

Dr. V. Sebastian Vs. the State

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Court : Kerala

Decided On : Jul-20-1987

Reported in : 1988CriLJ1150

Judge : K.T. Thomas, J.

Appellant : Dr. V. Sebastian

Respondent : The State

Judgement :

K.T. Thomas, J.

1. The appellant is a doctor by profession. He was in the Health Service of Kerala State. He worked as Municipal Health Officer for a certain period, on deputation. While so, he has been indicted for offence under Section 161 of the Penal Code and Section 5(2) of the Prevention of Corruption Act (for short 'the Act'). The Special Judge convicted him and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 100/- under each of the counts.

2. The case against him, in short, is that he demanded and received illegal gratification in a sum of Rs. 10/- from P.W. 1 for issuing a 'life Certificate' in favour of the mother of P.W. 1. Being the widow of a railway employee, the said mother was entitled to family pension. The application for family pension must be

supported by a life certificate. (The purpose of the certificate is to assure that the applicant concerned is a living person).

3. On 14-7-1980, P.W. 1 and his mother (P.W. 6) approached the appellant and requested him to issue the certificate. Appellant had issued a similar certificate to P.W. 6 during the previous year. As appellant did not remember it, he insisted on some other responsible person identifying the appellant. Therefore P.W. 7 Municipal Councillor identified her to the appellant. After preparing the required certificate appellant demanded Rs. 10/-. But P.W. 1 did not have the money with him, nor was he willing to pay bribe money for that favour. He consulted P.W. 3, a Lecturer in S.N. College, Quilon. They together went to Vigilance Police and gave a complaint to the Dy. S.P. (vigilance). A trap was arranged by the Vigilance police. Later P.W. 1 went to the Municipal Office and met the appellant, who then asked him whether the amount has been brought. The previously arranged currency note was passed over to the appellant who took it and kept it in the drawer of his office table. Ext. P2 certificate was then delivered to P.W. 1. At that stage the signal was shown and members of the vigilance squad came in. They recovered the currency note from the appellant.

4. The appellant denied having demanded or received any amount. According to him, the recovery of the currency note from his drawer was part of a conspiracy hatched by P.W. 1 and P.W. 3 who were after his blood. He claimed to have made forays into a network of nefarious trade indulged in by some meat sellers (by selling adulterated meat) under the protective umbrage of politicians like P.Ws. 1 and 3. The resentment brewed in them made them to stealthily enter in his room and deposit the currency note in his drawer.

5. The prosecution succeeded in proving that the appellant received the currency note from P.W. 1. Apart from the evidence of P.W. 8, Dy.S.P. P.W. 2 who was a Deputy Tahsildar had deposed that he was present when the currency note was recovered from the drawer and also when phenolphthalein test was conducted by P.W. 8. Ext. P4 is the mahazar which P.W. 8 prepared after recovering the currency note. P.W. 5 is a Constable attached to the Vigilance wing who too was present when P.W. 1 paid the amount to the appellant. Ext. P1 is the First

Information Statement lodged by P.W. 1 before laying the trap. Ext. P2 is the life certificate signed by the appellant. Ext. P5 is the mahazar prepared by the Dy.S.P. at 4.30 p.m. noting down the number of the currency note which P.W. 1 proposed to hand over to the appellant. From the aforesaid materials it is clear, without any manner of doubt, that P.W. 1 paid the currency note to the appellant after arranging the trap and the appellant received that currency note from P.W. 1 in consideration of delivering Ext. P2 certificate.

6. The learned Counsel for the appellant would have felt that a challenge of the finding regarding payment and acceptance of the amount by the appellant is not a worth-while exercise in view of overwhelming evidence to prove the same. Hence the entire focus of his arguments was made on the following points : (1) On the facts proved the offence under Section 161, I.P.C. is ruled out; (2) Prosecution failed to prove that the appellant had dishonest intention in receiving the sum, since the appellant as a Medical Officer, was entitled to take fees for issuing certain types of medical certificates and he would not have received the money as anything different; (3) The burden to prove that the amount received was illegal gratification is still on the prosecution.

