Bhimsingh Vs. State

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Court : Rajasthan

Decided On : Jan-21-1955

Reported in : 1955CriLJ992

Judge : Sharma, J.

Appellant : Bhimsingh

Respondent : State

Judgement :

Sharma, J.

1. This is an appeal by Bhimsingh accused who has been convicted by the learned Special Judge (Sessions Judge) Bharatpur Under Section 165A, Penal Code, and sentenced to three months' rigorous imprisonment and a fine of Rs. 30/-

2. The circumstances under which the prosecution was started against the appellant are said to be that the appellant presented an application Ex. PI before the Sub-Tahsildar Kumher for help of the police in preventing the intervention of one Chitar in the cultivation of a certain field in village Pachmoor, sub-Tehsil Kurnher, District Bharatpur which according to the appellant had been in his cultivatory possession for sometime past. This application was presented in the Sub-Tehsil, Kumher on the 13-8-1953 and it was forwarded to the Sub-Divisional Officer, Bharatpur with a recommendation that the appellant be granted relief

prayed for by him. The application came up before Mr. P. S. Saxena, Sub-Divisional Officer and Sub-Divisional Magistrate, Bharatpur 'hereinafter to be referred to us the Sub-Divisional Magistrate) on 14-8-1.9.53 and he finding no reason to take the action prayed for, consigned it to the record room and directed the appellant to seek his remedy in proper court. The appellant was present at the time the order was made and after hearing the order, requested the Magistrate to take something from him and make an order in his iavour and while so saying he put his hand into his pocket and brought out a money bag.

The Sub-Divisional Magistrate brought this matter to the notice of the Superintendent of Police by his report Ex. P-2 dated 14-8-1953. The Superintendent of Police, Bharatpur, forwarded the report to the Station Officer, Kotwali Bharatpur who secured a warrant for arrest of the appellant Under Section 3, Prevention of Corruption Act, 1947 and arrested the appellant. After necessary investigation the case was challaned Under Section 165A, Penal Code, in the court of the Special Judge (Sessions Judge), Bharatpur.

(2a) The prosecution examined four witnesses namely P.W. 1 Bhiki, an orderly of the Sub-Divisional Magistrate's court, P.W. 2 Shri P. S. Saxena, Sub-Divisional Magistrate, Bharatpur, P.W. 3, Shri Bhagatram S.H.O., Kotwali Bharatpur and P.W. 4 Sri Madan Mohan Reader of the Sub-Divisional Magistrate's Court. Of these P.W. 3 Shri Bhagatram was a formal witness and the remaining three were the eye witnesses of the occurrence.

3. The appellant denied the charge. He admitted that he had made an application Ex. P-l in SnhTphsfl Kumher on which orders were passed by trip Sub-Divisional Magistrate, hut denied having offered any to him. No defence was how-aver, produced by the appellant.

4. The learned Special judge was satisfied from the prosecution evidence that an offence under 3. 105A had been marie out against the appellant and convicted and sentenced him as mentioned above.

5. In this appeal, it has been argued by Mr. M. M. Tiwari on behalf of the appellant that in the first instance the prosecution evidence way discrepant and it was not

provisional that the appellant made any attempt to here be the Sub-Divisional Magistrate Further, it was argued that trip Sub-Divisional Magistrate had no power to order trip to assist the appellant in ploughing flip fluid in question, and therefore, it cannot be said that the tier-user) any here to the Snh-DivWnnal Magistrate for the discharge of the tatter's official functions. It was also argued that in any case the Magistrate had passed the order and. thereafter he become functus officio and consequently even if the appellant offered anything it could not be said to be illegal gratification within the meaning of Section 161, Penal Code. Finally, it was argued that at any rate the appellant is an illiterate rustic and did not know the implication of offering any inducement to a Government servant as is apparent from his action and therefore, the sentence awarded to him is severe.

