

Mehmood Beg Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-10-1972

Reported in : 1973CriLJ806

Judge : L.S. Mehta, J.

Appellant : Mehmood Beg

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Nuruddin Ahmed

Judgement :

L.S. Mehta, J.

1. Mr. Ugamrai Bhan-dari was posted as Additional Sessions Judge. Banswara. on October 6, 1969. Prior to that he had been working as Additional Sessions Judge, Jhalawar. At Jhalawar he had been trying case No. 101/1968 (criminal). State v. Ctiaatra Mehmood Beg and Ors. under Section 302/109. I.P.C. That case could not be finalised at Jhalawar prior to Mr. Bhandari's transfer. He had, however, heard a part of arguments in that case on October 23. 1969. Thereafter the case had been fixed for hearing the arguments left over on October 28, 1969. On October 23. 1969. Mr. Bhandari went away from Jhalawar to Banswara. The prosecution story is that on October 26, 1969. appellant Mohmood Beg. resident of Cherdia, District Kota. went to the bungalow of Mr. Bhandari at Banswara at 11.45 A.M. There he

first contacted Mr. Bhandari's son. Mr. Om Prakash (aged 18 years). He asked him as to where his brother Vilava was, Mr. Om Prakash told him that he was not in his house. Thereafter Mehmood Beg asked Mr. Om Prakash to arrange his meeting with Mr. Bhandari. He was allowed to enter the room in which Mr. Bhandari was sitting on a cot. Mr. Om Prakash also followed the accused. Mehmood Beg at first paid respects to Mr. Bhandari, he sat on the floor and started talking to the Additional Sessions Judge about his case. Soon after the appellant took out a bundle of currency notes, wrapped in a plastic cover, and offered the same to Mr. Bhandari as a bribe in the presence of Mr. Om Prakash, Mr. Bhandari having smelt bad intention on the part of the appellant fact up from the cot and after going aside he in a low tone asked his son Mr. Om Prakash to call the Station House Officer. Police Station. Banswara. Mr. Om Prakash telephoned to the Station House Officer, but he was not available at the Police Station. Thereafter Mr. Om Prakash tried to contact Deputy Superintendent of Police. Banswara. but he too was not present at the head quarters. Mr. Bhandari then wrote a report and gave it to Mr. Om Prakash to fair it out. Mr. Om Prakash did so. Thereafter he at the instance of his father gave that report to the Superintendent of Police Mr. Shvam Pratap Singh Rathore (P. W. 5) at his residence. The report is marked Ex. P/1. On this communication the Superintendent of Police reached Mr. Bhandari's residence. He saw Mehmood Beg sitting in Mr. Bhandari's room. The document Ex. P/1 was sent that very day at about 12.30 P.M. by the Superintendent of Police to P. W. 6 Metal Head Constable, in-charge-Police Station. Banswara. through his driver. On receipt of the first information report Jeetmal. after having obtained sanction (Ex. P/4) for undertaking investigation in the case from the Sub-Divisional Magistrate. Banswara, arrived at the spot along with some police constables. He seized the currency notes, wrapped in a plastic cover and lying on the Judge's cot. The currency notes were of the following denominations:

(a) 9 currency notes of Rs. 100/- each;

(b) 9 currency notes of Rs. 10/- each;

(c) 2 currency notes of Rs. 5/- each. A seizure memo was prepared on the spot and is marked Ex. P/2. Jeet Mal also prepared site inspection note Exhibit P/3, site

