

The State Vs. Ram Prasad

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Court : Rajasthan

Decided On : Sep-25-1957

Reported in : AIR1958Raj184; 1958CriLJ971

Judge : K.L. Bapna and; D.M. Bhandari, JJ.

Acts : Criminal Law (Amendment) Act, 1952 - Sections 6; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 1 and 526

Appeal No. : Criminal Ref. No. 62 of 1957 and Cri. Transfer Appln. No. 57 of 1957

Appellant : The State

Respondent : Ram Prasad

Advocate for Def. : P.N. Datt, Adv.

Advocate for Pet/Ap. : C.B. Bhargava, Dy. Govt. Adv.

Judgement :

K.L. Bapna, J.

1. These two matters arise out of the prosecution of one Ram Prasad for an offence under Section 161, Penal Code read with Section 5 (2), Prevention of Corruption Act, 1947.

2. Ram Prasad was the correspondence clerk in the office of the Station Master, Kotah Railway Station. Shanker Lal made a complaint on 9-10-1956, to the Officer-in-charge, Anti-Corruption Branch, Rajasthan State, at Kotah that the accused Ram Prasad was demanding a sum of Rs. 10/- in order to issue a memo to appear at a test before the Traffic Inspector, Kotah, for being placed on the list of candidates approved for employment off and on in Class IV Service. The trap was organised by Sardar Bishakha Singh, Deputy Superintendent of Police, Rajasthan, and it was alleged that the trap was successful, and the accused was caught red-handed. The case was transferred later on to the Special Police Establishment, Jaipur, on the ground that the accused was a Central Government employee working in the Railway. Mr. A. R. Khan, Superintendent of Special Police Establishment, Jaipur, put up a challan in the Court of Special Judge at Jaipur. The accused made an application that the Special Judge at Jaipur had no jurisdiction to try the case, as the alleged occurrence took place at Kotah within the jurisdiction of the Special Judge, Kotah. It was mentioned that the trap was laid by the Rajasthan Police and the investigation was also conducted by that police, and the applicant suffered great hardship if his case was tried at Jaipur. The learned Special Judge, Jaipur, made a reference on the 18th of May, 1957, for decision whether he had jurisdiction. It was mentioned that the main part of the investigation was conducted by the Rajasthan State Police, and the special jurisdiction conferred on the Sessions Judge, Jaipur City, by Notification No. F. 2 (9) Jud/52, dated 18th November 1955, appointing the Sessions Judge of Jaipur City to be Special Judge also for the trial of all cases investigated by the Delhi Special Police Establishment involving offences punishable under Sections 161 or 165 or 165A of the Indian Penal Code or Section 5 (2) of the Prevention of Corruption Act, 1947 (Central Act No. II of 1947) with jurisdiction over the whole State of Rajasthan appeared to him to be doubtful. The learned Special Judge has accordingly referred the case to this Court for decision on the question of jurisdiction. The reference case is No. 82 of 1957.

3. The accused Ram Prasad has also moved an application for transfer of the case from the Court of the Special Judge, Jaipur City, to Special Judge, Kotah. This is petition No. 57 of 1957.

4. The learned Deputy Government Advocate who appeared for the State has urged that the case investigated by the Special Police Establishment can only be presented to the Court of Special Judge, Jaipur, and that the Government notification in this behalf supersedes the jurisdiction of other Special Judges elsewhere.

5. Section 6 of the Criminal Law Amendment Act, 1952, (Act XLVI of 1952) authorised the State Government by notification in the Official Gazette, to appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences :

(a) an offence punishable under Section 161, Section 165 or Section 165A of the Indian Penal Code, or sub-s. (2) of Section 5 of the Prevention of Corruption Act, 1947;

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a).

6. The first Notification is dated 26th August 1952, and is as follows :

'In exercise of the powers conferred by Section 6 of the Criminal Law Amendment Act, 1952 (No. XLVI of 1952), the Government of Rajasthan is pleased to appoint all the Sessions Judges and Additional Sessions Judges in Rajasthan, in virtue of their office, to be Special Judges within their respective jurisdiction for the purposes of the said Act'.

7. The second Notification is dated 18th November 1955, and is as follows :

'In exercise of the powers conferred by Section 6 of the Criminal Law (Amendment) Act, 1952 (Central Act XLVI of 1952) and in partial modification No. F. 2 (9) Jud./52 dated the 26th August 1952, the Government of Rajasthan is pleased to appoint the Sessions Judge, Jaipur City, to be Special Judge also for the trial of all cases investigated by the Delhi Special Police Establishment involving offences punishable under Sections 161 or 165 or 165A, of the Indian Penal Code or Section 5 (2) of the Prevention of Corruption Act, 1947 (Central Act II of 1947) with jurisdiction over the whole state of Rajasthan.'

8. The use of the word 'also' in the second notification, indicates that the Sessions Judge, Jaipur City, has been appointed Special Judge in addition to the other Special Judges already appointed. The jurisdiction of the Special Judge, Jaipur City, in respect of cases beyond his local jurisdiction is, however, restricted to the cases of the Delhi Special Police Establishment. The contention of the learned Deputy Government Advocate that the Special Judge, Jaipur, was the only Special Judge who could deal with the case is not correct.