6. On behalf of the State it has been argued by Mr. R. A. Gupta that it was fully established by the prosecution evidence that the appellant in order to obtain a favourable order from the Sub-Divisional Magistrate attempted to bribe him and that he failed in his attempt simply because the Sub-Divisional Magistrate refused to accept an illegal gratification. Further, it was argued that the Sub-Divisional Magistrate was a revenue officer as well as a Magistrate and therefore, he had full powers to take any action on the application of the appellant.

In any case, it was argued that whether the Magistrate had power or not, the appellant thought that the Sub-Divisional Magistrate was fully empowered to grant an appropriate relief in the matter and therefore if he attempted to bribe the Magistrate for obtaining a favourable order, he fully came within the clutches of Section 165A, Penal Code. It was argued that it was not correct that the Magistrate became functus officio after passing the order dated 14-8-1953 as he had full powers to review his order, but even if he had none, that would not detract from the crime of the appellant.

7. In support of their legal contentions both the learned Counsel cited a number of rulings. learned Counsel for the appellant relied upon the rulings; in the cases of - Shamsul Huq v. Emperor', AIR 1921 Cal 344 (A); - 'Venkatarama Naidu v- Emperor' AIR 1929 Mad 756 (B) and -- 'Rahimullah v. Emperor' AIR 1935 Pesh 26 (C). On behalf of the State, reliance vvas placed upon the rulings in the case of -

'Emperor v. Amiruddin Salebhoy' AIR 1929 Bom 44{2j (D); - Tlameshwar Singh v. Emperor* AIR 1925 Pat 48 (E); - Ramchandriah v. Emperor' AIR 1927 Mad 1011 (F); - Emperor v. Phulsfngh' AIR 1941 Lah 276 (G); - 'Ram Sewak v. Kmperor' AIR 1948 All 17 35 - 'Tudur Davaldas v. State of Bombav1, AIR 1852 Bom (X): - 'State v. Sadhu Oharan Psnicmlvi' AIR 1992 Orissa 73 CD and - 'Mahadp.v Dhnnnappa v. State of Bombay' : AIR 1953 SC179 .

8. So far as the facts are concerned, it cannot be said that the learned Judge of the lower court was unjustified in holding that the appellant offered to pay to the Sub-Divisional Magistrate some in nney for obtaining a favourable order. The evidence of the Sub-Divisional Magistrate, P.W. 2 as well as Bhiki P.W. 1 his peon and Madan Mohaan P.W. 4 his reader is quite clear. All these witnesses have stated that application of the appellant eaine up for consideration before the Sub-Divisional Magistrate and that the Magistrate marie an order dismiss in the application. They have also clearly stated that on this the appellant put rift hand into his pocket and asked the. Sub-Divisional Magistrate to take something and make an order in his favour.

The only discrepancy which is pointed out is that while the Sub-Divisional Magistrate had stat ed that the appellant had taken out his money bag from his pocket, the other witnesses have said that he only put his hand into his pocket and the money bag was not actually taken out of it. This, however, is not a material discrepancy and it may be that the observation of the Sub-Divisional Magistrate or that of the two witnesses was a little faulty in this matter. The fact, however, remains that in order to obtain a favourable order from the Sub-Divisional Magistrate, the appellant requested the Sub-Divisional Magistrate to accept some illegal gratification and with a view to offer him something put his hand into his pocket in order to take his money bag. It was subsequently found on search that the appellant had a money bag in his pocket and it contained a sum of Rs. 30/12/-. It cannot, therefore, be said that the offer of the appellant was an empty offer.

9. The question remains whether on the facts proved an offence Under Section 165A is made out against the appellant. In the case of 'Shamsul Huq v. Emperor(A)', it was held that

Where it was not within the powers of the public servant to show any favour to the person offering the bribe, the latter should not be convicted Under Sections 161 and 109.

In that case, the case against the accused was dismissed and later on he was said to have offered Re. 1 to the Sergeant as a bribe to withdraw the charge which the Sergeant had brought against him. It was held that it was not within the powers of the Sergeant to show any favour to the petitioner who had already been discharged by the Magistrate and no money could have been paid to him as a motive or reward for doing anything for the accused.

