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Court : Rajasthan

Decided On : Jan-24-1956

Reported in : 1957CriLJ157

Judge : Bapna, J.

Appellant : Gainda Raghuvir

Respondent : The State

Judgement :

Bapna, J.

1. This is an appeal by Gainda, son of Raghuvir Kachi of Nagla-Bhensa, Police Station Rupbas, who has been convicted under Section 165A of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for six months, and to pay a fine of Rs. 200 /-, and in default, to further undergo rigorous imprisonment for three months by the learned Special (Sessions) Judge, Bharatpur, by judgment dated 15-6-1955. The sum of Rs. 100/-, which was sought to be offered as bribe was directed to be forfeited to the Government.

2. The case for the prosecution is that mutation of one bigha and twelve taiswas of land in Khasra No. 1543 in village Bhensa was made in favour of Girraj Nai by Shri Kaluram, Naib Tehsildar, Rupbas, by order dated 31-10-1954. This order was by consent of Gainda, in whose name that land previously stood. Gainda, however,

changed his mind, and approached Shri Kaluram to reverse the entry and on 4-11-1954, offered to pay illegal gratification to Shri Kaluram.

Shri Kaluram refused to be tempted, but Gainda accompanied by Deoji went to his house on the next day, that is, 5-11-1954. The Naib Tehsildar suspected that they had come for the same purpose of offering him a bribe again, and wrote to the Police Officer to come and take action. He also sent for two respectable persons of the locality, Nashilal and Pyarelal. After the arrival of the Sub-Inspector Nathi Singh, Pyare Lal and Nathilal, the Naib Tehsildar entered his baithak. Gainda offered Rs. 100/-, and asked the Tehsildar to reverse the entry. The Naib Tehsildar declined to accept the money. The Sub-Inspector, Nathi Lal and Pyarelal heard the conversation, and saw the offer being made through the chinks in the door, entered the room, and took possession of the amount of Rs. 100/- consisting of ten notes of Rs. 10/- each. The Sub-inspector informed the Deputy Superintendent of Police, who submitted the challan of Gainda and his companion Deoji. Deoji was given the benefit of the doubt, and acquitted. Gainda's plea in defence was that Shri Kaluram was of the Mali caste, and when he went to Bhensa, he asked to be given Hukka of the Kachhis to which community Gainda belonged. His request was refused, and Shri Kaluram had become angry on that score. He had called the accused Gainda to his house, and falsely implicated him. The money which he had at the time, and which was recovered, had been brought by him from his village for purchasing seeds. The learned Sessions Judge accepted the prosecution case, and convicted and sentenced the accused as aforesaid.

3. It was contended that under the revenue laws the Naib Tehsildar had no power to reverse any entry in the revenue records, and, therefore he had become functus officio in the matter of exercising any power to grant any favour to the accused. Learned Counsel relied on Venkatarama Naidu v. Emperor AIR 1929 Mad 756 (A) and Qazi Rahimullah v. Emperor AIR 1935 Pesh 26 (B). The Madras case was adversely commented upon by a subsequent decision of the same High Court in re Varadadesikachariar : AIR1950 Mad93 .

The other High Courts have taken a different view, and it has been held that the relevant question is the state of mind of the accused, when he offers a bribe, and it

has nothing to do with the question whether the public servant is or is not in a position to do or not to do the act, for the doing or not doing whereof the amount is offered to him, Mahadeo Daunappa Gunaki v. The State : AIR1952 Bom435 . This latter view has found approval with their Lordships of the Supreme Court in Mahesh Prasad v. State of Uttar Pradesh : 1955 CriLJ249 , where it has been observed that

To constitute an offence under Section 161, I. P. C. it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver 'with any other public servant' and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is even aware of it. He may not even have intended to do what he holds himself put as capable of doing. He may accordingly be guilty of cheating. Nonetheless he is guilty of the offence under Section 161.

If, therefore, the acceptance of a bribe by representation that a particular favour will be shown, although the acceptor is not authorised to do the act, will be an offence under Section 161, I. P. C., the offerer of an illegal gratification to a public servant, who may have no authority to show the particular favour would be guilty of the offence under Section 165A, although the Public Servant may refuse to be tempted.

4. It was next contended that the prosecution witnesses Nathi Singh, Nathilal, Pyarelal, Shri Kaluram and Jawali were interested witnesses, being party to the trap, and, therefore, their statements could not be acted upon without corroboration. Reliance was placed on Shiv Bahadur Singh v. State of V.P. : 1954 CriLJ910 . In the case relied upon, the police had supplied the amount of bribe to be offered to the public servant, and a trap was laid in which the public servant stepped in.

In the present case, no trap was laid, no money was supplied by the police, what happened was that Shri Kaluram wanted action to be taken against the accused, whom he suspected to have come with an intention of offering the bribe, as he had done so on the previous day; but the Naib Tehsildar did not fall in with the wishes of Gaimda. There is nothing in the evidence these witnesses which should detract

from the value of their evidence. (After considering further evidence, the judgment concluded :) On a careful consideration of the evidence, I have no hesitation in coming to the conclusion that the conviction was correct.

5. Learned Counsel contended that the sentence was severe, but I do not at all agree with him on this point. The sentence is not severe.

6. The appeal is accordingly dismissed.

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