plan Exhibit P/4 and arrest memo of the accused Exhibit P/5. After bringing to an end the investigation, the police presented a challan in the Court of Special Judge. Banswara. Learned Judge charged the accused under Sections 165A and 214, I.P.C. to which he pleaded not guilty. In support of its case the prosecution examined six witnesses. In his statement recorded under Section 342. Cr.P.C. the accused deposed that his sister, wife of Kudrat Ullah Khan, lived in the Mahi Colony, Banswara. He wanted to invite her at his house on Shabraat festival. On October 26. 1969. he went to Banswara. Abdul Geni was also with him. He saw Mr. Ugamrai Bhandari's residence on the road side. Abdul Gani wanted to meet him. He kept waiting outside Mr. Bhandari's bungalow. As soon as Mr. Bhandari saw him. he called him inside his house. As some enquiry was going on against Mr. Bhandari at Jhalawar. he asked him as to what the actual position of his case was and sought, his assistance in connection with influencing Advocate Mr. Thawar Das. After some time the police arrived at the spot. He in his defence produced Kudarat Ullah Khan (D. W. 1). The trial court by its judgment. dated September 24. 1970, found accused Mehmood Beg guilty under Section 165A, I.P.C and sentenced him to six months' rigorous imprisonment. The currency notes Ex. 1 to Ex. 20 were ordered to be confiscated to the State.

2. Aggrieved by the above verdict. Mehmood Beg has taken the present appeal. By Section 3. Prevention of Corruption Act. offence under Section 165A was declared to be a cognizable offence. Section 5-A of the Act provides that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under Section 165A I.P.C. without the order of a Magistrate of the First Class, Learned Counsel for the appellant submitted that P. W. 6 Jeet Mal. Police Head Constable. Banswara, had no power to investigate the case. The sanction, which he had obtained from the Sub-Divisional Magistrate. Banswara. is not of any consequence, as the full facts of the case had not been brought to his notice. In this connection it may be stated that from the evidence of P. W. 1 Mr. Ugam Rai Bhandari. P. W. 2 Mr. Om Prakash and P. W. 5 Mr. Shyam Pratap Singh Rathore, Superintendent of Police. Banswara. it is evident that neither Deputy Superintendent of Police nor Station House Officer. Police Station Banswara. was available at the headquarters. The matter being urgent. Head Constable Jeet Mal approached the Sub-Divisional Magistrate and submitted to

him a report Ex. P/6. stating therein that as his senior officer was not available and as he was not authorized to investigate the case and he being incharge of the Police Station then, permission should be accorded to him to register the case and take over its investigation. On this report the Sub-Divisional Magistrate. Banswara, passed the following order.-

Let investigation be taken in hand and case registered against the accused, if found guilty.

After having obtained the above authoritative approval from the Sub-Divisional Magistrate. Banswara. Head Constable took over investigation. In view of such an order illegality of the investigation is not liable to any objection at all. The Magistrate under the circumstances mentioned in the report got himself satisfied that there existed good and sufficient reason for authorizing Jeet Mal. an officer of a lower rank, to conduct the investigation. It cannot be said that the Magistrate accorded permission as a mere matter of routine, but he did so in exercise of sound judicial discretion. The sanction, therefore, is valid: vide Para. 10 H.N. Rishbud v. State of Delhi : 1955 CriLJ526 .

3. Apart from what has been said above, it may be stated that the attention of the Court was not drawn to any illegality in the permission at an early stage of the trial. Had any breach, if any been brought to the notice of the court at an early stage of the trial, the Court could have considered the nature and extent of the violation and passed appropriate order for such investigation as might be called for and by such officer, as it considered appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act. Where the cognizance of the case had already been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice has been caused thereby. In other words, if cognizance has in fact been taken on a police report, vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it, cannot be set aside unless illegality in the investigation brought about a miscarriage of justice. As has been observed by their Lordships of the Privy Council in Lumbhardar Jutshi v. King. AIR 1950 PC 26 : 51 Cri LJ 644 a fault in

procedure cannot deprive the Magistrate of his jurisdiction to try the accused. In this connection a reference is also made to Prabhu v. Emperor AIR 1944 PC 73 : 46 Cri LJ 119. Both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. In State of Uttar Pradesh v. Bhagwant Kishore Joshi : 1964 CriLJ140 it has been observed by his Lordship Subba Rao, J., that where the prosecution evidence has been held to be true and where the accused had full say in the matter, the conviction cannot obviously be set aside on the ground of some irregularity or illegality in the matter of investigation; there must be a sufficient nexus, either established or probalised, between the conviction and irregularity in the investigation. In Dr. M.C. Sulkunte v. State of Mysore : 1971 CriLJ519 it has been laid down by his Lordship Mitter, J. that to set aside the conviction it must be shown that there has been miscarriage of justice as a result of irregular investigation. In a recent decision reported in the State of Andhra Pradesh v. P.V. Naravana. : 1971 CriLJ676 his Lordship Sikri, C. J., held that.-

Illegal investigation by police prior to taking cognizance of offence does not vitiate either the trial or conviction unless miscarriage of justice has been caused thereby.

