

In Re: Devanugraham

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Court : Chennai

Decided On : Jul-25-1950

Reported in : AIR1951Mad255; (1950)2MLJ333

Judge : Panchapagesa Sastri, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161

Appeal No. : Criminal Appeal No. 728 of 1949

Appellant : In Re: Devanugraham

Advocate for Def. : The State Prosecutor

Advocate for Pet/Ap. : V. Rajagopalachari and ;R. Purushotham, Advs.

Judgement :

Panchapagesa Sastri, J.

1. This is an appeal by G. Do-vanugraham, Food Inspector of the Corporation of Madras, against his conviction and sentence by the Fifth Presidency Magistrate for an offence under Section 161, Penal Code. He has been sentenced to rigorous imprisonment for six months and to a fine of Rs. 800.

2. Learned counsel for the appellant raised a number of points. Firstly he contended that the evidence did not make out the offence. Secondly he urged that

the investigation was by an Inspector who had not the requisite sanction to act under the Prevention of Corruption Act. Thirdly he contended that the evidence had not been recorded in extenso by the Presidency Magistrate. Lastly he urged that the sanction granted by the Commissioner of the Madras Corporation evidenced by EX. P 6 was not legal.

3. It is conceded by the State Prosecute that if the sanction granted is illegal then the conviction cannot stand. The ground of objection urged against the validity of the sanction is that the facts relating to the alleged offence were not placed before the sanctioning authority or rather that there is no evidence on behalf of the prosecution that the facts were so placed. Reliance was placed on the decision of the Judicial Committee reported in *Gokulchand Dwarka-das v. The King* . That judgment decides that there should be evidence either from the order granting the sanction or other documentary evidence placed before the Court or even oral evidence that the facts were placed before the officer from whom sanction was sought. In the present case, Ex. P-6 refers to the particular offences for which sanction is being accorded, and also the name of the per-son; but apart from these two matters, there is nothing to indicate that the facts which are said to have given rise to the offence were placed before the officer. There is no independent evidence on record that such facts were placed before him. No doubt there is a reference in Ex. P-6 to a letter dated 28-3-1949 with reference to which sanction is being accorded. That letter, however, was not placed before Oourt; nor is there any request made to mo here for allowing additional evidence by way of placing that letter before thia Court. What was urged by the State Prosecutor was that the heading in Ex. P-6 showed that the conduct of Devanugra-ham under suspension was the subject-matter of the reference in relation to 'acceptance of illegal gratification'. From this it was sought to be argued that there was sufficient compliance with the requirements of the law as laid down by the Judicial Committee in the case already referred to. I cannot agree with this view. It follows that it is not proved that the sanction accorded as legal. If so, the conviction cannot stand. In this view, it is unnecessary to deal with the question as to whether the offence is brought home to the appelliant; nor ia it necessary to refer to the other contentions raised by the learned advocate for the appelliant.

4. In the result the conviction and sentence are set aside, and the appellant is acquitted. Fine, if paid, will be refunded.

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