

State of Rajasthan Vs. Keshar Dev and anr.

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Court : Rajasthan

Decided On : Mar-26-1999

Reported in : 1999(3)WLC346; 1999(1)WLN302

Judge : Mohd. Yamin, J.

Appeal No. : S.B. Cr. Revision Petition. No. 55 of 1990

Appellant : State of Rajasthan

Respondent : Keshar Dev and anr.

Disposition : Petition dismissed

Judgement :

Mohd. Yamin, J.

1. In this revision State has challenged the order of learned Special Judge, Anti Corruption Cases, Jodhpur dated 23.12.1989 by which the learned Judge discharged the accused respondents.

2. I have heard the learned Public Prosecutor as well as learned Counsel for the accused respondents at length.

3. Facts may be narrated as follows : One Keshar Singh lodged a complaint to Dy. S.P. Anti Corruption Cases, Barmer that he had possession over a plot of land

situated on Devandi Road in Siwana. He had submitted an application in the office of the Municipal Board, Siwana but patta was not granted to him. The Executive Officer Keshav Dev demanded a sum of Rs. 3,500/- and told that the patta would be issued after payment of this amount of bribery. complainant refused to pay the bribery and Keshav Dev also refused to grant patta. Ultimately the complainant agreed to pay a sum of Rs. 1,000/- and out of this a sum of Rs. 800/- was paid to Keshav Dev at his residence and the balance was assured to be paid soon. Keshav Dev assured that the patta would be prepared within 15 days. Then the complainant met Keshav Dev after 3-4 months and inquired about the patta. Keshav Dev replied that since he was to pay the balance amount of Rs. 200/- the same may be paid and then patta would be given. Thereupon the complainant went to Dy. S.P. of Anti Corruption Department and lodged complaint.

4. A trap was arranged on 27.5.1987. The complainant submitted currency notes of Rs. 200/- on which phenolphthelene powder was sprinkled. It is alleged that at about 7.45 P.M. those very notes were given to Keshav Dev at his residence. It is further alleged that at the same time the Dy. S.P. of Anti Corruption Department along with his raiding party made a raid and caught the accused Keshav Dev. Keshav Dev was asked to submit the money which he had received. One of the hands of the accused was washed in the water mixed with sodium carbonate and it turned to be light pink. It was told that a sum of Rs. 50/- was given to a peon Hari Ram to bring wine and the rest of the amount of Rs. 150/- was recovered from a room of the accused respondent where the amount was lying beneath a book. The another currency note of Rs. 50/- was also recovered from the place of occurrence. Learned Special Judge after hearing both the parties discharged the accused respondents on the grounds :

(1) that no money was recovered from the possession of the accused,

(2) that the amount of Rs. 150/- was not recovered from the pocket of the part of accused but notes were recovered on search of the room beneath a book which was lying in a window and a currency note of Rs. 50/- was lying in the same room on a bed. (The learned Sessions Judge was of the opinion that the currency notes were surreptitiously placed in the room of the accused respondent),

(3) that the amount of Rs. 50/- was returned to the complainant so that wine may be purchased and it meant that the amount was not paid as bribery, and

(4) that Hari Ram is said to be a Class-IVth servant who was cooking food at the time of trap and his hands were washed with water containing sodium carbonate but the colour did not turn pink, it meant that Hari Ram did not touch the currency notes. So the story of payment of Rs. 50/- to Hari Ram in order to bring wine is false.

