

Makhan Lal Vs. State

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SooperKanoon Citation : sooperkanoon.com/754429

Court : Rajasthan

Decided On : Feb-26-1958

Reported in : AIR1959Raj214; 1959CriLJ1115

Judge : K.K. Sharma, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 6; [Constitution of India](#) - Article 311; Railways Establishment Code - Rule 1705

Appeal No. : Criminal Appeal No. 69 of 1957

Appellant : Makhan Lal

Respondent : State

Advocate for Def. : R.A. Gupta, Deputy Govt. Adv.

Advocate for Pet/Ap. : J.K. Mathur and; P.N. Dutt, Advs.

Disposition : Appeal allowed

Judgement :

K.K. Sharma, J.

1. This is an appeal by Makhan Lal, who has been convicted by the learned Special Judge, Jhalawar, under Section 161 I.P.C. and Section 5(2) of the Prevention of Corruption Act (hereinafter to be referred to as the Act). Under

Section 161, I.P.C. he has been sentenced to six months' rigorous imprisonment and under Section 5(2) of the Act, he has been sentenced to six months' rigorous imprisonment and a fine of Rs. 500/- or in default to further rigorous imprisonment for three months.

Both the substantive sentences of imprisonment have been made concurrent. This judgment of the learned Special Judge is dated the 25th of May 1957.

2. The appellant was the Station Master and posted at Jhalawar Road Railway Station of the Western Railway since the 1st of January 1954. The case of the prosecution is that he was in the habit of demanding bribe both from those who consigned the goods from Jhalawar Railway Station or whose goods were received at the said station. One Bhanwerlal Dalai, hereinafter to be referred to as the complainant, complained to the police authorities about this and on the request of the Police authorities, the Distt. Magistrate deputed Shri M. N. Kaul, Sub Divisional Magistrate, Jhalawar to go with the police party for the purpose of entrapping the appellant.

The party which consisted of Shri Ratan Singh, Deputy Superintendent of Police, Jhalawar, Shri M. N. Kaul, Sub Divisional Magistrate, Jhalawar, and the complainant, in the company of one Gouri Shanker, went to Jhalawar Road Railway Station in the morning of the 9th of March 1954. The complainant had produced 10 currency notes of Rs. 5/-each and four currency notes of Rs. 10/-each before Shri Kaul and their numbers had been taken down. The complainant was then asked to go to the appellant and offer the illegal gratification, Bhanwerlal went to the appellant in the company of Gouri Shanker and offered him illegal gratification demanded by the appellant, but he could not find time to pass on the currency notes to the appellant up till about 6 O'clock in the evening when the Down Dehra Dun Express was to arrive at Jhalawar Road Railway Station.

Near about that time, the complainant made over the fourteen currency notes mentioned above to the appellant, who put them in the ticket tube. A signal was given by the complainant and on this, the Deputy Superintendent of Police and Mr. Kaul rushed to the spot. The appellant was asked to produce the notes which he had accepted as illegal gratification. The appellant denied having received any

illegal gratification but when a threat was advanced that his person as well as the whole place would be searched, the appellant took out the fourteen currency notes in question from the ticket tube and produced them before Mr. Kaul.

3. A Recovery memo. (EX. P/8) was prepared by Mr. Kaul and the numbers of the currency notes in question were noted down therein. Those numbers tallied with the numbers of the currency notes which a little while before had been produced before Mr. Kaul by the complainant for the purpose of being passed on to the appellant). At that time also, a memo was prepared which is Ex. P/7 on the record of the case.

4. The appellant was arrested and sanction was obtained from the Regional Traffic Superintendent, Bombay for the prosecution of the appellant. That sanction is Ex. P/1 on the record. After further investigation, the case was laid before Special Judge, Jhalawar.

