

Jethmal Kothari Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-30-1986

Reported in : 1987CriLJ764; 1986(1)WLN650

Judge : Guman Mal Lodha, J.

Appellant : Jethmal Kothari

Respondent : State of Rajasthan

Judgement :

Guman Mal Lodha, J.

1. The accused appellant, Jethmal Kothari, has filed this appeal against his conviction and sentence for the offence Under Section 165, I.P.C. The appellant was sentenced to pay a fine of Rs. 2,500/- in default of payment of fine, to undergo nine-months' rigorous imprisonment.

2. According to the prosecution, the occurrence took place on July 5, 1972; a report (Ex. P-I) was lodged at 4.15 p.m. by Yashwant Singh SHO (P.W. 1) before the Superintendent of Police, Bikaner stating inter alia that he was investigating a case No. 106/72 Under Sections 3/14 and 13/14 of the Foreigners Act at the police station Gangashahr. At about 4 p.m. the appellant who was co-accused in that case and a partner of the seized saffron worth Rs. 36,000/- came to the police station Gangashahr to plead the case of accused Vallabh Kumar for release.

3. It was further stated that Shiraz, a Pakistan Smuggler who had reached Bikaner was not to be arrested. The accused had given him offer of a sum of Rs. 10,000/- as bribe for hushing up the matter by the police. Yashwant Singh (P.W. 1) is alleged to have asked the appellant to approach him after one or two hours. In the meanwhile, a report to this effect was submitted to the Superintendent of Police, Bikaner. Shri Balwant Singh (P.W. 2) advised the Station House Officer to telephone him when the accused again came to offer the bribe. At about 5.30 p.m. a telephone was received from Prithvisingh that the accused had come to offer the bribe. Balwant Singh Superintendent of Police left police station at 5.30 p.m. on July 5, 1972 with Mahavir Prasad (P.W. 7) Deputy Superintendent of Police (CAD) and M. N. Dhawan (P.W. 6), Deputy Superintendent of Police City. The trap party headed by Balwant Singh S.P., and two other motbirs on the way Motilal (P.W. 4) and Manaklal (P.W. 5) reached at the police station Gangashahr at 6 p.m. and recovered Rs. 5,000/- lying in a dirty cloth bag on a table vide recovery memo, (Ex. P-2). A case was registered at the police station Gangashahr against the accused Under Section 165A, I.P.C. by M. N. Dawan (P.W. 9). Heeralal (P.W. 8) Dy. S.P. (ACD) had after investigation submitted charge sheet against the appellant to stand his trial in respect of the offence Under Section 165A, I.P.C.

4. The conviction of the accused-appellant is based on the examination of the nine witnesses of the prosecution. The accused denied the charge and the allegation against him.

5. Having heard, Shri N. K. Maloo, the learned Counsel for the appellant, at length, and on a perusal of the relevant record referred to, I am of the opinion that the accused-appellant has been very lucky to have been sentence only of fine in a serious case of this nature. I am in agreement with the finding of the trial Court that the appellant has offered a sum of Rs. 5,000/- as bribe to the SHO Yashwant Singh (P.W. 1), for hushing up the matter by the Police in another case in which he was co-accused, and that the appellant was caught red-handed. In such a case, the imposition of fine only is ridiculous. It protects, abates and encourages socio-economic crimes against the society and State by judicial-process and brings judiciary in contempt of people.

6. It is common knowledge that the corruption is raising its ugly head and the entire economy of the country so also the values are at stake. In such circumstances, the imposition of fine only and that too, when the allegations are so serious that the accused wanted to get a smuggler of Pakistan released by payment of Rs. 10,000/- as bribe to the police officer, is grossly inadequate. However, there is no appeal from the side of the State, which again tantamounts to State's 'protective umbrella' to such anti-social activities and unspoken, unwritten, undetected conspiracy to help accused indirectly. It would have without hesitation enhanced the sentence and jailed him, if the State would have cared to file appeal or even now pressed for revision.

7. It is directed that the Chief Secretary should enquire why State did not file appeal for enhancement, and taking suitable action against erring officers as it smells of 'corruption in protecting corruption even after detecting corruption'. The enquiry report should be submitted to me, within 6 months.

8. This appeal of the accused fails but the accused had already succeeded in avoiding and evading jail. He has not failed as he has not been jailed. The State and Judiciary have failed in spite of paper conviction. What a poor homage to 'social and economic justice' enshrined in the Preamble of the Constitution.

9. With the above self indictment, the appeal is dismissed. The impugned judgment DA 30-11-76 is upheld. The trial, court is directed to take steps for getting the fine of Rs. 2,500/- recovered from the accused and in default of payment of fine, take steps to get the accused appellant arrested and send him to jail to undergo nine months' R.I.