Mithan Lal Vs. the State

Mithan Lal Vs. the State

SooperKanoon Citation : sooperkanoon.com/754128

Court : Rajasthan

Decided On : Apr-12-1967

Reported in : 1968CriLJ431

Judge : Kansingh, J.

Appellant : Mithan Lal

Respondent : The State

Judgement :

Kansingh, J.

1. Appellant Mithanlal who was convicted by the Special Judge, Gangapur, for an offence under Section 161, I.P.C. and sentenced to six months' rigorous imprisonment and a fine of Rs. 200/- and in default further rigorous imprisonment for three months by his judgment dated the 10th January, 1965, has lodged this appeal.

2. Accused Mithanlal was a Patwari in the Revenue Department and was posted at village Senka in the month of July, 1963. It was alleged against him that he demanded a bribe of Rs. 100/- fromone Kirori Mina of Santha who wanted to have certified copies of Khasra entries in connection with a suit instituted by one Mat. Sukli in the Court of the Munsiff, Hindaun. Hirori paid Rs. 50/- to the accused expressing his inability to produce Rs. 100/- at the time. He promised to pay the

balance on the following day. Kirori, however, did not want to pay this amount and accordingly he apprised Shri Bajpal singh, Deputy Superintendent of Police, Anti Corruption Department, Bharatpur, of the bribe that the accused had demanded from him.

The Deputy Superintendent of Police then devised a trap and initialed currency notes of the value of Bs. 50/- asked Kirori to give them to the accused if he demanded them. The numbers of the currency noted were note by the Deputy Superintendent of Police in a list in the presence of Motbirs. Kirori accompanied by the members of the raid party who remained at some distance then went to the house of the accused. While Kirori entered the room where the accused was sitting, the Motbirs and other members of the raid party kept outside the room.

Kirori then passed on the currency rotes to Mithanlal who took them into his hand and then put them into the pocket of his shirt and started preparing copies of the entries. Thereafter Kirori lighted a bidi which was the prearranged signal for the raid party. On receiving this signal, the raid party entered the room and the Deputy Superintendent recovered the currency notes that he had signed earlier from the person of the accused. After obtaining the sanction for prose-outing the accused from the Collector of Sawai Madhopur, a challan was put up against the accused in the Court of Special Judge, Gangapur. As to result of the trial, the accused was convicted and sentenced as mentioned at the outset.

8. From what immediately follows, it will not be necessary for me to refer to the evidence about the offence. Learned Counsel for the appellant has questioned the legality of the proceedings on the ground that the sanction for prosecution that h said to have been accorded by the Collector was not valid. The order of sanction that has been placed on the record is Ex. P. 4. It ran as follows:

Office of the Collector,Sawai Madhopur.No.... Dated....SANCTION FOR PROSECUTION

Whereas it has been reported to me that Shri Mithanlal, while functioning as Patwari Haloa Santha, Tehsil Mahwa, District Sawai Madhopur demanded and accepted Rs. 50/- on 9.7.63 at his residence from Shri Kirori s/o Teja Meena r/o

village Santha as brile for giving him copies of the Khaera Girdawari (Nakal Intakhal) in the name of Met. Sukhi, and that the said amount was obtained and accepted by the Bald shri Mithan Lal patwari by illegal means and by abusing his official position as a public servant, and the said amount so accepted by him as illegal gratification was also recovered from the possession of the said Shri Mithan Lal Patwari in the presence of motbire; and

Whereas from the perusal of the facts on record of case No. 68 of 1963 of C.P.S. Anti-Corruption Department, Jaipur, I am satisfied that there is a prima facie case against Shri Mithan Lal Patwari of committing offences under Section 161, I.P.C. and Section 5(1)(d)(2) of the Prevention of Corruption Act;

Now, therefore, in pursuance of Section 6 of the Prevention of Corruption Act, 1947, I.P.C. Joseph, Collector, Sawai Madhopnr, being the authority competent to remove Shri Mithanlal Patwari from service, do hereby accord sanction for prosecution of tba said Shri Mithan Lal Fatwari under Section 161, I.P.C. and under Section 5(1)(d)(2) of the Prevention of Corruption Act.

Sd/- D.C. Joseph,

Collector, Sawai Madhopur.

