Act 2 of 1947 (hereafter to be referred to as the Act). The prosecution examined Lekh Raj (PW 1) Head Assistant from the office of the Controller to prove the sanction (Ex. P.1). The witness deposed that the sanction-order bears the signature of Shri K.C. Kurian, Controller of Printing and Stationery Punjab. He also stated that the appellant was employed in the office of the Controller and was on deputation from that office to the Government of India, Ministry of Home Affairs. He further stated that the Controller of Printing and Stationery Punjab, Chandigarh, was the appointing and dismissing authority for the staff working under him. In support of his statement the witness produced four letters (Exs. P3 to P6) written by the appellant. Exs. P4, P5 and P6 are letters dated 30-1-58, 27-2-58 and 14-3-58 respectively addressed by the appellant to the Accounts Officer, Printing and Stationery Department Punjab, Chandigarh, while Ex. P3 is a letter dated 22-1-69 addressed by him to the Controller. All these letters are admitted by the appellant to have been addressed by him to the officers concerned, in Ex. P. 6th appellant stated that he had joined the Rationing Department Delhi with the permission of the Accounts Officer, Printing and Stationery Department, Punjab while his claim in Ex. P5 was that he had done so after a no-objection certificate to that effect was issued to him by the Accounts Officer under his office memo No. 3660-G dated 12-11-1953. In Ex. P4 the appellant stated that he was entitled to payment of arrears on account of difference of leave salary and that he has been informed that his service book along with his bill for arrears had been submitted by the Accounts Officer to the Accountant General Simla for pre-audit. He complained in his letter that the payment of arrears was being unduly delayed and requested that early steps be taken to finalise the case. Ex. P. 3 clarifies the position regarding the appellant's claim for difference of leave salary admissible in his case as he states therein that he had taken leave from 29-6-1954 to 19-11-1954 which had been duly sanctioned by the office of the Controller and necessary payment for the said period was also made to him by a cheque for Rs. 321/15 As. According to him the payment of that amount was made to him on the basis of the last pay certificate submitted by the Rationing Department Delhi; but since the decision on fixation of pay of Sub-

Inspectors in the Department was then under consideration his case for payment of difference of pay was lingering in the office of the Controller for the last two years.

7. The argument of the learned Counsel for the appellant however, is that the appellant was merely attempting to put forth a claim for establishing continuity of his service for the entire period, but there was no evidence to show that his claim was actually accepted by the Controller. I do not think so. If the appellant had no connection with the office of the Controller there would have been no occasion for payment of leave salary to him for the period of 29-6-54 to 19-11-54 by means of a cheque for Rs. 321/15 As. As stated by the appellant himself in Ex. P.3. Likewise there would have been no occasion for him to claim payment on account of difference of pay.

8. The appellant proved through Dw 12, Shri B. M. Sharma, retired. Under Secretary, Ministry of Home Affairs, two documents Exs. D. 12 and D. 13 in support of his contention that his appointment under the Ministry of Home Affairs was a direct appointment and had nothing to do with his previous appointment in the office of the Controller. Ex. D.12 is dated 20-11-54 while Ed. D. 13 is dated 30-11-54. Both these documents show that the appellant was appointed as a temporary clerk in the Ministry of Home Affairs with effect from the forenoon of 20-11-54. These documents read with Ex. P. 3 go to establish continuity of service between the last date of leave viz., 19-11-54 mentioned in Exhibit P. 3 and the date on which he was appointed in the Ministry of Home Affairs. If the appellant was not an employee in the office of the Controller there was no question of his reverting to that office after the abolition of the rationing system in Delhi and proceeding on leave from 29-6-54 to 19-11-54. Likewise if his appointment under the Ministry of Home Affairs was not in continuation of his previous service there would have been no question of his having been appointed in the said Ministry with effect from the forenoon of 20-11-54 i.e., the day immediately following the expiry of his sanctioned leave in the office of the Controller. Similarly if the appellant had no connection with the office of the Controller there would have been no occasion for his service book being retained in that office as mentioned in Ex. P. 4.