In the case of 'Venkatarama Naidu v. Emperor (B) it was held that

If a man in the vain hope of getting a public officer to reconsider a question, as to which that public officer is functus officio offers a bribe be commits no offence whatever.

In that case, the accused was anxious to become a police-man and by orders of the District Superintendent of Police he presented himself before the Reserve Inspector who found that he was below the minimum height accepted for the police and rejected his application. On this the accused tendered a five rupee note to the officer in the hope that the officer would reconsider his decision and make a report to the District Superintendent of Police to that effect. The officer had the man charged. But it was held that the officer having become functus officio could not show any favour to the accused and, therefore, the accused could not be guilty of abetment of an offence Under Section 161.

In the case of 'Rahimullah v. Emperor (C)', it was held that

No offence Under Section 161 is committed where the public servant to whom the bribe is offered is at the time when the offer is made functus officio as to the matter in respect of which the bribe is offered.

Reliance was placed in this last mentioned case on Calcutta and Madras cases referred to above. Therein the accused was charged for offering unlawful gratification to the Inspector with a view that he should show undue favour to a

friend oi the accused against whom a case Under Section 381, Penal Code, was in process of investigation, Before the offer was made, the order had already been made in favour of the friend of the accused ,and the case had been dropped. Under those circumstances, it was held that the Inspector had no power to show any favour to the accused at the time the offer was made.

10. Coming to the rulings relied upon by the learned Counsel for the State in the case of 'Ram Sewak v. Emperor (H)', referred to above, the accused had obtained a ration card on the basis of an inquiry form for himself and for other members of his family. It was found by an Inquiry Inspector of the Supply Department that the accused was drawing a ration in excess of that to which he was entitled to and therefore he made a report to the Senior Inspector in the same department. The Senior Inspector made a report against the accused to the Town Rationing Officer on 15-8-1945 and, on the same date, after the report had been made, the accused attempted to bribe the Senior Inspector. Reliance was placed by the accused on the rulings of Calcutta and Madras High Courts mentioned above, but Mulla J., did not find himself in agreement with those rulings and held that even though the Senior Inspector had already made a report before the bribe was offered, the accused was guilty of abetment of an offence Under Section 161, Penal Code.

In the case of the 'State v. Sadhu Charan Pani-grahi (J), referred to above, it was held that

the fact that the public servant is functus officio when money is offered to him as a bribe would not by itself and as a matter of law, be sufficient to negative the offence Under Section 161.

It was further observed that

the gist of the offence clearly is not that there was at the time an official act to be procured capable of being, performed by the taker of the bribe or by another public servant with whom he is intended to exercise his influence, but that the Extra legal gratification is obtained as a motive or reward for doing official acts, that is, for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official act itself, or in its

being capable of performance but on the nature of the act as being official. This is meant to exclude from its purview acts which were totally unconnected with any official conduct and which may be attributable purely to the private capacity of the bribe taker or of the other public servant. The emphasis is on the gratification offered being a motive or reward for official conduct (inclusive of that which is believed) or held out to be so.

Further, the connection between the money and the act sought to be procuring such act must be clearly established either by direct or circumstantial evidence. Illustration C to Section 161 clearly shows that the inducing of the belief by the taker of the bribe would be quite enough to bring the case within the purview of Section 161 so long as the achievement contemplated is an act of official character if the bribe is a motive or reward for the same. Similarly, the belief in the giver of the bribe would be enough to bring the case Under Section 161/116.

In that case of course the accused was acquitted, but it was because it was held that it was not established that the accused offered money for any favourable orders by the Registrar in his official capacity. The cases discussed above were considered by their Lordships of the Supreme Court in the case of - 'Mahadev Dhanappa v. State of Bombay (K) With reference to the case of 'Shamsul Huq v. Emperor (A)', and 'Venkatarama Naidu v. Emperor (B)', referred to above, their Lordships observed that the question of law was not fully discussed and the reasons in support of the conclusions arrived at were not clear or convincing,

With reference to the cases of 'Ram Sewak v. Emperor (H), and 'State v. Sadhucharan Pam'grahi (J), referred to above and other case where a similar view was taken, their Lordships observed that the point of law appears to have been more fully discussed in these cases and the reasonings set out therein appeared to their Lordships as at that time advised to be more convincing than those set out in Calcutta and Madras cases referred to above. Their Lordships however, did not consider it necessary to express any definite opinion whether the fact that the officer to whom the bribe was offered had become functus officio took the act of the accused out of the ambit of Section 165A, because in that case it was held that the officer in question had not become functus officio. Their observations all the

same are entitled to great weight.