5. The prosecution examined the complainant Bhanwerlal (PW. 3), Shri Outh Chand, Chief Clerk, Establishment Section Regional Traffic Superintendent's office, Bombay (P W. 1), Shri M. N. Kaul (P.W. 2), Gouri Shanker (PW. 4), Ram Prakash Asstt. Station Master, Jhalawar Road (PW. 5), Shri C. D. Bhargava, Inspector, Special Police Establishment, Ajmer (P.W. 6), and Shri Ratan Singh, Deputy Superintendent, Special Police Establishment, Ajmer (P.W. 7). The prosecution also exhibited a number of documents, including the sanction (Ex. P/1), the memo, of the currency notes (Ex. P/7), their seizure memo. (Ex. P/8), and the report of the complainant (Ex. P/6).

6. The appellant denied the charge. He admitted that 14 currency notes in question had been made over to him by the complainant, but pleaded that they had been handed over to him as the railway fare for the purchase of two First Class railway tickets from Jhalawar Road to Delhi. In his defence, the appellant examined six witnesses, namely, (DW. 1) Shri Sohanlal Sharma, Station Master, Jhalawar Road, (DW 2) Shri Har Bans Lal, Relieving Asstt. Station Master, Jhalawar Road, (DW 3) Jata Shanker, (DW 4) Govindlal, (DW 5) Dhanna Pointsman, Jhalawar Road Station and (DW 6) Shri Purushottam, whose 31 bags of Dhania were consigned on the date in question, i.e., the 8th of March 1954 and

about which part of the illegal gratification is said to have been demanded.

7. Learned Special Judge, by his judgment dated the 25th of May 1957, found that the appellant had received the fourteen currency notes as illegal gratification from the complainant and consequently, convicted and sentenced him as mentioned above.

8. The appellant has come in appeal to this court.

9. The first question that has been canvassed by Shri P. N. Datt, on behalf of the appellant is that the sanction for the prosecution of the appellant was invalid inasmuch as it was not given by the authority, which was empowered to remove him from service. It was argued that under Section 6 of the Act, no court can take cognizance of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or under Sub-section (2) of Section 5 of the Act, alleged to have been committed by a public servant, except with the previous sanction, in the case of a person, who is employed in connection with the affairs of the Union and is not removable from his office, save by or with the sanction of the Central Government or some higher authority of the Central Government and in the case of any other person of the authority competent to remove him from his office.

It was argued that the appellant could be prosecuted for an offence under Section 161 or Sub-section (2) of Section 5 of the Act only with the previous sanction of the authority competent to remove him from his office. It was argued that the authority competent to remove the appellant from his office was the Central Government, or in any case, the General Manager of the Western Railway. As the sanction for prosecution was neither given by the Central Govt. nor by the General Manager of the Western Railway, but by the Regional Traffic Superintendent of Bombay Region, who was not competent to remove the appellant from his office, the sanction was invalid and the prosecution was in consequence bad.

Mr. Dutt referred to Rules 1704 and 1705 of the Indian Railways Establishment Code, Vol. I (1951 Edition), in order to show that no railway servant could be removed or dismissed by an authority lower than that by which he was appointed to the post held by him substantively. It was argued that previous to 1st of January

1942, the B.B. and C.I. Railway, which is now called Western Railway was managed by the B.B. and C.I. Railway company. From the 1st January 1942, the management was taken over by the Government of India.

At that time, heads of departments were requested to make or arrange to make through their Distt. Officers a formal offer of service under the Government, on the terms appended to each member of the permanent staff employed in their respective departments on the form sub-joined. These forms were accordingly served on each employee of the erstwhile B. B. and C.I. Railway by the head of the department or the District Officer and he was asked to accept the offer if he so chose. The offer was accepted by the appellant and thereafter he was taken into Government service by the Government of India, or at any rate by the General Manager of the B.B. and C.I. Railway, who had been authorised by the Government of India to make appointments in pursuance of the circular issued by the Government.

