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Ouseph Varkey Vs. State

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Court : Kerala

Decided On : Jun-09-1954

Reported in : 1954CriLJ1604

Judge : Sankaran and;Joseph JJ.

Appellant : Ouseph Varkey

Respondent : State

Judgement :

Sankaran, J.

1. The accused in C. O. No. 1/1953 on the file of the Special Judge at Trichur is the petitioner. He was tried for the offence under Section 165-A, Penal Code, and was found guilty of the offence charged against him. The Special Judge has accordingly convicted him under that section and sentenced him to undergo rigorous imprisonment for a period of one month. The legality and the sustainability of such conviction and sentence are challenged by the accused by means of this revision petition.

2. The prosecution case against the accused is that on the morning of 10-7-1953 the accused offered a sum of Rs. 35 to P. W. 1, who was at that time the Tahsildar at Trichur, and induced him to accept the same as illegal gratification and to show him some special undue favours in the course of the discharge of the Tahsildar's

official duties. The accused had already obtained some lands on registry in the Panamcherry village within the jurisdiction of the Trichur Tahsildar. He also unauthorisedly occupied large extents of unregistered lands adjoining his own registered holding. The revenue authorities started proceedings against him to have him evicted from the lands unauthorisedly occupied by him. In one such case prohibitory assessment had already been levied and in another the matter was pending orders. The accused tried to escape from such prohibitory assessment and to get the lands either on registry or on lease and he had filed the necessary petitions in that direction.

While matters were at this stage, P. W. 1 inspected the locality on 8-7-1953 and as a result of such local inspection he came to the conclusion that more lands were in the unauthorised occupation of the accused. After instructing his 1 subordinates to survey such lands also and to take up fresh eviction cases against the accused, P. W. 1 returned to his residence at Trichur. On the next day the accused went there to meet P. W. 1 but did not succeed in his attempt. Next day i.e. on 10-7-1953 he again went to the residence of P. W. 1 at 8 A.M. and met him.

After representing his difficulties to P. W. 1 the accused requested that he may be saved from further troubles and prayed that no more cases may be taken against him. In respect of the cases already taken the -accused wanted the help of P. W. 1 to get exemption from prohibitory assessment and also for getting lands on registry or on lease. After making these requests, the accused offered to P. W. 1 currency notes to the value of Rs. 35 enclosed in an envelope and placed the same on the table near which P. W. 1 was seated. It is also stated that the accused offered an apology for the smallness of the amount.

P. W. 1 immediately sent Ext. H letter to the District Magistrate who was residing close by, intimating him of what had transpired and requesting for orders to take the accused into custody and to proceed against him in due course of law. The District Magistrate forwarded the letter to the local Police after passing the order Ext. H(1) on it directing the Police to proceed to the spot and take immediate action. P. W. 6 who was then in charge of the Police Station, at once proceeded to the residence of P. W. 1 and prepared the Mahazar Ext. K regarding the envelope

and the currency notes placed on the table in front of P. W. 1 and took the same into custody.

The letter Ext. J addressed to the Inspector of Police which P. W. 1 had prepared and which also referred to the episode, was also entrusted to P. W. 6. P. W. 6 prepared the first information report Ext. A at 10 A.M. on the same day. The further investigation of the case was taken up and completed by P. W. 7 who was at the time the Assistant Superintendent of Police at Trichur, and charge-sheeted the case against the accused under Section 165-A, Penal Code, before the Special Judge.

3. The prosecution in this case was conducted in accordance with the provisions of the Criminal Law Amendment Act, 46 of 1952, and also in accordance with the provisions of the Prevention of Corruption Act, 2 of 1947 as amended by Act 59 of 1952. Acceptance of illegal gratification by public servants in connection with the discharge of their official duties has been made punishable under Sections 161 and 165, Penal Code. By Section 3, Prevention of Corruption Act, offences under Sections 161 and 165. Penal Code, were declared to be cognizable offences. But the proviso to Section 3 states that a public officer below the rank of Deputy Superintendent shall not investigate any such offence without the order of a Magistrate of the First Class or make any arrest therefor without a warrant.