11. I have read all the above cases carefully and to my mind, the reasons given by Mulla J,, in the case of 'Ram Sewak v. Emperor (H)', and Jagannadhadas and Panigrahi, JJ. in the case of 'State v. Sadhucharan Panigrahi (J), referred to above on behalf of the prosecution are much more convincing than the reasons given in the cases cited on behalf of the appellant. Illustration C to Section 161 reads as follows :

A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

This illustration as observed by Jagannadhadas and Panigrahi JJ., shows that the inducing of the belief by the taker of the bribe would be quite enough to bring the accused within the purview of Section 161 so long as the achievement contemplated is an act of official'character if the bribe is a motive or reward for the same.

Similarly, the belief in the giver of the bribe would be enough to bring the case Under Section 161/116. If the view taken by the Madias and Calcutta High Courts and Peshawar Judicial Commissioner's court taken in the rulings relied on by the learned Counsel for the appellant be taken to be correct, then as observed by Mulla J. in the case of 'Ram Sewak v. Emperor (H)', a public officer can accept with impunity illegal gratification after an act had been done in favour of particular person. I am therefore, not agreeable with the view that if a public servant accepts or is offered bribe after he has passed a particular order, no offence of accepting illegal gratification or offering illegal gratification is established It is however, necessary that it should be proved that the offer was made to the public servant for the purpose of getting an official act done by him.

12. Coming to the next argument of the learn-ed counsel for the appellant that the mere fact of the appellant asking the Sub-Divisional Magistrate to take something from him and make an order in his favour was not sufficient to constitute an offence of attempt to pay bribe to the Sub-Divisional Magistrate. I hold that it was

not necessary that the appellant should have placed the cash which he wanted to pay to the Sub-Divisional Magistrate before the latter. It was enough that the appellant had money in his pocket and after requesting the Sub-Divisional Magistrate to take something from him for making a favourable order, he put his hand in his pocket to take out his money bag which was not empty and contained a sum of Rs. 30/12/-.

In the case of 'Rameshwar Singh v. Emperor (E), quoted above, it was held

A mere offer to pay an illegal gratification to a public servant, although no money or other consideration is actually produced, amounts to an attempt to bribe.

In that case, the accused asked the complainant whether he had in his possession the police diaries which referred to what was known as the Shah-kund murder case which was then before long to be tried, and on the complainant stating that these diaries were in his possession, the accused stated that if it was possible for the complainant to supply him with copies of these diaries he was willing to pay a bribe of Rs. 3000/- for copies of these papers. No money was actually produced before the Sub-Inspector but it was held that the offer in the circumstances of the case was quite sufficient to make out a case of abetment of an offence under S, 161 against the accused.

In the case of 'Ramchandriah v. Emperor (F)', decided by the Madras High Court quoted above, it was held that

to constitute an offence Under Section 161, a firm offer to pay money being sufficient, it is not necessary that the illegal gratification should actually have been produced, nor is it essential that the person to whom the firm offer was made should have accepted it.

In that case the accused informed the manager of the Municipal office that if he used his influence with the Chairman and Councillors to secure the contract for a particular person he would get Rs. 200/- from that person or if not from him, then from himself. It was held that the fact that the money was not actually produced, did not take out the case from the ambit of abetment of an offence Under Section

161.

