

In Re: Varadadesikachariar

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Court : Chennai

Decided On : Jul-27-1949

Reported in : AIR1950Mad93

Judge : Panchapakesa Ayyar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Prevention of Corruption Act, 1947](#) - Sections 4

Appeal No. : Criminal Revn. Case No. 783 of 1948

Appellant : In Re: Varadadesikachariar

Advocate for Def. : Assistant Public Prosecutor

Advocate for Pet/Ap. : K.S. Jayarama Ayyar, Adv. ; for C.K. Venkatanarasimham, Adv.

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. This is a petition by one Varadadesikachari to set aside his convictions under Section 161, Penal Code (in respect of two counts) by the Sub divisional Magistrate, Tiruvallur, confirmed by the Sessions Judge of Chingleput on appeal. The facts are briefly these :

2. The petitioner, Varadadesikachari, aged 42, was living in Royapuram and was working as a Clerical Supervisor, Control Office, Return Stores Depot, Alamadhi on a daily wage of Rs. 4.8.0. The workshop of the Return Stores Depot, Alamadhi, was under the control of a European Officer by name Lt. C. J. Wince, who has been demobilised and has returned to England now. The petitioner used to put up papers for orders, to Lt. Wince and was, in the eyes of illiterate coolies, like P. Ws 3 to 9, a man of great influence with that officer. Lt. Wince received an anonymous petition against the petitioner which finally started the enquiry against the petitioner. The sum and substance of the charges against the petitioner is that he being a public servant, in or about August 1946, accepted Rs. 100 (besides fruits for Rs. 5) from one R. K. Parasuraman, P. W. 5, as illegal gratification, as reward for exercising his official favours to P. W. 5 and twenty-one other tentmenders of Bangalore group, viz., for recommending to Lt. Wince their retention in their jobs at R. S. D, Alamadhi, despite a retrenchment discharge notice served on them ; and that on 22nd August 1946, he accepted a gold ring. M. O. 2 worth Rs. 35-7-6, from one Avadi Krishnan, P. w. 8, as illegal gratification, as a reward for exercising his official favours to P. W. 8 and other tent-menders of the non Bangalore group, namely, for recommending to Lt. Wince their retention in their jobs at R. S. D., Alamadhi, despite a retrenchment discharge notice served on them ; and that in the same month he accepted Rs. 10 from one C. Gangadaram, P. W. 9, through P. W. 3 as illegal gratification, as a reward for exercising his official favours to P. W. 9 viz, the recommendation to Lt. Wince for his retention in his A Grade job at R. 8. D. Alamadhi, in spite of a notice retrenching him from A Grade and subsequently entertaining him in the III grade. Both the Courts below have, after an elaborate discussion of the entire evidence, found that the petitioner received the Rs. 100 and the gold ring and was guilty regarding the charges of illegal gratification on the first two counts, though they gave him the benefit of the doubt regarding the third count as there was no independent corroboration of the evidence of the bribe-giver P. W. 9 who of course was an accomplice.

3. Mr. K. S. Jayarama Iyer, for the petitioner, did not seriously dispute the fact of the acceptance of the Rs. 100 and the gold ring by the petitioner from P. Ws. 3 to 5, and 7 and 8 respectively. That fact was proved beyond all possibility of dispute, by the evidence of P. Ws. 3 to 8 and the recovery of the ring from the petitioner.

He only raised three contentions : The first was that the petitioner did not receive them as illegal gratification, or bribe, but simply as 'mariyadas', or honours rendered to him by the person benefited by his recommendation, who gave them willingly, and even joyfully, out of gratitude for his recommending them. It is well known that modern law attaches little weight to euphemistic terms used, or to the free will of the bribe giver. Thus, many illegal cusses imposed by and given willingly to a zamindar have been set aside even though they are clothed in gorgeous terms as 'Kanikka', or voluntary gift, nazars, marriage presents, etc. Many a payment has been hold to be illegal gratification, though it has been joyously given to the corrupt officer and is called a gift given in gratitude, mamool, or by other euphemistic terms. A bribe, as distinguished from an extortion, is always voluntary. The distinction between a bribe and extortion is roughly that between adultery and rape. The essence of the matter is the real nature of the payment, to be gathered from the circumstances and under the general presumption mentioned in Section 4 of Act II [2] of 1947. Section 4 says that, where in any trial of offences punishable under Section 161, Penal Code, it is proved that an accused person has accepted or obtained for himself any gratification other than legal remuneration or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained it as a motive or reward as is mentioned in Section 161, Penal Code. In this case, this petitioner did not prove anything to the contrary, and the evidence proved conclusively that the parties intended these gifts to be only 'illegal gratifications', as defined in Section 161, Penal Code. The age-long custom of giving and taking such bribes will only be a reason for reducing the sentences. When the petitioner promised to recommend them, and when they gave the money and the ring, there was an implied bargain for, and fulfilment of an illegal gratification transaction, despite the euphemistic term 'mariyada' used. I, therefore, find against the first contention.

4. The next was that the petitioner had merely recommended the tent-menders, the givers of the Rs. 100 and the gold ring, to Lt. Wince, and that he had himself no power to retain the persons who made the gifts, or compel Lt. Wince to retain them and so would not be liable under Section 161, Penal Code. Reliance was placed on a ruling of Jackson J. In re Venkiah 47 M. L. J. 662 : A. I. R. 1924 Mad.

851 : (1924) 26 Cri. L. J. 396. I have looked into that ruling. It will not apply strictly to the facts of this case. Further, it is a ruling of 1924, long, before Act II [2] of 1947 has raised the mandatory presumption referred to above. Reliance was also placed on a Bench ruling in Venkatarama Naidu v. Emperor, 1929 M. W. N. Cr. 143 : A. I. R. 1929 Mad. 756 : (1929) 30 Cri. L. J. 1055, The facts in that case are also not strictly applicable to the facts here. That is also far earlier than Act II [2] of 1947 which has been enacted raising a mandatory presumption in view of the alarming increase in bribery in the country during this horrible post-war epoch and the need to deal with such cases with a strong hand free from the cobwebs of technical defences regarding absence of strict proof of motive, and acceptance of the gifts as mamool, mariyada, and other euphemistic terms dating from Hindu and Moghul times. It is obvious that this petitioner was a panjandrum under Lt. Wince and believed to be able to influence him, and that he had made recommendations only in his capacity as a supervisor entitled to make those recommendations, and not as an independent third party philanthropist or Samaritan. Hence, he will be clearly liable under Section 161, Penal Code.

5. The last contention was that, considering the entire circumstances and especially the fact that these payments were willingly made and were not stipulated for before the recommendations were made, and that these are the petitioner's first offences, and date from 1946, and that the petitioner has been dismissed from service, the sentences might be modified and a fine imposed instead. The learned Public Prosecutor has no objection to this. No doubt bribery ought to be put down with an iron hand, as the learned Sessions Judge has rightly remarked. But each offender has to be dealt with in the light of the facts in his case. After considering the entire circumstances, I modify the sentences of imprisonment and fine imposed on the petitioner, and, seeing that the man has been dismissed from service for these very offences, impose a fine of Rs. 250, or, in default, rigorous imprisonment for two months, on both the counts together. Time for payment of the balance of fine till 3 P. M on 14th August 1949.