It was argued that as the appointing authority was at least the General Manager, it was he who could remove the appellant from his office and it was not within the power of the Regional Traffic Superintendent to remove the appellant from his office, in order to show that the Regional Traffic Superintendent was not the Head of the Department. Shri Dutt relied upon Appendix XXXVIII, on page 242 of the Indian Railways Establishment Code, Vol. II Second Reprint 1951.

10. It was argued that the same language which finds place in Clause (c) of Rule 1705 of the Indian Railways Establishment Code, hereinafter to be referred to as the Establishment Code, finds place in Article 311 of the [Constitution of India](#), and also in Appendix 'A' of the Western Railway Discipline and Appeal Rules, Reprint of 1951, at page 51.

11. Learned counsel relied upon a ruling of Bombay High Court and another of Allahabad High Court in order to show that no officer inferior to the General Manager of the railway in the circumstances like those present in this case, could remove a class III railway employee from his office. The ruling of the Bombay High Court is reported in the case of Mohanlal Keshavlal v. The State AIR 1956 Bom 504, and that of Allahabad High Court is in the case of Mohammed Matteen

Qidwai v. The Governor-General in Council AIR 1953 All 17.

12. On behalf of the State, it has been argued by Shri R. A. Gupta that when the management was in the hands of the B. B. and C. I. Railway Company, the District Traffic Superintendent had power to appoint a Class III Railway employee, and that the appellant, in fact, was appointed by the then District Traffic Superintendent of B. B. and C.I. Railway as a Signaller. Mr. Gupta also relied upon a ruling of a Single Judge of Allahabad High Court in the case of Ram Pukar Singh v. The state, AIR 1954 All 223, in order to show that the stage at which it is to be considered whether a valid sanction for prosecution under Section 161 has been given, is the stage when the cognizance is taken of the case. Once cognizance had been taken, the question of sanction becomes immaterial.

13. Arguments (have also been made, at length on the merits of the case, but before going into the merits, I would like to examine the question of the validity or the invalidity of the sanction, because if it is held that the sanction is bad, with due deference to the learned Single judge, who decided the Allahabad case of AIR 1954 All 223, to my mind, the conviction and sentence of the appellant, cannot be maintained. I, therefore, proceed to ex-mine the question whether the sanction in the present case is valid or invalid.

14. Section 6 of the Act so far as it is relevant to the present case, runs as follows:--

'No court shall take cognizance of an offence punishable under Section 161, Or Section 165 of the Indian Penal Code (XLV of 1860) or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction.

(a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government or some higher authority of the Central Government;

(b) In case of a person who is employed in connection with affairs of a State and is not removable from his office save by or with the sanction of the State

Government or some higher authority of the State Government;

(c) In the case of any other person, of the authority competent to remove him from his office.' * * * * *

The public servant in question cannot be prosecuted under Section 161 of the Indian Penal Code or Section 5(2) of the Act, except with the previous sanction of the authority competent to remove him from his office where the case does not come under Clause (a) and Clause (b) of Section 6(1). The present case does not fall in Clause (a) or Clause (b) but falls in Clause (c) and that is why it is necessary to examine whether previous sanction of the authority competent to remove him from his office has been given in the present case. The appellant was at first appointed as a Signaller in the B. B. and C. I. Railway by the order of the District Traffic Superintendent of the then B. B. and C. I. Railway company. That railway continued to be managed by the B. B. and C. I. Railway Company up to the 31st of December 1941. It was contemplated that the management of this railway would be taken over by the Government of India from the 1st Jan. 1942. The Agent and General Manager of the B. B. and C. I. Railway issued a circular No. 12/E/402/40 of 28/4/1941, in pursuance of the decision of the Government of India to take over the management of the B. B. and C. I. Railway. A copy of this circular is printed on Page 224, as Appendix 'N' of the Western Railway General Manager's office Manual, Vol. 1 of the B. B. and C. I. Railway, Abridged Edition (1953). In para. 2 of this circular, Heads of Departments have been requested to make themselves or through their District Officers, a formal offer of service under the Government on the terms appended, to each member of the permanent staff employed in their respective Departments, on the form subjoined. The form sub-joined runs, as follows:--