On the face of it, the sanction is all right and if the matter had stood at that, perhaps there' was very little that the learned Counsel for the appellant could urge. However, it appears that the Collector Mr. D.C. Joseph had appeared as a witness in the case as P.W. 3 and he has stated the circumstances which led him to accord the sanction. Se stated that on the 1st October, 1964, the day on which he issued the order of sanction for prosecuting the appellant Mi hanlal, he was Collector at Sawai Madhopur. He stated that the sanction was issued by him after the perusal of the factual report of the Anti-Corruption Department and after considering the same and on coming to the conclusion that there were grounds to believe that Mithanlal Patwari had accepted illegal gratification from Kirori.

He admitted in cross-examination that the factual report was received by him but he did not receive the statements of witnesses. The factual report that led the

Collector to issue the sanction was, however, not brought on the record. On the basis of the evidence given by the sanctioning authority in Court the learned Counsel submitted that the Collector had not seen the evidence in the case but be based his opinion only on the factual report that was put before him by the Anti-Corruption Department. According to learned counsel, it was the duty of the Collector to have satisfied himself that the evidence that was collected against the accused made out a prima facie case.

Learned Counsel further submitted that for coming to this conclusion it is the duty of the sanctioning authority to examine the matter without any bias in favour of the investigating agency and where this is lacking, the sanction is vitiated. Learned Counsel relied on State v. Hiranand : AIR 1958 MP2 , Budh Sagar v. State : AIR1961 All368 and State v. Nathi Lal 1957 All LJ 23 in support of his contention. Tue learned Government Advocate and shri H.N. kalla who argued the case on behalf of the State on the other band submitted that as the necessary facts constituting the offence were before the sanctioning authority and it had undoubtedly applied its mind and bad thereafter come to the conclusion that the sanction be accorded there remained no flaw in the sanction. The learned Counsel also submitted that the sanction that bas been brought on the record fully meets the requirements of law. The learned Counsel for the state placed reliance on Madan Mohan Singh v. state of Uttar Pradesh : AIR 1954 SC637 , Jaswant Singh v. state of Punjab : [1967]66ITR604(SC) and Jai Singh v. state of Rajasthan 1964 Raj LW 478.

4. The leading case about the form and the manner of according sanction is Gokulchand Dwarkadas v. The King AIR 1948 PC 82. Their Lordships of the Privy Council were dealing with an order of sanction which was required to be given for a prosecution for the contravention of the Cotton Cloth and Yarn (Control) Order, 1943. Clause 23 of the Control Order provided that a prosecution for the contravention of the Control could be launched only with the sanction of the competent authority. Their Lordships pointed out as to how the matter is to be dealt with by the sanctioning authority and what are the requirements of a valid sanction and how this has to be proved. Their Lordships observed as follows:

In order to comply with the provisions of Clause 23, it must be proved that be sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the fact should be referred to on the face of the sanction, but this is not essential since Clause 23 doe a not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their location. They are not concerned merely to see that the evidence discloses a prima facie cues against the person sought to be prosecuted. They can refuse fraction on any ground which commends itself to them, for example that on political or economic grounds they regard a prosecution as inexpedient. Where facts are not referred to on the face of the sanction nor is it proved by extraneous evidence that they were placed before the sanctioning authority, the sanction is invalid, and the trial court would not be a Court of competent jurisdiction. This being be the defect cannot be cured under Section 587, Criminal P.C., as a defect in the jurisdiction of the Court can never be cured under Section 637.

It will be clear from the above observations that the existence of a valid sanction, where sanction is required for prosecution under the law, is a condition precedent to the institution of the prosecution. Their Lordships also pointed out that the Government had an absolute discretion to grant or withhold their sanction. It is further necessary for the prosecution to prove that the necessary facts were placed before the sanctioning authority. Than their Lordships pointed out as to what the sanctioning authority is to see. In that connection, their Lordships observed that the sanctioning authorities are not concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted, but they can refuse sanction on any grounds which may appeal to them. Their Lord-ships pointed out by way of example that sanction could be refused where prosecution has thought it inexpedient on political or economic grounds.

5. The above observations of their Lordships, to my mind, clearly imply that it is undoubtedly necessary for the sanctioning authority to see that the evidence disclosed a prima facie case against the persons sought to be prosecuted.

6. The position has been clearly brought out further by their Lordships of the Supreme Court in : 1958 CriLJ265 (Supra). Their Lordships were dealing with a case under the Prevention of Corruption Act, 1947, and the question of sanction came to be considered because Section 6 of the Act required a sanction for prosecution. This is precisely the question before me. Their Lord-ships relied on Gokulchand's case AIR 1948 PC 82 (Supra) and observed as follows:

The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. It should be clear from the form of the sanction that the motioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the, prosecution and therefore unless the matter can be proved by further evidence, in the sanction Itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case.