The law relating to this matter underwent further changes with the passing of the Criminal Law Amendment Act, 46 of 1952. By Section 3 of this Act a new section was added to the Penal Code as Section 165-A by which abetment of offences coming under Section 161 or Section 165 was itself made a substantive offence. The new section i.e. 165-A runs as follows :

'Punishment for abetment of offences defined in Section 161 or Section 165' : Whoever abets any offence punishable under Section 161 or 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Provision was also made in Act 46 of 1952 for the appointment of Special Judges who may be or may have been Sessions Judges, or Additional Sessions Judges or Assistant Sessions Judges, under the Code of Criminal Procedure to try offences under Sections 161, 165 and 165-A. Authority was also conferred on the Special Judges to take cognizance of such offences without the accused being committed before them for trial and to follow the procedure prescribed by the Code for the trial of warrant cases by Magistrate.

Provision for appeal and revision was also expressly made under Section 9. By Act 59 of 1952 certain additions and amendments were made to the provisions of Act 2 of 1947. One of the new sections thus added and which arises for consideration in this revision petition in Section 5-A. which enumerates the police officers who could investigate offences under Sections 161, 165 or 165-A without the order of the Presidency Magistrate or a Magistrate of the First Class and make arrest without a warrant.

It is stated that such officers should not be below the rank of an Assistant Commissioner of Police in the Presidency towns of Madras and Calcutta and of a Superintendent of Police in the Presidency Town of Bombay and of a Deputy Superintendent of Police in other jurisdictions. Under special circumstances a Police Officer of the Delhi Special Police Establishment, not below the rank of an Inspector of Police, who is specially authorised by the Inspector-General of Police of that establishment, has also been authorised to investigate into offences of the categories already mentioned, without the order of a Magistrate,

4. In the present case the Judge who conducted the trial of the case against the accused had been appointed as a Special Judge under Section 6 of Act 46 of 1952 and hence the competency of the Special Judge to try the case is not open to objection. In, fact no such objection was raised at the time of arguing the revision petition. But the first point urged on behalf of the revision petitioner was that P. W. 7, the Assistant Superintendent of Police, who investigated and charge-sheeted the case is not an Officer empowered by Section 5-A of Act 2 of 1947 to proceed with the investigation of the alleged offence without the order of the Magistrate and hence the entire proceedings have to be quashed as being illegal

from the very inception.

Reliance was also placed on the ruling in - Sudhir Kumar v. The State : AIR1953 Cal226 , in support of the position contended for by the petitioner's learned Advocate. The prosecution in that case was for an offence under Section 161, Penal Code. The investigation was conducted by a Sub-Inspector of the Railway Police without the order of a competent Magistrate. An objection was raised that the entire proceedings were illegal to so far as the investigation was conducted in contravention of the proviso to Section 3 of Act 2 of 1947.

That proviso stated that a Police Officer below the rank of Deputy Superintendent of Police shall not investigate an offence under Section 161 or Section 165 without an order of the Magistrate. The objection was sought to be met by contending that the omission to adhere to this provision cannot be said to be an illegality vitiating the entire proceedings, but is only an irregularity which is saved by Sub-section (2) of Section 156, Criminal P. C.

Sub-section (1) of that section contains the general provision empowering any officer in charge of a police station to investigate even without the order of a Magistrate any cognizable offence arising within the jurisdiction specified in the section. Sub-section (2) states that no proceedings of a Police Officer in any such case shall be called in question on the ground that the case is one which such officer was not empowered to investigate under the section.

It is obvious that these general provisions cannot override the special provision contained in the proviso to Section 3 of Act 2 of 1947. Accordingly the objection raised in - AIR 1953 Cal 226 (A)' is upheld and it was ruled that the failure to comply with the Proviso to Section 3 of Act 2 of 1947 was not a mere irregularity coming within the saving provision contained in Sub-section (2) of Section 156, Criminal P. C., but that it amounted to an illegality vitiating the entire proceedings.

