A.R. Puri Vs. State

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Court : Delhi

Decided On : Mar-23-1987

Reported in : 32(1987)DLT115; ILR1987Delhi71

Judge : M.K. Chawla, J.

Acts : Indian Penal code, 1860 - Sections 21

Appeal No. : Criminal Revision Appeal No. 2 of 1983

Appellant : A.R. Puri

Respondent : State

Advocate for Pet/Ap. : K.K. Luthra and; K. Shouriah, Advs

Judgement :

M. K. Chawla, J.

(1) A short, sweet and interesting question of law regarding the interpretation of the term 'public servant' as defined in Section 21 of the Indian Penal Code with respect to a person working as an Assessor with an insurance company has arisen which requires going into on the following admitted facts,

(2) Anoop Raj Pun is the proprietor of a firm, M/s. M. R. Puri and Co. This firm is engaged as a surveyor of insurance claims with their head office at New Delhi.

Shri A..R. Puri is holding a license for the said purpose, issued by the Controller of Insurance, New Delhi. It is a case of the prosecution that truck, Ford Make, Model 1981, bearing Registration No. Rrb 3879 belongs to one Mr. M. S. Bhatia of Jaipur. It met with an accident in District Gurgaon. The said truck was insured with M/s. United India Insurance Company, Jaipur. Sardar Manohar Singh Bhatia lodged a claim of Rs. 1,32,549.57, as damages with the insurance company. Shri V. P. Chawla a private surveyor was deputed by the company to conduct the preliminary survey. He submitted his report on the 4th May, 1981 to the Divisional Office of the Company at Jaipur. As the estimated claim was beyond the sanctioning powers of the Manager of the insurance company, it was referred to the Regional Office. In order to verify the correctness of the estimate submitted by Shri V. P. Chawla, the Regional Office of the insurance company appointed M/s. M. R. Puri & Co. to survey and assess the loss. Shri Puri went to Jaipur on 5-5-81 and in the company of the owner inspected the truck at the shop of M/s. National Motors, It is the further case of the prosecution that Shri A. R. Puri, instructed the owner to contact him in the hotel on the next day. The accused is alleged to have made a demand of Rs. 8,000.00 as bribe on the plea that he would submit a suitable report and recommend the payment of Rs. 58,000.00 . At that time, he gave a threat that if this amount is not paid, he will spoil the case. As the story goes, Mr. M. S. Bhatia a sum of Rs. 5,000.00 to after some time. In his presence, the accused Mr. A. R. Puri wrote a letter, in his own hand-writing for and on behalf of Mr. Bhatia, intimating the Divisional Manager, Jaipur that he was agreeable to settle his claim at Rs. 58,000.00 . The accused also obtained his signatures.

(3) After 213 days, the accused again contacted Mr. Bhatia on telephone and. renewed his demand of balance amount. Mr. Bhatia came to Delhi and contacted the accused at his residence. He explained .the difficulties in arranging the finance. The accused then reduced the demand Of Rs. 1500.00 . The accused directed Mr. Bhatia to come with the money in the morning of 17-5-81. However, on the same evening Mr. Bhatia made a written complaint to the Superintendent of Police, Cbi who in turn laid a trap and. apprehended the accused after he had accepted Rs. 15001- from Mr. Bhatia. It is on these facts that the challan. under Section 161 Indian Penal Code . and Section 5(1)(d) road with Section 5(2) of the Prevention of Corruption Act against tile accused was filed in the court below.

(4) The learned Additional Sessions Judge, on consideration of the report and the documents: found, that a prima-facie case is made out against the accused and framed the charges. It is against this order the accused has filed the present revision petition, praying for the quashing of the charges.

(5) The first and foremost contention of the learned counsel for the petitioner is that the petitioner is a member of a private firm of Insurance Surveyors. He is not on the pay roll of the Government or any Corporation. The surveyors professional charges on contract basis depending on the nature of a claim and the work involved. There does not exist any relationship of masters and servant as is normally understood in the case of a public servant. According to the learned counsel the court below went wrong in bringing the case of the petitioner underclause: fifthly of Section 21 of the Indian Penal Code. The charge under these circumstances merits quashing.