4. In this case it was distinctly mentioned by Jeet Mal in his report Ex. P/6 that as no senior officer was available at the police station, he should be accorded permission to investigate the case, specially under the circumstance that it was he alone who was at the moment incharge of the police station. These reasons, in my opinion, were sufficient to enable the Magistrate to give permission to Jeet Mal in accordance with the provisions of Section 5-A of the Prevention of Corruption Act, 1947. The accused also did not raise¹ any objection in regard to illegality in the investigation in the course of his trial nor has he shown any basis for raising an inference that he has been materially prejudiced because of the alleged illegality or irregularity in the investigation of the case. Keeping in view the above background, it is difficult to conclude that the conviction of the appellant cannot be maintained because the investigation had been carried by a police officer below the rank of a Deputy Superintendent of Police, as no prejudice has been shown to have been caused to the appellant.

5. It may also be mentioned here that investigation in this case was not solely conducted by the Head Constable Jeet Mal (P. W. 6), The first information report Ex. P/1 contains an endorsement of the Superintendent of Police, Banswara. The recovery memo Ex. P/2. the site inspection note Ex. P/3 and the site plan Ex. P/4 also bear the signatures of Mr. Shyam Pratap Singh Rathore, Superintendent of Police, These documents show that the investigation was conducted in his presence and collaboration.

6. The next point raised on behalf of the appellant is that the first information report Ex. P/1 does not contain all the details of the case, According to the statements of P. W. 1 Mr. Ugamrai Bhandari and P. W. 2 Mr. Dm Prakash. accused Mehmood Beg. counsel adds, came to the residence of the Judge with Abdul Gani but his name does not appear in the first information report. The first information report also does not narrate the fact of the arrival of the Superintendent of the Police on the spot, nor does it clarify whether the bundle of the currency notes was handed over to the Judge by the appellant or was kept under the pillow lying on the cot. The first information report is the information recorded under Section 154, Criminal P.C. It is an information given to police officer relating to the commission of a crime. It forms the basis of starting investigation. It can only be used to corroborate or contradict the evidence of the informant given in court or to impeach his credit. It follows that a Court cannot treat the first information report as a substantive evidence. It can only make use of it in one or other of the aforesaid Purposes. See *The State of Bombay v. Rusy Mistry* : AIR 1960 SC391 . Absence of the name of a particular witness in the report or want of details as to at what particular place the bundle of the currency notes was in fact put will not materially affect it. The major part of the story hangs together remarkably well in the document. In this connection a reference is made to *Abdul Gani v. State of Madhya Pradesh* : AIR 1954 SC31 . In that case it has been observed that.-

Though the first information report is not as full as it could be. it cannot be ignored altogether. It can be used to corroborate the statements of the eye witnesses.

7. A close perusal of the first information report (Ex. P/1) filed by Mr. Ugamrai Bhandari further shows that it gives the details as to how the accused first talked

to Mr. Bhandari's son. Then the accused entered the Judge's room and talked to him about his case pending in his court. Thereafter he took out a bundle of currency notes and offered the same to the Judge. Mr. Om Prakash was standing nearby. The accused then told Mr. Bhandari that it was a gift to his son and placed the bundle below his pillow. As the Superintendent of Police reached the spot after the first information report had already been given to him it was not expected of the informant to have visualized the details of the visit of the Superintendent. of Police at the site. In this view of the matter, I do not agree with the argument of learned Counsel for the appellant that the first information report incapacitates the persecution story as it stands.

8. Mr. Nuruddin Ahmed, counsel for the appellant, then pointed out that the most important witness in this case was Abdul Gani but he has not been examined. Adverse inference. therefore, by virtue of Section 114, Evidence Act be drawn against the prosecution. It is to be seen whether Abdul Gani was a very material witness in this case, P. W. 1 Mr. Ugamrai Bhandary says.-

This is wrong that Abdul Gani entered his room.