In : AIR1961 All368 (supra) the learned Judges of the Supreme Court observed that the sanction for prosecution by the officer concerned under Section 6 should not be granted as a matter of routine merely on the request of the prosecuting authority. The learned Judges further added that the sanctioning authority should not take his decision in this respect lightly but he should realise that it is his duty to take a deliberate decision as to whether it is a fit ease for according sanction for prosecution.

7. In : AIR 1958 MP2 (supra), it was pointed out that the necessity of sanction has been provided for the protection of publisher vants who in the strict and impartial discharge of their duties may offend persons and create enemies. The court must, therefore, be satisfied that the sanctioning authority had before according the sanction applied its mind to the facts of the ease.

8. In Indu Bhusan Chatterjee v. State : AIR1955 Cal430 it was pointed out that where the sanctioning authority has merely followed the dictates of the investigating agency, the sanction is vitiated. The learned judges observed that the provision for sanction is a most salutary safeguard and the sanctioning authority is placed somewhat in the position of a sentinel at the door of the criminal courts in order that no irresponsible or malicious prosecution can pass the portals of the Court of Justice. The learned Judges pointed out that it was, therefore, essential that persons charged with the responsible duty of granting sanction which is a duty of deciding whether or not the credit and reputation of another citizen should be put in peril by means of a criminal prosecution should bring to the discharge of their duty a sense of responsibility and. the industry required to examine the relevant material.

9. In 1964 Raj LW 478 (supra), my learned brother Chhangani J. observed that in construing sanction the courts' approach must be realistic and should not be clouded by an over strict insistence on statement of facts with mathematical accuracy and logical precision. He also observed that a court should not expect a strict observance of very nice and subtle distinctions in the forma of expression. He, therefore, felt that variance in the statement of what is contained in the order of sanction and facts constituting the offence should not be over-emphasized. All that my learned brother meant was that we must not be over strict and should deal with the statements in the order of sanction in a realistic manner but in my view he never proceeded to lay down as to how the sanctioning authority is to be satisfied about the necessity of giving sanction for prosecution.

10. I need not deal with the other eases referred to by learned Counsel on either side as they deal with slightly different situations and are not quite helpful for appreciating the position in the present case.

11. As was submitted by the learned Counsel for the appellant, the prosecution had not placed on record the factual statement which bad persuaded the Collector to accord the sanction in the present case The learned Government Advocate made hat available to me at the time of the arguments. It is signed by the Deputy Superintendent of Police, Anti Corruption Department. It Beta out the facts of the

case briefly and then refers to the statements of the witnesses. A perusal of this factual report does not disclose that any effort was made to see what evidence would eventually be admissible and what would, not be admissible at the trial.

It mentions that the Patwari got puzzled and begged to be excused for his mistake. It also contains the gist of one Hari Ram Naib Tehsildar's statement to the effect that the conduct of the Patwari was doubtful. This shows that the investigating agency had placed only such data as was all mixed up. Some was receivable in evidence while the other was not so receivable in evidence. It is always desirable that whatever evidence is collected by the investigating agency is placed before the sanctioning authority so that the latter may be able to form its own opinion m an unbiased manner.

In the present case, the Collector has only confined his attention to what was stated in the factual report. As he did not have before him. the evidence that the investigating officer had collected, one is not sure that he would have held the same opinion if that evidence were present before him. What is necessary is that the sanctioning authority should be satisfied on the evidence collected by the investigating agency that there was a prima facie case against the accused as would warrant the grant of a sanction for prosecution. In view of what the Collector has himself stated as P.W. 8, I am not satisfied that he as the sanctioning authority had dealt with the matter properly in accordance with the view that has been taken in Gokul Chand's case AIR 1948 PC 82 (supra) and affirmed by their Lord-ships of the Supreme Court in : 1958 CriLJ265 (supra).

12. Accordingly I am of the opinion that the sanction to prosecute the appellant was not properly accorded with the result that the proceedings in the case stand vitiated.

13. In the result, I hereby accept this appeal, set aside the conviction of the accused and quash the proceedings taken against him. The accused shall stand discharged. He is on bail and his bail bond will stand cancelled.