'No. Date ----- To,

I have been authorised by the Agent and General Manager, on behalf of the Government of India, to offer you re-employment under Government on and from the 1st Jan. 1942, from which date you will be treated as a State Railway servant, on the terms appended to the Agent and General Manager's Circular No. 12.E/402/40, dated the 28th April 1941, which is being widely circulated among the

staff. You are required to come to a decision as to whether you accept this offer, in which event you should please sign the sub-joined memo of acceptance and detach and return it to the undersigned within 30 days of the receipt of this letter.

Head of Department

Distt. Officer

Station -----

Date -----

To,

Re-employment of staff.

Your letter No.---- dated-----

I hereby accept your offer of re-employment on the B. B. and C. I. Railway under State management with effect from the 1st January 1942 on the terms appended to the Agent and General Manager's Circular No. 2/E/402/40, dated the 28th April 1941.

Signature of Employee-----

Designation-----'

The railway employees, who accepted the offer, were taken in Government service and like Others, it appears that, the appellant was also taken in the service of the Govt. of India. Now, according to the provisions of Article 311 of the Constitution, or for that matter those of Clause (a) of Rule 1705, (Page 179 of the Establishment Code, Vol. I of 1951), the appellant could be removed only by an authority who appointed him or who was superior to that authority and not by an authority lower than that by which he was appointed to the post held by him substantially. It has therefore, to be ex-mined as to by what authority the appellant's was appointed at the time when he was taken into Government service after taking over the management of the B. B. and C. I. Railway lay the

Government of India. As to what authority appointed him when the management was in the hands of the B. B. and C. I. Railway Company, is immaterial.

15. I am supported in this view by a ruling of a Division Bench of Allahabad High Court in the case of AIR 1953 All 17. In that case, the employee in question was first in the service of R. K. Railway and was appointed as a Sub Permanent Way Inspector by the Chief Engineer of that railway. Subsequently, with effect from the 1st of Jan. 1943, R. K. Railway and B. N. W. Railway were taken over by the state and for purposes of administration, they were combined into one railway called the O.T. Railway. The services of the employee in question as also of other employees were terminated from the midnight of 31/12/1942.

The employee was then given a new appointment in the O. T. Railway on the same post by the then General Manager of B. N. W. Railway and R. K. Railway on behalf of and under the authority of the Government of India. He was subsequently removed from service by an order dated the 20th of Dec. 1944 of the Chief Engineer of O. T. Railway with effect from the 3rd of February, 1945.

The employee brought a suit for a declaration that the order of his removal from service being in contravention of Section 240 (2), Government of India Act (corresponding to Article 311 of the [Constitution of India](#)), was void, illegal and ineffective and he was entitled to be regarded as continuing in his post. It was held that his appointment in the new set up was not by the Chief Engineer but by the General Manager on behalf of the Government of India and therefore, the Chief Engineer had no authority to remove him from service. The employee, who was the plaintiff, was on this finding given the declaration prayed for.

16. In the present case, no doubt the appointment of the appellant as Signaller was made by the District Traffic Superintendent when the management was in the hands of B. B. and C. I. Railway, Co., but before the management was taken over by the Government with effect from the 1st of January, 1942, a circular was issued by the General Manager of the then B. B. and C. I. Railway, in pursuance of the decision of the Government of India to offer the terms appended as in Appendix to the circular to the non-gazetted staff of the railway, who were to be offered re-employment under Government on and from the 1st January, 1942.