5. Learned Special Judge was of the view that since a sum of Rs. 150/- was recovered from beneath a book lying in window in the room and a sum of Rs. 50/- was recovered from the bed lying on a cot, it meant that the amount was not given to the accused respondent and since it is not recovered from the person of respondent either from his pant or from his person, he was not liable for accepting bribery. The learned Judge was of the view that Hari Ram was not at all involved in the matter and it cannot be accepted that he had washed his hands as he was cooking food and, therefore, phenolphthelene powder was not found in his hand wash. Learned Judge was also of the view that the Sanctioning Authority has first refused to grant sanction and then Dy. Secretary of Local Self Government, K.K. Choudhary, wrote a letter to Sanctioning Authority on 9.8.1988 and refused to give sanction. Another letter was written to B.S. Rajgopal, the Dy. Director of Prevention of Corruption Department on 13.9.1998 by which it was informed that it was not possible to give sanction. But somehow or the other the sanction was later on obtained and the accused persons were challaned. Reliance was placed by learned Judge on a judgment of Allahabad High Court in which it was held that if the sanctioning authority once refuses the sanction and later on reviews its order, the same would not be legal. Learned Counsel for the accused respondents cited a Division Bench judgment of Allahabad High Court rendered in Vijay Bahadur v. State of U.P. in Civil Misc. Writ Petition No. 6252 of 1984, decided on 3.8.1988, reported in 1988 (14) A.L.R. page 706, wherein it has been held that once the order refusing to sanction was passed on entire material and the appointing authority was satisfied that no prima facie case was made out and no fresh material was placed on record but there was erroneous impression, in such cases review or going back on earlier order is fraught with danger. It is destructive of

certainty and finality. It may leave room open for influence and pressure. An order, judicial or administrative, may be permitted to be reviewed or recalled only if it was passed under misapprehension on fact. Otherwise it gives rise to misgiving and speculation which is not conducive to the sense of justice. In this case of Allahabad High Court question arose regarding sanction under the Prevention of Corruption Act, 1947 which was once refused but later, on review was granted. It was further held by the Division Bench that since earlier order was passed after careful consideration of material on record, the appointing authority was precluded from recalling it or passing fresh order on some material because of erroneous impression.

6. State has challenged the order of learned Special Judge for the reasons mentioned in the revision petition and learned PP submitted that it may be quashed and the case be remanded for trial after framing the charge. Learned Counsel for the accused respondents submitted that the case of the prosecution itself is that the application which was submitted by the complainant to grant patta was decided on 5.5.1986 and accused Keshav Dev took over charge of his post on 15.7.1986. He, therefore, submitted that no work was pending with the respondent and while supporting the order of learned Special Judge he has reiterated the grounds given in the order.

7. From the record I find that Keshav Dev was transferred to Siwana by order dated 5th/6th July, 1986. He, therefore, might have taken charge not before this date and hence when the application of the complainant was already decided on 5.5.1986, no work was pending with accused respondent. Even otherwise facts, as discussed above, are such that no case against the respondents is made out.

8. So far as sanction is concerned, there appears to be no ground to review the earlier refusal. In 1997 Cr. L.J. page 4059 Mansukhlal Vithaldas Chauhan v. State of Gujarat, Hon'ble Supreme Court considered about validity of a sanction and held that it depends on applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. It necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution

has to be sanctioned or not. The mind of sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. In this case sanction was granted under the order of High Court passed in a writ of mandamus under Article 226 of the Constitution. Therefore, the Hon'ble Supreme Court made such observations as stated above. But it is the law of the land that the sanction should be given by sanctioning authority without any pressure and after applying its independent mind.

9. In the case in hand, once the sanction was refused and the sanctioning authority reviewed its order under some compulsion, it meant that the sanction was not given by an independent mind. Such a sanction cannot be acted upon.

10. So far as merits are concerned, I fully agree with learned Special Judge, A.C.D. cases, and I concur with him that no case was made out. Hon'ble Supreme Court in : (1996)9SCC766 Shri Satish Mehra v. Delhi Administration and Anr., held that the object of providing opportunity to be heard at the time of framing of charge is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost and that when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time, it is advisable to truncate or nip the proceedings at the stage of the charge itself.

11. In view of above discussion, there is no scope to interfere with the order of learned Special Judge.

12. Consequently, there is no force in this revision petition and it is hereby dismissed.