13. Taking up another argument of the learned Counsel for the appellant that it was not within the power of the Sub-Divisional Magistrate to order the police to assist the appellant as requested by him in the first instance, it cannot be said that the Magistrate had no power to order the police to assist the appellant. He could have taken action Under Section 145, Criminal P. C, or Section 107, Criminal P. C. and could have ordered the police to attach the property to safeguard the appellant before the decision of the ease. Simply because the Sub-Divisional Magistrate considered that the application was not made under any particular provision of law and made an order that the application be Sled does not show that he could not have taken any action favourably to the appellant if he had not been simply led away by the omission to state any provision of law in the application under which action was required.

Even supposing however, that the Sub-Divisional Magistrate had no power to assist the appellant, the question is not what the Sub-Divisional Magistrate could have done but the question is what the appellant wanted him to do. The appellant certainly wanted that the Sub-Divisional Magistrate in [his official capacity should assist him and for that he made an offer to pay him some cash. It was fbeld in the case of 'Emperor v. Phulsingh (G), cited above that

section 161 does not require that the public servant must in fact be in a position to do the official act, favour or service at the time.

It was held that

illustration (c) to the section shows that even if a person offers gratification to a public servant by way of reward for services which in fact were never rendered by him, he would still be guilty of the offence Under Section 181. The heinousness of the act obviously lies in the intention of the bribe-giver to corrupt the public servant and the act does not become any the less heinous merely because the public servant does not happen to possess the necessary power to do the required favour or service.

In the case of 'Indur Dayaldas v. State of Bombay (I)', also quoted above it was held that

Section 161 does not require that the public servant must himself have the power or must himself be in a position to perform the act or show favour or disfavour, for doing or slowing which the bribe has been paid to him. From the last explanation to the section it i3 clear that it is ful necessary in order to constitute an offence Under Section 101 that the act for doing which the Drifoe Is given should actually be performed. It is sufficient if a representation is made that it has been or that it will he performed and a public servant, who obtains a bribe by making such representation, will be guilty of the offence punishable under this section, even if he had or has no intention to perform and has not performed or does not actually perform that act. A representation by a person that he has done or that he , will do an act impliedly includes a representation that it was or is within his power to do that act.

14. It is quite clear in this case that the Sub-Divisional Magistrate was a public servant. It is also quite clear that the appellant moved the public authorities to assist him in the cultivation of his field. He, therefore, moved the authorities with the clear intention that he should obtain an order from them in his favour. While requesting the Magistrate to accept something from him he put Jus hand in his pocket to take out his money hag. Thus, he clearly attempted to give illegal gratification to the Sub-Divisional Magistrate. The fact that the Magistrate had already passed an order against him is not material as has been shown above. In the first instance the order passed by the Magistrate was not such an order which he could not reconsider or could not review but even if he could not, the appellant made an offer under the impression that the Magistrate could still pass an order in his favour.

The offer made by him was quite firm because he not only asked the Magistrate to accept something from him, but put his hand in his pocket and tried to take oat the money bag. It may be that by the action of the Magistrate he was prevented from placing any cash actually before the Magistrate, but it does not affect the matter. The appellant was clearly guilty of an offence Under Section 165A, Penal Code.

15. The only question remains whether the sentence should be reduced. To my mind the appellant in his rustic simplicity did not know the full consequences and implications of his act. This is clear from the fact that he asked the Magistrate to accept something publicly in open court. It would, therefore, not be proper to treat him in the matter of punishment in the same way as is necessary in the case of those bribe-givers who deliberately want to corrupt public officials in order to gain their ends. The appellant has been in jail for sometime after his conviction and I therefore, consider it proper to reduce the term of his imprisonment to that already undergone. At the same time, I consider it proper to increase the amount of fine to Rs. 100/-.

16. The appeal is partly allowed, the conviction is maintained, but the sentence of imprisonment is reduced to that already undergone. Instead, the fine of Rs. 30/- increased to a fine of Rs, 100/-. The appellant is on bail and need not surrender to it under the circumstances of the case. He is given one month's time to pay the fine or the balance of fine, if he has already paid the fine imposed upon him by lower courts. In default or pavment of flnp within the period allowed, he shall undergo two months rigorous imprisonment.