(6) On the other hand, the submission of the learned counsel for the respondent is that the General Insurance Company has been established by an Act of the Parliament and since then it has acquired a status of a Government Company. Any person in the service of and assisting the Government or a Corporation established under the Central Act, will fall within the definition of public servant as defined .in sub-clause (5), (9) and 12 of Section 21 of the Indian Penal Code. According to the learned counsel there need not be a relationship of master and servant as alleged.

(7) Before parting with the rival contention of the parties, it maybe noticed that the learned lower court on the basis of the material before him came to the conclusion that the case of the accused is not covered either by clause 9 or clause 12(a) or (b) but clause 'fifthly' of Section 21 of the Indian Penal Code, is fairly and squarely attracted. On that basis, he framed the charges.

(8) Public Servant is defined in Section 21 of the Indian Penal Code. Clause 'fifthly' reads

'EVERY jury man, assessor or member of a Panchayat, assisting a court of justice of public servant.'

As per the reasoning of the court below, the bare reading of the words in the clause, that a jury-man, or anassessor, who is assisting the court of justice or public servant, would mean that public servant need not be the court of justice. Once it is alleged by the prosecution that on the basis of the surveyor's report the Insurance company has to decide the loss of the claimant, the appointment of the accused as an assessor, will prima-facie prove that the accused is a public servant. The provisions of prevention of Corruption Act and thus fully attracted when he accepted Rs. 1500.00 as illegal gratification as a motive or reward for showing favor to Shri Bhatia.

(9) Prima facie the conclusion of the learned lower court, is not in consonance with the object with which the legislature included the word 'assessor' in this clause. In the ordinary dictionary meaning, the word 'assessor' means as a legal adviser who sits behinds a Magistrate ; or the one appointed as an associate in office with another or the one who assesses taxes or value of property income etc. for taxation and the one who shares another's dignity. The terminology of the fifth clause shows that according to the Interpretation Act, every jury-man, assessor or member of Panchayat are sui generis terms and similarly 'court of justice or public servant' are words connoting the same general sense. The words 'public servant' appearing in this clause, to my mind, connote a much narrower meaning than interpreted by the court below as they are ejusdum generis to the phrase 'court of justice' preceding it.

(10) During the course of investigation of the case, the Department examined Shri R. Ramalingam, Deputy General Manager an Shri P.S. Bhatia, Assistant Administrative Officer. of the United India Insurance Co. under section 161 of the CR. P.C. Both of them categorically admit that the surveyors are not the salaried staff of the Insurance Company; that the professional charges realised by the surveyor's firm are as a result of their independent contract between the insurers and the claim investigators; that different payments are made, according to the nature of the case handled by various insurance companies; that the surveyors are expected to complete the job within a reasonable period though no time limit is ever fixed. In the face of such an evidence, the assessor/surveyor is not the same person as tried to be interpreted in clause 'fifthly' and certainly an assessor of an

insurance company will not fall in that category. In this clause the word 'assessor' goes Along with the juror concerned or connected with the administration of justice. Prima facie, clause 'fifthly' has wrongly been stretched and applied to. the present petitioner.

(11) Learned counsel for the parties during the course of hearing arguments, did not argue to bring the case of the present petitioner within the ambit of clause 'ninthly' to which I fully agree. Even according to the learned lower court, this clause is not at all attracted even though to start with the case . of the prosecution was that the petitioner was covered under this clause. For that reason, I do not propose to deal with or express any opinion on this clause.

(12) We are now only left with clause 12 and to find out if the case of the petitioner is covered under it or not. Clause 12 reads as under:-

'TWELTH- Every person; (a) in the service or pay of the Government or remunerated by fees or commission turn the performance of any public duty by the Government; (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.'