9. Shri Roshan Lal Khanna (P.W. 20) is the next witness examined by the prosecution in connection with the appellant's appointment in the office of the Controller. He deposed that before partition of the country he had joined the office of the Controller of Printing and Stationery Punjab at Lahore as a copy-holder on 14-3-1933. Gurbachan Singh appellant who had joined that office in 1936 was then working as a copy holder with him. He further stated that Gurbachan Singh worked in that office for six or seven years. His statement finds corroboration from Ex. D 15 which purports to be an extract from the service book of the appellant during the course of his employment in Rationing Department at Delhi. According to that document the appellant worked as a copy-holder in the government Printing Press Punjab, Lahore from 3-2-1936 to 7-9-1943. On 8-9-1943, he was promoted as Assistant Joint Store-keeper and then reverted as copy-holder from 12-11-43 to 14-11-43. From 15-11-43 to 29-1-44 he was transferred on deputation to the Ordinance Parachute Factory Lahore where he continued to work till 10-10-46. On 11-10-46 he was declared as a substantive temporary Sub-Inspector in the office of Controller of Rationing Delhi. The office of Controller of Printing and Stationery Punjab at Chandigarh being in corresponding office of the Government Printing and Stationery Punjab Lahore, his continuity of service in the Department of Printing and Stationery appears to have been upheld and that is why immediately after rationing was abolished in Delhi the appellant hastened to claim his lien over his post in the office of the Controller. His claim appears to have been recognised because of leave having been sanctioned to him for the period of 29-6-54 to 19-11-54 till he proceeded on deputation to a post under the Ministry of Home Affairs with effect from the forenoon of 20-11-54.

10. That the appellant held a permanent post in the office of the Controller is also apparent from the letter dated 6-8-1966 (Ex. P. 52) addressed by Shri G. D. Gupta, Under Secretary to the Government of India, Ministry of Home Affairs to the Superintendent of Police, Special Police Establishment annexing a copy of the letter dated 17-6-1966 (Ex. P. 53) addressed by the Accounts Officer in the office of the Controller to the Under Secretary, Ministry of Home Affairs. According to Exhibit P.52 the appellant was transferred as a Lower Division Clerk from the office of the Controller where he held a permanent post. The letter also negatives the appellant's claim that he is a permanent hand of the Home Ministry and states

that with effect from 1-6-1966 his services had been replaced at the disposal of the Controller. Ex. P. 53 recognises that the Controller's officer is the parent office of the appellant and goes on to add that before he is reverted to that Department his case of suspension must be finally decided because action to retire him from service would be taken after the period of suspension is regularised and entries in the service book are completed right up to the date of his reversion to his parent office.

11. This evidence leave no manner of doubt about the appellant being a permanent employee in the office of the controller.

12. Mr. Sharma questioned the correctness of the statements made in Exs. P. 52 and P. 53 and strongly urged that both these documents were fabricated during the course of the trial at the instance of the police after the prosecution had failed to prove the appellant's connection with the office of the Controller. Learned counsel argued that both these documents were not available when Shri G. D. Gupta (P. W. 24) was examined on 24-2-1965. It was only re-called on 25-10-1966. Meanwhile he had been persuaded by the police to address the letter Ex. P. 52 along with annexure P. 53 which had been procured during this interval.

13. It is no doubt true that Exhibits P 52 and P. 53 came into existence after the close of the prosecution case and the examination of the last defense-witness Inder Singh (DW 11). But that is hardly any reason to suspect that an officer of the status of Shri G. D. Gupta would stoop so low as to fabricate false evidence with a view to oblige the police.

14. After Shri G. D. Gupta was re-called and examined, the prosecution was also allowed to examine Shri Rattan Singh (P.W. 32) who was working as an Assistant in the office of the Controller and had brought with him the appellant's file as maintained in that office. He deposed that before 20-11-1954 the appellant was working in a 'confirmed post' as a Reviser in the office of the Controller and that the file brought by him contained an application dated 22-10-53 made by the appellant seeking permission to get his name registered with the Employment Exchange Delhi in search of a better job. The witness further deposed that necessary permission was accorded to him by the Controller on 12-11-1953.

15. To rebut the additional evidence adduced by the prosecution, the appellant was allowed to examine Shri B. M. Sharma (DW 12) retired Under Secretary, Ministry of Home Affairs. But there is nothing in the evidence of that witness which in any way disproves the prosecution case. The two last exhibits D, 12 and D. 13 which relate to the appellant's appointment as a clerk in the Ministry of Home Affairs which were proved through him have already been referred to by me earlier. If anything, those letters establish the continuity of the appellant's service from one department to another without any break.

