

Ram Kishan Vs. State

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Court : Delhi

Decided On : Feb-23-2000

Reported in : 2001CriLJ2735; 84(2000)DLT673

Judge : Dalveer Bhandari, J.

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

Appeal No. : Crl. Appeal No. 49 of 1978

Appellant : Ram Kishan

Respondent : State

Advocate for Def. : Mr. M.S. Bhutalia, Adv.

Advocate for Pet/Ap. : Mr. R.L. Mehta and; Mr. T.R. Kakar, Advs

Judgement :

ORDER

Dalveer Bhandari, J.

1. This appeal has been filed under Section 161 I.P.C. and Section 5(2) read with Section 5(1) (d) of the [Prevention of Corruption Act, 1947](#) against the order of learned trial court by which the appellant in Corruption Case No. 25 of 1977 on 9th

March, 1978 was sentenced one year R.I. under Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act and a fine of Rs. 100/- in default of payment of the fine, the appellant was further directed to suffer further R.I. for three months and under Section 161 IPC the appellant was sentenced to RI for one year. The trial court also directed that the sentences of imprisonment shall run concurrently.

Brief facts which are necessary for disposal of this appeal are recapitulated as under.

2. Ram Kishan appellant, Manual Assistant attached to Taxi Meter Unit in the Inspectorate of Weights and Measures of the Office of the Director of Industries, Khyber Pass, Delhi, was charged under Sections 161 IPC and 5(2) read with 5(1)(d) of the [Prevention of Corruption Act, 1947](#). As per the charges, the appellant, being a public servant employed and posted in the aforementioned office, on 30.6.1976, obtained and accepted a sum of Rs. 10/- from PW 11 who was plying three wheeler scooter, as a motive or reward for getting the meter of his scooter passed.

3. Kuldip Singh, complainant before trial court, PW 11, used to ply three wheeler scooter on contract basis at Rs. 20/- per day having hired it from PW-7. He used to bring the scooter from the house of PW -7 at 8.00 a.m. and return at 8.00 p.m.

4. On 29.6.76, Kuldip Singh, complainant went to the house of PW-7 to collect the scooter and noticed that the seal of the Meter was in a broken condition. So, he drove the scooter to the Weights & Measurements Office and got the scooter entered for checking. In order to check the Meter of three wheeler scooter, the scooters were required to go on a round to ISBT from a fixed point on The Mall. If the fare shown by the Meter be Rs. 3.50 p or Rs. 3.60p, the Meter would get passed. In case of the fare being shown above Rs. 3.60p, the Meter would not be passed as correct. The scooter of complainant showed fare amounting to Rs. 3.70p and so it was not approved.

5. The appellant told him that if he was paid Rs. 10/- as bribe, he would get the Meter of complainant's scooter passed and then the appellant would himself affix

the seal thereon. The complainant at that time put the appellant off saying that the complainant did not have the amount of Rs. 10/- with him and promised that he would come back on 30.6.1976 at about 11.00 a.m. and pay Rs. 10/- as bribe for this purpose.

6. However, the complainant went to the Anti Corruption Branch. The Investigating Officer, after recording statement of the complainant before two Panch witnesses and number of the ten rupee note of the complainant as well as applying powder phenol phthalein thereon, gave the directions to the complainant that the complainant should pass on the same ten rupee note to the bribe taker within the hearing and sight of both the Panch witnesses and in the course of such a conversation as to indicate that the money was accepted by the bribe taker as bribe. The witnesses were also instructed to remain close to the complainant and the bribe taker and watch the transaction.

7. The raiding party then reached near the office of the Inspector, Weights & Measurements, Khyber Pass at 11.15 a.m. The three wheeler scooter of the complainant was sent for checking and again the Meter showed a fare of Rs. 3.70p and was declared to have failed. The complainant then contacted the appellant and outside the room near the corner, the complainant gave the same ten rupee note along with the verification certification form which the appellant accepted in his right hand and put the same in the pocket of his shirt. On receiving the signal, the Investigating Officer came up on the scene and caught the appellant. The number of the currency note was tallied with the recorded number in the raid report and all the things were taken in to possession in the presence of the complainant and the Panch witnesses. Then a colourless solution of sodium carbonate was prepared and as the right hand of the accused was dipped therein, it became pink. Similarly, the left pocket of the shirt was dipped in another solution of sodium carbonate and that too became pink. Both these pink solutions were transferred into bottles and were sealed and labels with the signature of the complainant and the Panch witnesses affixed thereon. The complaining statement along with the report was sent to Police Station Anti Corruption Branch where FIR No. 28 was recorded and the case property was deposited in the Mal Khana, P.S. Civil Lines, Delhi. The bottles were later sent to CFSL and were reported positive

test for Phenol Phthalein.

8. After obtaining sanction for the prosecution of the appellant, as contemplated by Section 6 of the [Prevention of Corruption Act, 1947](#), report under Section 173 of Code of Criminal Procedure was filed in Court. The learned trial court framed charges under Section 161 IPC and under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#). The appellant pleaded not guilty of the charges.

9. The prosecution examined 12 witnesses in support of its case. The statement of the appellant under Section 313 Cr. P.C. was recorded in which the appellant categorically denied that he demanded Rs. 10/- from the complainant in order to get the Meter passed. On consideration of entire evidence on record, the learned Special Judge arrived at the conclusion that the prosecution has been successful in establishing the guilt of the appellant.

10. Learned Special Judge convicted the appellant Ram Kishan under Section 161 I.P.C. and Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) against the order of learned Special Judge by which the appellant in Corruption Case No. 25 of 1977 on 9th March, 1978 was sentenced one year R.I. under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and imposed a fine of Rs. 100/- in default of payment of the fine, the appellant was further directed to suffer further R.I. for three months and under Section 161 IPC the appellant was sentenced to RI for one year. The learned Special Judge also directed that the sentences of imprisonment shall run concurrently.

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12. The learned counsel for the appellant also relied on the judgment of this Court in the judgment of Inder Parkash Shingal v. State ; 38 (1989) DLT 5. In this case also the accused appellant was con-victed under Section 161 Indian Penal Code and Section 5(1)(d) & 5(2) of the [Prevention of Corruption Act, 1947](#). The Court reduced the sentence of the imprisonment of appellant to the period already

undergone on the ground that the appellant has faced the agony of trial for about 18 years now.

13. The learned counsel for the appellant placed reliance on some of the decided cases in which their Lordships of the Supreme Court in the case of B.G. Goswami v. Delhi Administration; 1973 SCC 796, observed as under :

'Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilised societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.'

14. This case has been followed in a number of subsequent judgments by the Supreme Court and various other courts. In Ramesh Kumar Gupta Vs . State of M.P. : 1995 CriLJ3656 , while referring to the judgment of B.G. Goswami v. Delhi Administration (supra), the sentence of imprisonment was reduced to the period

already undergone, in a case where the accused was convicted under Section 161 of the Indian Penal Code.

15. In the instant case, the incident had taken place in 1976. The basic facts regarding the delay are quite akin to the facts of Shri Ramesh Kumar Gupta Case (supra). The appellant had undergone some part of the sentence and faced trauma of criminal proceedings for almost 24 years.

16. On consideration of all the relevant facts and circumstances of this case, in my considered opinion the ends of justice shall be met by upholding the conviction of the appellant. However, the sentence of imprisonment of the appellant, Ram Kishan is reduced to the period already undergone.

17. The appeal is accordingly disposed of.

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