9. The next point for consideration is whether in the particular case the Special Judge, Jaipur City, had jurisdiction. The challan is mentioned to have been presented by the Superintendent of Police, Special Police Establishment, Jaipur. The learned Deputy Government Advocate explained that the Special Police Establishment mentioned was the Delhi Special Police Establishment. It is desirable in the case of formal documents where jurisdiction depends upon special circumstances that such circumstances should appear on the face of the record. It is hoped that the Superintendent of Police of the Special Police Establishment will keep this in view in challans that may be presented by him in future.

10. The main point raised by the learned Special Judge is that his jurisdiction is limited to cases investigated by the Delhi Police Establishment. In the present case, he has found that the main part of the investigation was conducted by the Rajasthan State Police. The challan mentions that after the trap had become successful, and the case was registered by the Rajasthan State Police, it was transferred to the Special Police Establishment, Jaipur (Branch of the Delhi Special Police Establishment). It is not mentioned in the challan what investigation was made by the Special Police Establishment, but the F. I. B. was recorded by the Delhi Special Police Establishment on 30-10-1956, and the sanction for the prosecution of the accused was obtained from the Divisional Operating Superintendent, Western Railway, Kotah, some time in February, 1957. The learned Deputy Government Advocate explains that certain witnesses were also examined by the Delhi Special Police Establishment, and thereafter the challan was presented. The later part of the investigation was thus completed by the Delhi Police Establishment, i In our opinion, the investigation by the Delhi Special - Police Establishment referred to in the notification of 18-11-1955, does not

necessarily mean the? investigation from A to Z, but even the later part of the investigation which may lead to the presentation of the challan would be sufficient. It is understandable that in many cases the assistance of the Delhi Special Police Establishment may be required after a certain stage of investigation has been reached by the Rajasthan State Police. What was intended by the Notification of 18-11-1955, appears to be that where the Delhi Special Police Establishment is employed to investigate and that branch of the police comes to the conclusion that a challan is to be presented, the Special Judge, Jaipur City, has jurisdiction to entertain such challan.

11. A contention was raised by learned counsel for the accused during the course of arguments before the learned Single Judge of this Court that the subsequent Notification of 18-11-1955, was not valid, and a reference has been made by the learned Single Judge for consideration of that question also. The contention is that Section 6 of the Criminal Law Amendment Act empowers the appointment of Special Judges for such area or areas as may be specified in the Notification. Section 7 (2) of the said Act says that--

'Every offence specified in Sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more special judges than one for such area, by such one of them as may be specified in this behalf by the State Government.'

It is urged that the area of jurisdiction of each Judge, in case of appointment of more than one Judge is to be specified. In the present case, it was urged that every Sessions Judge or Additional Sessions judge in Rajasthan has been made a Special Judge for the area within his jurisdiction. When the State of Rajasthan was thus divided into various areas and each area had a Special Judge, the appointment of the Special Judge, Jaipur City, for the whole of Rajasthan would be contrary to the previous notification whereby separate Special Judges for separate particular areas had been appointed. The stress laid is on area, and the contention is that where the State has already been divided into various areas, the Special Judge could only be for a particular area. The answer to these contentions is very simple. Section 6 authorises the State Government to appoint Special Judges for

such area or areas as may be specified in the notification. A Special Judge can, therefore, be appointed for any particular area or one for several areas. The second notification can be taken to be an appointment for several areas assuming that the State had been divided into several areas by the previous notification. The notification of 18th November, 1955, makes the Special Judge, Jaipur City, as a Special Judge in addition to the one who is already appointed for the various areas by the notification of 26th August, 1952. For Delhi Police Establishment cases there are two Special Judges, viz., (1) Special Judge of the place where the offence was committed and (2) Special Judge of Jaipur City.

12. A minor contention was raised that the Special Judge could be for an area or areas, but not by class of cases. As discussed above in respect of the offence committed at Kotah the case can be dealt with by two Special Judges, (1) the Special Judge, Kotah, and (2) the Special Judge, Jaipur City. Section 7 (2) authorises the State Government to specify the offence which can be tried by one or the other Special Judge in case there are more than one Special Judge for such area. It would have been quite in order if in the present case an order had been passed by the State Government that the present case be tried by the Special Judge, Jaipur City. The same result has been achieved by a general order that the cases investigated by the Delhi Special Police Establishment shall be tried by the Special Judge, Jaipur City.

13. Our answer, therefore, to the reference made by the learned Special Judge, Jaipur City, is that he had jurisdiction to entertain and try the case challaned by the Delhi Special Police Establishment against Ram Prasad on a charge under Section 161, I. P. C. read with Section 5 (2) of the Prevention of Corruption Act, 1947.

14. Now as to the application for transfer. The grounds submitted for transferring the case by the accused are that almost all the witnesses are residents of Kotah. The trap was also laid by the Rajasthan Police at Kotah, and a perusal of the challan shows that except for two witnesses, viz., Shri Raghubir Singh, Investigating Officer, Delhi Special Police Establishment, Jaipur, and Shankerlal, who is now residing at Mangalpura, Jhalawar, all the mine witnesses are of Kotah.

With respect to Shankerlal, Kotah is certainly nearer than Jaipur. The evidence of Raghbir Singh is bound to be only formal. In the circumstances the ends of justice will be better served if the trial takes place at Kotah. The accused was a clerk, and is under suspension. In the interests of justice, the case is transferred from the Court of Special Judge, Jaipur City, to the Court of Special Judge, Kotah.

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