By para 2 of this circular, the General Manager requested Heads of Departments to make, or arrange to make through their District Officers, a formal offer of service under the Government on the terms appended to each member of the permanent staff employed in their respective departments, on the form sub-joined. This sub-joined form has been given above. The Head of the Department, or the District Officer was required to inform the former employees of the B. B. and C. I. Railway that he had been authorized by the Agent and General Manager on behalf of the Government of India to offer them re-employment under Government on and from the 1st of January, 1942, from which date, they would be treated as State Railway servants on the terms appended to the Agent and General Manager's Circular No. 2/E/402/40 of 28-4-1941.

They were required to come to a decision whether they accepted the offer and they were in-formed that in that event, they should sign the subjoined memo of acceptance, detach and return it to the Head of the Department, or the District Officer, as the case may be within 30 days of the receipt of that letter. In the sub-joined memo, the employees were to notify that they accepted the offer of re-employment on the B. B. and C. I. Railway under State management with effect from the 1st of January, 1942, on the terms appended to the Agent and General Manager's Circular No. 2/E/402/ 40, dated the 28th of April, 1941.

In this case, the memo, of acceptance by the appellant has not been filed but it is the case of both the parties that such an acceptance must have been given by him. The question remains whether his appointment was made by the Regional Traffic Superintendent, who has given sanction in this case, or by some officer equivalent or subordinate to the Regional Traffic Superintendent, because the sanction, would be valid only if the appointment was made by the Regional Traffic Superintendent, or an officer of equal or lower rank.

No material has been placed on the file of this case to show that the appointment of the appellant under the Government was made by the Regional Traffic Superintendent or an officer of equal or a lower rank. Mr. Gupta argued that in the absence of any material that the appointment of the appellant under the Government was made by an officer superior to the Regional Traffic

Superintendent, the sanction by the Regional Traffic Superintendent should be held to be valid.

I do not agree with this argument of Mr. Gupta. It is for the prosecution to show that valid sanction had been given, and it was, therefore, the duty of the prosecution to prove that the appellant was appointed under the Government of India by Regional Traffic Superintendent or an officer of equal rank or lower rank. It was held by their Lordships of the Supreme Court in the case of Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637, that the burden of proving that requisite sanction Under Section 6 (1) of the Prevention of Corruption Act has been obtained rests on the prosecution and their Lordships observed that such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based.

'Requisite sanction' means the sanction given by the authority authorised to give it under Section 6 (1) of the Act and such authority is no doubt the authority competent to remove the employee in question from his office, and by virtue of Article 311 of the [Constitution of India](#), and the Rule 1705 of the Establishment Code, Vol 1, (page 179), such an authority was the authority who had appointed the employee referred to above, to the post held by him substantively.

In order to prove the 'requisite sanction' in this case, it was necessary for the prosecution to prove that the appellant had been appointed by the authority which accorded sanction for his prosecution, or by an authority lower to it in rank. All that has been proved by the prosecution in this case is that the Regional Traffic Superintendent accorded sanction for the prosecution of the appellant, and that according to Serial No. 3 (on page 6) of the Western Railway Schedule of Powers, dated the 10th of October, 1933, the Regional Traffic Superintendent had been delegated powers to make initial appointments to all non-gazetted posts in their respective establishments.

It is true that after the issue of the said Schedule of Powers, the Regional Traffic Superintendent had powers of initial appointments to all non-gazetted posts in their respective establishments, but it does not mean that even before that, or at any rate, on the 1st of January, 1942 when the appellant was taken into

Government employment, the Regional Traffic Superintendent had such powers. On the other hand, it would appear from Rule 135, page 15, Vol. 1 of the Establishment Code that on Indian Railways, the General Manager had the powers to make first appointments to non-gazetted posts, and a lower authority could make such an appointment only when such power had been delegated to it. The Establishment Code is of the year 1951.

17. No schedule of Powers of the year 1951 or of an earlier date has been produced by the prosecution to show that even before the year 1953 when the Schedule of Powers of that year was issued, the Regional Traffic Superintendent had power to make appointment to non-gazetted posts. In fact, what the prosecution ought to have proved was that on the 1st of January, 1942, when the appellant was taken into Government Service, Regional Traffic Superintendent or an officer of equal or lower rank had been delegated such powers by the Government of India, because if any Schedule of Powers had been issued after that date, delegating such powers to other officers, it would not govern the present case.