The same view was taken in - The State v. Madan Lal . The position will be still stronger in the case of a violation of the mandatory provision contained in Section 5-A, Prevention of Corruption Act, as amended in the year 1952. That section expressly states that investigation of the cases under the Act shall be in

accordance with the procedure laid down in the section 'Notwithstanding anything contained in the Code of Criminal Procedure'. In view of the express exclusion of the general provision contained in that Code, there is no scope for contending that an infringement of the mandate contained in Section 5-A would be saved by Sub-section (2) of Section 156, Criminal P. C. Any such infringement would undoubtedly be an illegality.

5. The question therefore is whether the investigation in the present case was conducted in violation of the directions in Section 5-A, Prevention of Corruption Act. It is seen that the investigation was taken up and completed and the case charge-sheeted by P. W. 7 who was at that time the Assistant Superintendent of Police within whose jurisdiction the alleged offence was committed. It is urged on behalf of the petitioner that an Assistant Superintendent of Police is an officer below the rank of Deputy Superintendent of Police.

Excepting the mere assertion in that direction, there is no basis to support it. It has also to be mentioned that the objection was not raised at the trial. In the evidence given by P. W. 7 he has stated in so many words that he took up the investigation of the case because the matter was within his competency and not of the officers subordinate to him. The statement was left unchallenged. It is not disputed that his rank as a Police Officer is just below that of a District Superintendent of Police, and definitely above the Inspector of Police.

His designation as Assistant Superintendent does not and will not by itself make out that he is an officer inferior in rank to a Deputy Superintendent. It appears that an officer holding the rank of a Deputy Superintendent of Police is designated in some jurisdictions as Assistant Superintendent. All that the Legislature has intended is that the investigation under Section 5-A without the warrant of a Magistrate should not be left to an officer inferior in rank to that of a Deputy Superintendent of Police. In the absence of any evidence in this case to support the contention that the rank of the Assistant Superintendent of Police is inferior to that of a Deputy Superintendent, it cannot be said that the investigation by P. W. 7 was in violation of Section 5-A.

There is still another aspect fully validating such investigation. It is only where there has been no order by a competent Magistrate that the investigation should be conducted by a Police Officer not inferior in rank to that of a Deputy Superintendent. In the present case, there was the order Ext. H(1) by the District Magistrate directing the Police to take the necessary action on the report Ext. H submitted by P. W. 1. In view of such an order the legality of the investigation in this case is not liable to any objection at all. Thus in any view of the matter, the first objection urged on behalf of the petitioner has to fail.

6. The next point urged on behalf of the revision petitioner is that the conviction in this case is based solely on the interested evidence of P. W. 1 which is not corroborated by any other independent evidence. Even if the objection that there is no corroboration of the evidence of P. W. 1 is well-founded, the absence of such corroboration by itself will not render the conviction bad. The rule of corroboration is only a rule of prudence. Where the sole evidence of the complainant is found to be thoroughly reliable and acceptable, there is no rule of law precluding the Court from convicting the accused solely on the basis of such evidence.

In this case the investigation was started at the instance of P. W. 1. who is a respectable officer in the service of the State. The Special Judge was impressed with the integrity of this witness and he accordingly chose to accept the version given by him as true. There is nothing to justify the interference by this Court in revision with such an appreciation of the evidence by the Special Judge. It cannot also be said that that the evidence given by P. W. 1 stands alone without other items of corroborative evidence.

P. Ws. 3 to 5 had sworn in support of the version given by P. W. 1, but the trial Judge has chosen not to rely on the evidence of these witnesses, because he felt that it would be unsafe to do so for the reasons that in view of their inferior status there was the likelihood of their being amenable to external influence and that there have been inconsistencies and contradictions in the versions given by them.

