

Mohd. Sadiq Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-11-1999

Reported in : 1999CriLJ4043

Judge : N.N. Mathur, J.

Acts : Prevention of Corruption Act, 1974 - Sections 5(1) and 5(2); Indian Penal Code (IPC) - Sections 161; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 132/82

Appellant : Mohd. Sadiq

Respondent : State of Rajasthan

Advocate for Def. : O.P. Sangaria, P.P.

Advocate for Pet/Ap. : S.D. Vyas, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 16-3-82 passed by the Special Judge, Jodhpur convicting the accused appellant of offence under Section

161, I.P.C. and Section 5(2) of the Prevention of Corruption Act and sentencing him to undergo 1 year's R.I. and to pay a fine of Rs. 500/- and in default of payment to further undergo 1 month's S. I. on each count.

2. The prosecution case is that on 6-9-76 PW/1 Tejaram submitted a written complaint before the Addl. Superintendent of Police (Anti Corruption), Jaipur stating that he is a resident of village Dabaria. After the death of his father he wanted to get 62 bigha of land mutated in his name and in the name of his 3 other brothers. He has submitted an application in that regard before the Patwari, Basroli. He had put the thumb impression thereon. He enquired about the progress in the said matter from the Patwari on 4-9-76, on which, he told him that he will required to pay a sum of Rs. 100/- as bribe for doing the said work. The Patwari also told him that he may pay sum of Rs. 50/- on 7-9-76 and rest of the amount later on. He did not disclose the name of the Patwari saying that he does not remember the name. It appears that the said application was forwarded to Dy. Superintendent of Police (Anti Corruption), Ajmer for arranging the trap. The complainant PW/1 Tejaram submitted the said application before the Dy. Superintendent of Police (Anti Corruption), Ajmer on 9-9-76. As Tejaram was required to pay a sum of Rs. 50/- to the Patwari on 7-9-76 and that date had gone, therefore Tejaram was asked to fix another date with Patwari. Accordingly, Tejaram met the accused Patwari and fixed the date 11-9-76 as the date for the payment of Rs. 50/-. Accordingly, a trap was arranged. Currency notes of Rs. 50/- were collected from the complainant Tejaram. PW/6 Sitaram, Dy. Superintendent of Police (Anti Corruption) put his initials on the tainted currency notes. He noted number of the said currency notes in memo Ex. P/2. Phenolphthalein powder was applied on the currency notes. The complainant Tejaram paid Rs. 50/- to the accused as per the plan. At that time PW/4 Shivkaran was also sitting along with Patwari. On receiving the signal, PW/6 Sitaram Pareek reached on the spot. It is alleged that the currency notes were recovered from the possession of the accused, which were lying under the Girdawri register. On enquiry, the accused stated that he had received the said currency notes against the 'Bigori' (land revenue). On search of the Patwarghar, the application submitted by the complainant Tejaram Ex.P/7 and Ex. P/8 were also recovered. The Police also seized Rs. 457/- from the pocket of the accused. The F.I.R. Ex. P/25 was prepared

and sent to the Police Headquarter. After usual investigation and after obtaining requisite sanction, Police laid chargesheet against the accused appellant of offence, under Section 161, I.P.C. read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act.

3. The accused appellant denied the charge and claimed trial. The prosecution in support of the case examined 7 witnesses and produced number of documents. The accused in his statement under Section 313, Cr. P.C. stated that the sum of Rs. 47.40 were due in complainant Tejaram against the 'Bigori' (land revenue). He denied receipt of the said amount for the purpose of mutation. He denied the submission of application Ex.P/7. He also stated that, when Tejaram came for payment of 'Bigori' of Rs. 47.40 he was preparing receipts of Phoosa, Kishore, Choutha, Ladu, Modu etc. Nathmal, Roshanali and Sher Singh were also there for receiving the copies of 'Bagori' (land revenue). When Tejaram asked him to take the amount of 'Bagori, (land revenue) he told him that he is preparing receipts of Modu and he should wait for his turn, but Tejaram put the currency notes on the carpet and he remained busy in preparing the receipts. Shyokaran covered the currency notes by putting register on it. The Dy. Superintendent of Police arrived there and prepared a false case. He categorically denied that he received the said amount as bribe. He has also stated that he has been falsely implicated as he refused to oblige Tejaram. In defence he examined 4 witnesses.