P. W. 2 Mr. Om Prakash states.-

I told my father that one more person accompanied Mehmood and that he was sitting in 'verandah'.

The Superintendent of Police Mr. Shyam Pratan Singh Rathore (P. W. 5) testifies.-

Abdul Gani was not in the room with the accused.

The investigating officer Jeet Mal (P. W. 6)(points out.-

A person namely Abdul Gani was sitting outside and not inside the room.

From the above evidence it is apparent that Abdul Gani was not present in the room in which the bundle of currency notes was offered by the appellant to Mr. Bhandari. It cannot, therefore, be said that Abdul Gani was an eye-witness and was a very material witness in this case.

9. That apart, it is a wrong idea that the prosecution must call witnesses irrespective of consideration of reliability or that it should discharge the function both of prosecution and defence. Witnesses essential to the unfolding of the narrative, on which the prosecution is based, must, of course, be called by the prosecution: See *Stephen Seneviratne v. King*. AIR 1936 PC 289 : 37 Cri LJ 963. It is also observed by his Lordship Dua J., in *Raghubir Singh v. State of U.P.* : 1971 CriLJ1468 that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced, without unnecessary and redundant multiplication of witnesses. Here Abdul Gani was obviously an associate or ally of Mehmood Beg. Apparently, therefore, the prosecution did not expect that his production would serve any useful purpose in its favour. Abdul Gani, as has been stated above, was not present at the time of the actual transaction. His evidence would, therefore, have hardly contributed to unfolding the main prosecution narrative. In the light of the above discussion, I do not agree with learned Counsel for the appellant that non-production of Abdul Gani in this case has impaired the prosecution version.

10. Lastly, counsel for the appellant brought to the notice of this Court some inconsistencies in the statement of P. W. 1 Mr. Ugarnrai Bhandari and P. W. 2 Mr. Om Prakash and urged that the two witnesses are wholly interested in implicating the accused, as Mr. Ugarnrai Bhandari had already been under suspension and a departmental enquiry had been in progress against him. Mr. Om Prakash (P. W. 2) says that he gave the first information report Ex. P/1 at his house. The Superintendent of Police Mr. Shyam Pratap Singh Rathore (P. W. 5). on the other hand, states that the first information report was given to him at his residence. These infirmities, counsel adds, are fatal.

11. Mr. Ugarnrai Bhandari. (P. W. 1) states that he sent Ex. P/1 to the Superintendent of Police. This is a mere lapse of memory on the part of Mr. Om Prakash by saying that he gave Ex. P/1 to the Superintendent of Police at his own house. This is a very minor contradiction, which hardly merits any notice. According to Mr. Ugarnrai the bundle of the currency notes was extended towards him by the accused and he did so in the presence of his son Mr. Om Prakash. The

witness further says that he did not take the notes in his hand, but they were kept by the accused below his pillow. Mr. Om Prakash (P. W. 2) deposes that the accused took out the bundle of the currency notes and he kept the same below his father's pillow. His father saw the bundle and found that it contained currency notes. This again is a very inconsequential inconsistency. From the statements of Dr. J.P. Verma. (P. W 4). P. W. 5 Mr. Shyam Pratap Singh Rathore. Superintendent of Police. Banswara. and Jeet Mal. Head Constable of Police (P. W. 6), the fact stands fully established that the bundle of the currency notes was found underneath the pillow of Mr. Bhandari. The two eyewitnesses also support this aspect of the story.