From Appendix 'N', page 224, of the Western Railway General Manager's Office Manual, Vol. 1 of 1953. Abridged Edition, it appears that the Government of India had decided to offer the terms of re-employment to the Ex-B.B. and C.I. Railway employees through the Agent and General Manager of B. B. and C. I. Railway. It was the Agent and General Manager, who issued Circular No. 12/E/402/ 40 of the 28th of April, 1941 to the Heads of Departments to make, or arrange to make through their District Officers, a formal offer of service under the Government.

Simply because instead of making a formal offer of service himself, the then Agent and General Manager of the B. B. and C. I. Railway, asked the Heads -of Departments to make such offer either themselves or through their District Officers, it does not follow that the Heads of Departments or District Officers were authorised by the Government of India to appoint the ex-employees of the B. B. and C. I. Railway to service under the Government. The utmost that can be said is that the appointment was made by the Agent and General Manager. To my mind, therefore, the prosecution failed in this case to prove that a valid sanction under

Section 6(1) of the Act, had been given for the prosecution of the appellant.

18. I may now revert to the contention of the learned Deputy Government Advocate that the stage at which it had to be seen whether valid sanction had been given, was the stage when the case was taken cognizance of. As in the present case cognizance had been taken by the Special Judge, the question whether sanction was valid, could not be subsequently raised. For this, learned counsel has relied upon the ruling of the Allahabad High Court in the case of AIR 1954 All. 223, referred to above. There is no doubt that the said ruling supports the contention of the learned Deputy Government Advocate, but with due respect to the learned Judge, who decided that case, I find myself unable to subscribe to that view.

Under Section 6 of the Act, a safeguard has been afforded to the accused that he would not be prosecuted without the requisite sanction. Of course, the court at the time of taking cognizance of the case, ought to see whether such sanction had been given. But it is very difficult at that stage for the court to find out that the sanction is valid in all respects. If, therefore, the accused is to be barred from raising the question regarding the validity of the sanction when he appears in court in obedience to its process great injustice might be done to him. The law requires that there should be a valid sanction to prosecute the accused and the accused cannot be debarred from raising such a question when he appears before the court if he finds that no valid sanction has been given under Section 6. In the Bombay case of AIR 1956 Bom 504 referred to above, the conviction of the accused was set aside on the ground that no valid sanction had been obtained. Similarly, in the case of AIR 1954 SC 637, their Lordships of the Supreme Court examined the question of the validity of the sanction in an appeal against the order of conviction by the High Court. Their Lordships observed that an invalid sanction cannot confer jurisdiction upon the court to try the case. In the case of *Matajog Dobey. v. H. C. Bhari*, (S) AIR 1956 SC 44, it was held by their Lordships of the Supreme Court that--

'It is not always necessary that the need for sanction under Section 197 is to be considered as soon as the complaint is lodged and on the allegations therein

contained. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty, but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. "Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.'

19. In that case, the sanction which their Lordships were considering was the sanction under Section 197 of the Criminal Procedure Code but the wordings of Section 197 are similar to the wordings in Section 6(1) of the Act. Consequently, their Lordships' observations in Matajog's case (S) AIR 1956 SC 44 too have bearing in this case. These authorities go against the view of the learned Judge of Allahabad High Court who decided Ram Pukar Singh's case AIR 1954 All 223.

20. To my mind, no requisite sanction having been obtained in this case, the prosecution of the appellant was bad, and his conviction and sentence should, therefore, be set aside. In this view of the matter, it is not necessary for me to go into the merits of this case.

21. The appeal is allowed and the conviction and sentence are set aside. The appellant is on bail and he need not surrender in the circumstances of this case. Fine, if paid, shall be refunded.