7. Counsel had a purpose in advancing the contention to squirm out of Section 161 of the I.P.C. (It may appear that no useful purpose will be served by getting out of that Section as long as the appellant cannot wriggle out Section 5(2) of the Act because the sentence for both the offences were directed to run concurrently), the offence punishable under Section 5(2) of the Act is with reference to the definition of criminal misconduct contained in Section 5(1)(d) of the Act. A rule of presumption created by Section 4 of the Act is that where it is proved that a public servant has accepted any gratification it shall be presumed that the acceptance was as a motive or reward such as is mentioned in Section 161, I.P.C. learned Counsel rightly contended that the presumption does not apply in a case of criminal misconduct envisaged in Section 5(1)(d) of the Act, though the trial for the offence under Section 161 I.P.C. is brought within the scope of Section 4. The consequence is that if the accused succeeds in squirming out of Section 161 I.P.C., the burden will remain on the prosecution to prove that the gratification received was illegal or corrupt.

8. Under Section 161 I.P.C. the act of a person accepting any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is made punishable. The word 'gratification' has to be given its literal dictionary meaning. When it is shown that a public servant has received any amount of money which was not legal remuneration, the further question to be considered is whether the receipt is for doing or forbearing to do any official act. An attempt is made to show that it is not part of the official functions of a Municipal Health Officer to issue life certificates and that such certificates can be issued by any public servant holding a gazetted post. The words 'official act' in Section 161 I.P.C. are to be understood in that narrow sense, according to the contention of the counsel. Why should those words be interpreted narrowly? The language used in the Section does not justify the narrowing down of the scope of the words 'official act'. A public servant may have power to do certain official acts by virtue of the rank he holds as a public servant. He may get other powers by virtue of the office which he holds. When he exercises either of the powers, his act is official. No line of distinction need be made as between the acts in exercise of a particular office and acts in exercise of his position as a public servant. If the act is done in his official capacity, as distinguished from his purely private capacity, it amounts to official act. Even if it does not come within the scope of the functions of his office, the act does not cease to become official act.

9. A Division Bench of the Bombay High Court while discussing the scope of Section 161 of the I.P.C. took the view that when a public servant obtains bribe upon representation that a favour would be shown to the giver, it makes no difference if the favour proposed is not within his powers but another officer holding a similar office is empowered to do 'that act of favour. (*Indur Dayaldas Advani v. State of Bombay* (1951) 53 Bom LR 699 : 1952 Cri LJ 925. It was held that gratification should have been taken in order to do the official act as distinguished from private act or acts which are entirely non-official. Later another Division Bench of the same High Court followed the said view. *State v. Shamrao Navji Patel* (1956) 58 Bom LR 355. J.C. Shah, J. (as he then was) observed that if the act is done in his official capacity as distinguished from his purely private capacity, it is not necessary that the public servant should be obliged to do that act. In that case a Police Patil issued solvency certificate which was not part of his official functions.

Still the receipt of gratification for that purpose was held to amount to the offence. Those decisions thus support the view taken by me.

10. I do not find any force in the contention that the prosecution failed to prove dishonest intention of the appellant. There is no barometer to measure the intention or even the mental disposition of any person and therefore the court will observe the facts of the case in such a way as to discern the intention of the offender. According to the learned Counsel, the appellant being a medical practitioner was used to obtain legal fees for issuing certain types of medical certificates and he had a right to obtain fees for them. Hence it was contended that the appellant would not have treated the issuance of Ext. P2 certificate differently. The aforesaid argument cannot be accepted. It must be noted that the appellant has no case that he has the right to receive fees for issuing certificates like Ext. P2. No public servant can be heard to contend that he received bribe money as he was in the practice of receiving lawful remuneration. If such an argument finds acceptance, it would lead to preposterous consequences. That apart, Section 4 of the Act casts the burden on the appellant to prove that the amount of gratification received by him was not a reward for issuing Ext. P2.

11. Lastly it was contended that further leniency may be shown in the matter of sentence. Section 5(2) prescribes a punishment of imprisonment which shall not be less than one year. Of course, it was in exercise of the powers envisaged in the proviso that the trial court awarded a sentence which is far less than the minimum prescribed. But the learned Special Judge in awarding that sentence has taken into consideration 'the past unblemished official career of the accused' besides his attempts to control sale of spurious mutton. There is no material on record to support his observation that the appellant's official career in the past was unblemished. The learned Counsel tried his best to find support for the above observation from the testimony of P.W. 4 Municipal Commissioner. But there is nothing in that testimony to justify such an encomium for the appellant. The manner in which the appellant asked for and received the money, despite the smallness of the sum, does not behove of a Medical Officer of the rank held by him. I am therefore not disposed to show any leniency to the appellant, at any rate, more leniency than what he undeservedly secured from the trial court.

In the result, I confirm the conviction and sentence and dismiss the appeal.

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