4. Assailing the judgment, it is contended by Mr. Vya's that the learned Special Judge has committed an error in not considering the defence of the accused in right perspective. He has also submitted that PW/1 Tejaram is wholly unreliable witness. On the other hand, Mr. O.P. Sangaria has supported the judgment of the trial Court.

5. I have considered the rival contentions and scanned the evidence on record carefully. I have read the statement of PW/1 Tejaram. It is significant to notice that in the complaint Ex. P/I he said specifically that he submitted application Ex. P/7 before the Patwari after putting his thumb mark, but the application Ex. P/7 bears the signatures of Tejaram. PW/1 Tejaram in his statement categorically stated that he submitted application Ex. P/7 before Patwari which bears his signatures A to B.

He further says that Ex. P/8 also bears his signatures A to B Ex/ P/2 is the recovery memo of currency notes, which also bears the thumb mark of Tejaram. Such thumb marks of Tejaram is also found on Ex. P/4, Ex. P/5 & Ex. P/6. It is a matter of experience that if a person knows to sign, he will not put his thumb mark unless, it is necessary. It appears that Teja Ram is not a educated person and he does not know, how to sign, as such he puts his thumb mark. Thus, the signature of Teja Ram on Ex. P/7 & Ex. P/8 appears to be doubtful. This destroys the entire prosecution case.

6. The prosecution case further is that the accused received Rs. 50/- by way of illegal gratification for the purpose of mutation from PW/1 Tejaram. The defence of the appellant was that Tejaram gave Rs. 50/- for the purpose of depositing 'Bigori' (arrears of land revenue) due in the sum of Rs. 47.40. Learned counsel has invited my attention to Ex. P/5, the recovery memo of the currency notes wherein the accused gave the said explanation immediately on enquiry by the Dy. Superintendent of Police. This fact has also been admitted by PW/6 in his statement. He has admitted in the cross-examination that while preparing the recovery memo Ex. P/5 the accused stated that he received the amount of Rs. 47.40 due in the name of the complainant Tejaram. He also stated that at the time of arrest Rs. 457 were recovered from his person. The accused stated that Rs. 20.84 belongs to him and rest of the amount is of 'Bigori' recovered by him. The entire amount of Rs. 457 was deposited in Tehsil. It was reported by the Tehsildar that Rs. 536/16 were deposited against the 'Bigori'. PW/2 Bhanwarlal has admitted in the cross examination that on the spot Patwari told the Dy. Superintendent of Police that he had received Rs. 47.40 from Tejaram against the amount of 'Bigori'. PW/3 Baksharam has also admitted in the cross examination that the accused told the Dy. Superintendent of Police that sum of Rs. 47.40 is due in Tejaram against the 'Bigori'. He also stated that on being asked as to why receipt was not given, the accused stated that he was in process of preparing the same. The Dy. Superintendent confronted Tejaram on which, he admitted that the amount of 'Bigori' was paid. The entire issue is clinched when DW/1 Ram Dayal has given the details of 'Bigoris' due. He has stated that during the period 1975-1977 he was the Tehsildar. He stated that vide Ex. P/24 he gave notices to all the Patwaris who were defaulter in recovering the 'Bigori' and the accused was also one of them. He

also stated that in the register Ex. P/15 in Khata No. 3 of Amra Jat a sum of Rs. 28.97 was due against the 'Bigori' including tax of panchayat. In Khata No. 51 of Devaram, Tejaram etc. all the sons of Amra Jat a sum of Rs. 15.53 including panchayat rent was due. Likewise in Khata No. 127 in the name of Amra Jat Rs. 21-was due against education tax. The total of said amount comes to Rs. 47.50. Thus it is quite natural that currency notes of Rs. 50/- were paid against the amount of 'Bigori' due i.e. Rs. 47.50. The said figure is proved by the Tehsildar, by reference to official record. Teja Ram has deliberately made false statement with respect to submission of application Ex. P/7. Hence defence has succeeded in probalising its case. In view of this, the conviction of the appellant of offence under Section 161, I.P.C. and Section 5(2) of the Prevention of Corruption Act is not sustainable and deserves to be quashed and set aside.

7. Consequently, the appeal is allowed and the judgment of the Special Judge. Jodhpur convicting the accused appellant of offence under Section 161, I.P.C. and Section 5(2) of the Prevention of Corruption Act is quashed and set. aside. The accused appellant is acquitted of the said offence. He is on bail. The bail bonds stand discharged.