A very fine distinction has been drawn in the use of the expression 'or' in the context in which it/is found in clause 12-(A) of Section 21 of the Indian Penal Code, in case reported as R. S. Nayak v. A. R. Antulay 1984 Crl. L. J. 613, The relevant portion of the judgment on this aspect reads as under:

'THE use of the expression 'or' in the context in which it is found in Clause (12) (a) does appear to be disjunctive. Read in this manner, there are three independent categories comprehended in Clause 12 (a) and if a person falls in any one of them, he would be a public servant. Once it is accepted that 'a person in the pay of the Government' connotes a specific and independent category of public servant other than 'a person in the service of the Government' and the expression 'in the pay of the Government' does not in here a master-servant or command obedience relationship between the Government as the payer and the public servant as the Payee, no part of the section is rendered superfluous. The phrase 'in the pay of the Government' does not import of necessity a master-servant relationship. It is perfectly possible to say that a person can be parlance to speak of a person being in the pay of another if he is paid for acting at the behest or according to the desire of the other without the other being his master and he the servant, that is to say without the control over the manner of doing the work which a master-servant relationship implies. It is such a category in addition to the one 'in the service of the Government' that is sought to be comprehended in Clause (12) (a).'

The expression 'government' in Section 21(12)(a) must either mean the Central Government or the Government of a State. Substituting the expression the relevant portion of Section 21(12)(a) would read thus :

'EVERY person in the service 'or' the pay of the Central Government or the Government of a State or remunerated by fees or commission for the performance of any public duty by the Central Government or the Government of a State.'

(13) Clause (a) thus requires that a person in question must be either in the pay or service of the Government or must be remunerated by fees or commissions for the performance of any public duty by the Government. Keeping in view the fine distinction of the expression 'or' relating to a person in clause 12(a) Along with the expression 'government' as observed earlier, the case of the petitioner is also not covered under this clause. It is the common case of the parties that the petitioner is neither on the pay-rolls of the Government nor in the service of the Government. While entrusted with the job of surveyor, he was also not performing any public duty assigned by the Central Government or the State Government. His job in a way was on a contract basis, the remuneration of which was to be decided on the quantum of work involved in a particular job. A mere contractor, as is normally understood, will not be public servant although his contract may be with the government and he is paid on a commission basis.

(14) The case of the petitioner is also not alternated by clause 12(b). The Prosecution has tried to bring the case of the petitioner in this clause by alleging that he was performing the public duty of a Corporation established by or under a Central, Provincial or State Act. Learned counsel, however, loses site of the fact that words 'are remunerated by fees or commission for the performance of any

public duty by the government' as appearing in sub-clause (a) are missing in sub-clause (b). To attract this provision, the prosecution must bring the case of the petitioner to be in the service of or on the pay- roll of a local authority or corporation established by law. This is not the position here. Sub-clauses (a) and(b) of clause 12 have been interpreted incase reported as State v. K. Srinivasan & Ors' 1985, Criminal Law Journal, NOC5(MAD)(2). Keeping in view the effect of 1964 amendment, the expression 'public servant' appearing in Clause 12, was interpreted thus:-

'AFTER the 1964 amendment to Clause of Section 21 it is only a person in the service or pay of the Government or remunerated by fees or the commission for the performance of any public duty by the. Government who would fall within the definition of 'public servant', occurring in sub-clause (a) of Clause 12. The present change made by the 1964--amendment makes it clear that it is not necessary that a person should be an of in order to be a public servant under Clause 12. In that sense, the scope of Clause 12 has become wider so as to include every person who fulfillls the conditions enumerated in this clause. The Parliament has carefully added the words 'by the Government' after the words 'performance of any public duty' occurring in Clause 12(a). If the expression 'by the Government' had not been added, the last part of Clause 12 would read as if every person remunerated by fee or commission for the performance of any public duty would come within the definition. This would lead to the anamolous position viz., that even persons who are remunerated by any person of entity other than the Government, also would fall within the definition of 'public servant'. K such an interpretation is given, then every person who does some kind of public duty and who is remunerated there of (not necessarily by the Government) would fall within the definition. This position would be quite against the general understanding of the term pubic servant'. That is why the Parliament has carefully and cautiously added the words 'by the Government' so that only persons who are remunerated by the Government for the performance, of a public duty rendered by them would come within this definition. Thus, the most important ingredient in the third limb of Clause 12(a) is the expression 'remunerated by the Government.'

(15) The judgment referred to above do not bring out. the case of the present petitioner in any of the clauses of Section 21 of the Indian Penal Code. The respondent State may have any other avenue open to them for taking any action against the petitioner but certainly they cannot proceed against him, for the offences under Section 161 Indian Penal Code , under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act.

(16) In the result, the petition succeeds and the. impugned older is set aside.