Since the evidence of these witnesses has thus been rejected, it may be said that there is no other direct evidence of corroboration. But it has to be remembered that corroboration need not necessarily be by direct evidence. On the other hand,

circumstantial evidence could very well afford corroboration. Very strong circumstantial evidence in that direction is available in this case. As soon as the offer of bribe was made to P. W. 1 by the accused, the matter was reported to the District Magistrate who passed the order Ext. H(1), directing the Police to proceed to the spot and take necessary action.

The Mahazar Ext. K shows that the Police reached the spot before the accused could leave the place and recovered M. O. 1 consisting of the envelope containing currency notes to the value of Rs. 35 from the table over which the Same has been placed by the accused as illegal gratification offered to P. W. 1. In the statement given by the accused before the Special Judge, he has clearly admitted that he had gone to P. W. 1 and has met him and had tendered Rs. 35 to him by placing the same on the table at the time and place mentioned by the prosecution.

Thus all the material facts urged by the prosecution have been admitted by the accused, and the other circumstances already referred to also go in corroboration of the version given by P. W. 1. But in the statement of the accused the explanation given by him is that he had offered the amount to P. W. 1 with a request that the same may be adjusted towards the prohibitory assessment to be levied from him and the encroachment cases taken against him may be compounded. The trial Judge has held that this explanation is hardly acceptable. The telling circumstances disclosed by the evidence in the case could lead no other conclusion.

When the accused tendered Rs. 35 to P. W. 1 no definite amount was payable by him towards prohibitory assessment. Such amount had to be fixed by the Collector and not by P. W. 1. There is the further significant fact that the aforesaid sum was offered soon after P. W. 1 had directed his subordinates to take up fresh cases also against the accused for the encroachment noticed by him. The offer of certain amount of money to P. W. 1 in such a situation with a request that the accused may be saved from all troubles and may be helped to secure for himself the lands unauthorisedly occupied by him could not have been meant as a lawful payment. It was certainly intended as an illegal gratification to induce the officer to misuse his official position for securing an unlawful advantage to the accused.

Reference may also be made in this connection to the special provision contained in Sub-section (2) of Section 4, Prevention of Corruption Act (as amended by Act 59 of 1952), which runs as follows :

Where in any trial of an offence punishable under Section 165A, Penal Code (Act 45 of 1860) it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that e gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 161, Penal Code, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

In the nature of the prosecution evidence in this case the Court is fully justified in drawing the presumption as provided for in this sub-section. The case does not come within the exception mentioned in Sub-section (3) which states that the Court may decline to draw the aforesaid presumption if the gratification proved to have been paid or offered is so trivial that no inference of corruption may fairly be drawn. The* Burn of Rs. 35 tendered by the accused to P. W. 1 in this case cannot be taken to be so trivial as to attract the saving provision contained in Sub-section (3).

The attempt made by the accused to rebut the presumption legitimately arising against him has failed because his explanation that he was trying to make a lawful payment has been found to be absolutely unconvincing and unacceptable. The conviction entered against the accused by the Special Judge does not therefore call for any interference on the ground that it is not based on insufficient evidence.

7. Coming to the sentence awarded to the accused, it has only to be characterised as being ridiculously meagre. The Special Judge appears to have taken the view that a sentence of one month's rigorous imprisonment will meet the ends of justice in view of the fact that the amount offered as bribe to P. W. 1 was only Rs. 35. It is the gravity of the offence committed and not the nature or size of the instrument employed for committing that offence that should be the criterion for determining the sentence to be awarded to the offender. There is no doubt that the accused in

this case was making a daring attempt to corrupt a public officer like P. W. 1 by inducing him to go out of his way and to wink at the land grabbing enterprises pursued by the accused and to render illegal help to him for achieving success in such unlawful pursuits. An offence of this type has to be viewed as a grave offence calling for a deterrent sentence. However, we have to deal with the sentence in this case as it stands, because the State has not chosen to move this Court for an enhancement of the same.

8. In the result this criminal revision petition is dismissed.

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