17. I thereforee agree with the learned Special Judge that the sanction required in this case was that the Controller.

18. It may be mentioned here that Mr. R.L. Mehta, learned counsel for the State, showed me during the course of his arguments another sanction which had been obtained from the Ministry of Home Affairs before the cognizance of the offence was taken against the appellant. Mr. Mehta however submitted that the sanction order was not placed on file as the prosecution was satisfied that the authority competent to remove the appellant from service was the Controller. Nevertheless Mr. Mehta prayed that if I came to the conclusion that the appellant was an employee under the Ministry of Home Affairs, permission be granted to the prosecution to lead evidence at this stage for proving the sanction accorded by the Ministry of Home Affairs. As I am satisfied that the sanction required in the present case was that of the Controller, I have not felt the necessity of considering Mr. Mehta's prayer for additional evidence. But I must say that if I had even the least doubt in my mind about the validity of the sanction I would not have hesitated to grant Mr. Mehta's prayer for additional evidence as in my opinion the intention of the legislature in providing for a sanction in respect of the offences covered by Section 6 of the Prevention of Corruption Act is merely to afford a reasonable protection to the public servants in the discharge of their official functions. It is not the object of the section that a public servant who is guilty of the particular offence mentioned in that section should escape the consequences of his criminal act by raising the technical plea of invalidity of sanction. The section is a safeguard for the innocent and is not a shield for the guilty.

19. The next contention of the learned counsel for the appellant was that even if the appellant were held to be a permanent employee in the offence of the Controller in view of the fact that he was employed at the time of commission of the offence under the Ministry of Home Affairs the sanction required was that of the Central Government. The answer to the argument is furnished by a decision of the Supreme Court in *R. R. Chari v. State of Uttar Pradesh*. : [1963]1SCR121 where it was held that if the services of a public servant permanently employed by a Provincial Government or loaned to the Central Government to authority to remove such public servant from office would not be the borrowing government but the loaning government.

20. Mr. Sharma learned counsel for the appellant, then argued that sanction in this case had been accorded under Section 6 (1) (c) of the Prevention of Corruption Act, whereas the appellant had been prosecuted not only for offences under sections 161, 162 and 163 I.P.C. but also for an offence under Section 120-B for which the authority envisaged under Section 6(1)(c) of the Act would not be the proper authority. The argument appears to me to be wholly misconceived for the simple reason that if offences under Section 120-B and Section 163 I.P.C. are outside the scope of S. 6 of the Act there could be no bar to the prosecution of the appellant under those sections. The appellant is admittedly not a public servant who is removable from his office by or with the sanction of the State Government or the Central Government and as such he is not entitled to the protection of Section 197 of the Code of Criminal Procedure. That being so, I am not aware of any other provision of law to which one might turn for the purpose of discovering the necessity for sanction.

21. Mr. Sharma next argued that offences under sections 161, 162 and 163 with which the appellant was charged were non-cognizable offences. Since Section 120-B derives its colour from the offences which are said to be the object of criminal conspiracy no cognizance of offences under Section 120-B, I.P.C. could therefore, be taken in the absence of sanction under Section 196-A, Criminal P.C.

22. Mr. Mehta learned counsel for the State countered the argument by submitting that under Section 5-A of the [Prevention of Corruption Act, 1947](#) an offence under Section 161, I.P.C. is cognizable so far as investigation by officers of the rank of Deputy Superintendent of Police and an officer not below the rank of Inspector of Police who is specially authorised by the Inspector-General of Police, Special Police Establishment are concerned. There was therefore, no necessity for sanction under Section 196-A, Criminal P.C. Mr. Mehta also submitted that even otherwise it was not necessary to obtain sanction under Section 196-A Criminal P.C. in the case of an offence under Section 120-B read with Section 161, I.P.C. In this connection the learned counsel invited my attention to two decisions of the Privy Council; H. H. B. Gill v. King and Phanindra Chandra Neogy v. The King where it was held that no sanction under Section 197, Criminal P.C. was necessary in the case of an offence under Section 120-B read with Section 161 I.P.C. for the simple reason that a public servant in conspiring or accepting or attempting to accept illegal gratification could not be held to have committed the offence while acting or purporting to act in the discharge of his official duty. Both these cases were approved by the Supreme Court in Ronald Wood Mathams v. State of W. Bengal Air 1954 Sc 455 where it was held that sanction under Section 197 was not necessary for instituting proceedings against a public servant on charges of conspiracy and bribery.