12. Learned Counsel then said that the Additional Sessions Judge Mr. Ugamrai was already under a very heavy cloud of suspicious character and an enquiry was in progress against him. He, therefore, manufactured this story with a view to create better climate for himself. I do not agree with this proposition. A question was put to Mr. Ugamrai in the course of his cross-examination on this score and his answer was that he has been under suspension since January 13. 1970. in connection with some departmental enquiry and charge of misconduct. The witness further says that he did not put the money below his pillow out of his own pocket to implicate the accused. He also says that up to the time of the occurrence enquiry did not commence against him. It is the admitted position of the parties that a case under Section 302/109 I.P.C. was pending against the accused in the Court of Additional Sessions Judge. Jhalawar Mr. Ugamrai Bhandari (P. W. 1). It is also an admitted fact that the raise awaited final arguments to be advanced on October 28. 1969. The accused also admits that he entered the house of the Additional Sessions Judge on October 26. 1969. It has also been proved to the hilt that the accused was found sitting in the room of Mr. Ugam Rai on the date of the occurrence by Mr. Shyam Pratap Singh Rathore. Superintendent of Police. Banswara (P. W, 5), Jeet Mal. Head Constable (P. W. 6) and Dr. J.P. Verma (P. W. 4). The various documents Ex. P/2. Ex. P/3. Ex. P/4, which were prepared on the spot by Jeet Mal (P. W. 6) bear signatures of the accused. What for the accused entered the bungalow of the Additional Sessions Judge has not been satisfactorily explained by him. A bundle of currency notes was found underneath the pillow of the Additional Sessions Judge not only by the Superintendent of

Police and the investigating officer Jeet Mal. but also by Dr. J.P. Verma (P. W. 4) a signatory of the recovery memo Ex. P/2. Why should the Additional Sessions Judge offer a sum of Rs. 1,000/- out of his own pocket in order to foist a crime on the accused remains unexplained. Such a story presents a look of disbelief.

13. Learned Counsel for the appellant vehemently urged that it was unnatural to accept the version that the accused kept sitting in the room of the Additional Sessions Judge even after he had come to know that the Additional Sessions Judge had already sent a message to the police authorities. It is plain from the statement of P. W. 1 Mr. Ugamrai that after the money had been offered to him and kept beneath his pillow, he took his son Mr. Om Prakash (P. W. 2) aside and in a low tone whispered into his ear to call a police official. That shows that the accused was kept unaware of the communication made by Mr. Bhandari to his son. It cannot therefore be said that the accused got a clue that the Addl. Sessions Judge was taking steps to intimate to the Police the facts of the incident. It is on account of this reason that the accused did not take to his heels soon after offering the money to the Additional Sessions Judge. The accused was kept engaged in gossips by P. W. 1 Mr. Ugamrai Bhandari. Besides, the accused is a rustic villager and foolhardy. He rushed into peril for lack of foresight. He took a deliberate chance with implication or calculated risk. His subsequent conduct cannot be said to be unnatural in the circumstances of the case.

14. The defence of the appellant is that he went to Banswara to call his sister, wife of Kudarat Ullah (D. W. 1). This defence is demolished by his own witness Kudarat Ullah. He says in his cross-examination that he had not received any prior intimation about the arrival of Mehmood Beg. The witness further says that there was no talk about the visit of the appellant at his house. He then states that he cannot say what the relation of the accused is with his father-in-law Chhotekhan. The witness deposes that the accused had never come to his house prior to this occurrence. The defence taken by the accused that he casually visited the house of the Additional Sessions Judge at Banswara. appears to me to be an after-thought.

15. Learned Counsel at the fag end of his arguments submitted that even if it was held that the accused was guilty of the crime of which he has been convicted, he should be given benefit of the Probation of Offenders Act. There is no doubt that the accused in this case made a daring attempt to corrupt a Judicial Officer like Additional Sessions Judge by inducing him to go out of his way to render illegal help to him by acquitting him in a murder case. An offence of this type has to be viewed as a grave crime calling for a deterrent sentence. The sentence of six months' rigorous imprisonment awarded to the appellant by the Special Judge, Banswara, can be characterized ridiculously meager. However, I have to deal with the sentence of his case as it stands, as the State has not chosen to move this Court for the enhancement of the same. In any case prayer for mercy in the circumstances of this case is knocked back.

16. In the result, this appeal having no force stands dismissed. The District Magistrate, Jhalawar, is directed to take necessary steps for the arrest of the accused Mehmood Beg and send him to jail to undergo the sentence awarded to him.