23. I am afraid, I cannot agree with Mr. Mehta when he says that because sanction is not required under Section 197, Criminal P.C. there is also no necessity for sanction under Section 196-A, Criminal P.C. in respect of offences under Sections 120-B and 161, I.P.C. even when the investigation of the case is by an officer below the rank of officers mentioned in Section 5-A referred to above as in my opinion the position in so far as an offence under Section 161, I.P.C. is concerned is still the same notwithstanding the amendment of the [Prevention of Corruption Act, 1947](#) in 1952 by the introduction of Section 5-A as an offence under that section when so investigated, would still remain non-cognizable.

24. In all the three cases cited by Mr. Mehta the ratio decidendi is that a public servant while committing an offence of accepting bribe neither acts nor purports to act in the discharge of his official duty and as such the provisions of Section 197

are not attracted. In the case of an offence of criminal conspiracy with the object of committing a non-cognizable offence to which Section 196-A, Criminal P.C. is attracted, there is no such limitation and the section applies to public servants as well as to others alike. There is therefore, substance in the argument of Mr. Sharma that cognizance of an offence under Section 120-B and Sections 162 and 163, I.P.C. could not have been taken against the appellant for want of sanction under Section 196-A, Criminal Procedure Code.

25. The question however, is whether that would vitiate the trial as a whole. I have already stated that the appellant has been convicted of offences under Sections 120-B and 161, I.P.C. He has not been convicted of offences under Sections 162 and 163, I.P.C. If therefore, for want of sanction under Section 196-A, Criminal P.C. the appellant could not be tried for offences under Section 120-B and Sections 162 and 163, I. P.C. that would not affect his conviction under Sections 120-B and 161, I.P.C.

26. I am fortified in this view by the a decision of the Supreme Court in *Madan Lal v. State of Punjab* : 1967 CriLJ1401 . The accused in that case was charged with offences under Sections 120-B, 409 and 477-A, I.P.C. No sanction had however been obtained for the prosecution of the accused for offences under Section 120-B read with Section 477-A, I.P.C. it was held that the conspiracy to commit an offence is by itself distinct from the offence to do which the conspiracy is entered into. Such an offence, if actually committed, would be the subject-matter of separate charge. If that offence does not require sanction though the offence of conspiracy does, and sanction is not obtained., the Court can still proceed with the trial as to the substantive offence as if there was no charge of conspiracy.

27. In the present case, there is a valid sanction for the prosecution of the appellant for offences under Section 120-B and Section 161 I.P.C. If therefore there is no sanction in respect of offences under Section 120-B and Sections 162 & 163 I.P.C. his conviction for offences under Sections 120-B & 161, I.P.C. can still be maintained.

28. Mr. Sharma lastly argued that the officer who accorded the sanction had not been examined as a witness and all that had been done was that a Head Assistant

(Lekh Raj Pw 1) from the office of the Controller had been examined. He had only proved the signature of that Officer but there was no evidence to establish that the officer according the sanction, had applied his mind to the facts of the case.

29. There is no merit in this argument. The sanction order (Ex. P1) fully sets out the material facts and the offences disclosed by those facts. There is a presumption about official acts having been regularly performed. In the absence of any evidence to the contrary, it cannot be held that the officer granting the sanction acted mechanically without applying his mind to the material placed before him.

30. The next contention urged by Mr. Sharma was that this was a case of mistaken identity. From the very outset, the contention appeared to be so utterly devoid of merit that the learned counsel found it almost impossible to introduce any element of acceptability into his argument. He argued that the person actually responsible for the commission of the offence was another person who bore the same name as the appellant and who was employed in the Examination Branch of the Postal Department but the appellant had been falsely implicated in his place because of his enmity with Mr. R. K. Nayar (PW 11). To appreciate this contention it is necessary to set out the broad features of the prosecution story. (After examining evidence his Lordship came to the conclusion that defense set up by appellant was palpably false and was rightly rejected by the learned trial Judge-Ed).

31-40. The result of the above discussion is that the appellant's conviction for offences under Section 120-B and Section 161 I.P.C. is maintained. The sentence on each count however is reduced to one year R.I. The sentence of fine is set aside while the sentence of imprisonment is ordered to run concurrently. The appellant who is on bail should surrender forthwith.

41. Order accordingly.