

S. Rajeswaran Vs. the State

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Court : Chennai

Decided On : Apr-30-1991

Reported in : 1993CriLJ4

Judge : K. Swamidurai, J.

Appeal No. : C.A. No. 109 of 1986

Appellant : S. Rajeswaran

Respondent : The State

Advocate for Def. : S. Sriramulu, Adv. for SPE

Advocate for Pet/Ap. : K. Asokan, Adv.

Judgement :

1. The accused in C.C. No. 15 of 1983 who has been convicted by the learned VIII Additional Special Judge, Madras Division for an offence under S. 161, I.P.C. and 5(1)(d) r/w. S. 5(2) of the Prevention of Corruption Act is the appellant. The accused is an Assistant Conservator of Forest, Andaman Government Timber Depot, Madras, Harbour, Madras. He was sentenced to undergo rigorous imprisonment for a period of one year and imposed a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for a period of three months, for having received a sum of Rs. 500/- from one Ramachandra Nair, partner of M/s. Paywoods as illegal gratification other than the legal remuneration for showing favour to M/s.

Paywoods for reconsidering the reduction of Rs. 30,369.20 from the bills of M/s. Paywoods as a public servant. The prosecution examined P.Ws. 1 to 7 and marked Exs.P. 1 to P. 19. The accused has not examined any witness on his side but marked Exs. D-1 to D-11. M.Os. 1 to 83 were marked on the side of the prosecution. The learned Special Judge found him guilty as stated above. Aggrieved by the order of the Special Judge the present appeal has been filed.

2. The case of the prosecution is briefly as follows :

P.W. 1 is the Assistant Secretary, Confidential Cell of Andaman and Nicobar Government Administration. According to him he is the competent officer to authenticate all the orders issued by the Lt. Governor of Andaman and Nicobar Islands and Ex. P-1 does not disclose or reveal the name of the Lt. Governor who had accorded sanction and that the Lt. Governor has not signed the sanction order and he only signed Ex. P-1 which is the original. He denied the suggestion that he was not competent to authenticate the orders issued by the Lt. Governor and he had not produced any record to show, except his oral evidence, that he was empowered to authenticate the orders of the Lt. Governor.

P.W. 2 Ramachandra Nair is the partner in M/s. Paywoods. As a contractor of clearing agency he used to clear the goods received from Andaman and Nicobar Islands. Due to the delay in clearing the goods arrived from Andaman and Nicobar Islands at Madras port, a sum of Rs. 30,369.20 was about to be deducted from the bills of P.W. 2. According to P.W. 2 the accused demanded a sum of Rs. 2,000/- as bribe in order to make the entire payment without deduction. But P.W. 2 agreed to pay a sum of Rs. 500/- and asked the accused to come to his house to take the money. Then P.W. 2 on the same day, i.e. on 11-6-1982 went to the office of the Anti-Corruption and Vigilance Cell and gave a report to the Superintendent of Police which is Ex. P-6. The Superintendent of Police called the Inspector, P.W. 6 and entrusted the matter. The Inspector took up the matter and asked P.W. 2 to bring a sum of Rs. 500/-. P.W. 2 brought Rs. 500/- and after that P.W. 6 finished the formalities of solution test and gave some instructions to P.W. 2 to trap the accused. Then P.W. 2, P.W. 3, P.W. 6 went the house of P. W. 2 along with one Muthukumar and P.W. 6 made some arrangements to trap the accused. Then the

accused came and P.W. 2 and the accused had some discussion and then P.W. 2 gave the amount to the accused. The accused received the amount.

3. P.W. 3 Vasanthakumar is employed in Adi-Dravida Welfare Office as Inspector. On 11-6-1982 he was engaged by P.W. 6, Inspector of Police for trapping the accused. His evidence is that he was present at the scene when the accused took a sum of Rs. 500/- from P.W. 2 and also at the time of preparation of mahazar Ex. P.-9 at about 3.30 p.m. for the seizure of Rs. 500/- from the accused. He also corroborated the evidence of P.W. 2 that the accused was paid the amount for not making deduction from the charges due from P.W. 2 and that when the amount was paid to the accused, P.W. 6, the Inspector came there and introduced himself to the accused and that the accused stood perplexed on seeing the Inspector. Then phenolphthalein test was conducted in the hands of the accused and then the currency notes were seized under mahazar Ex. P-10 wherein this witness had signed. M.O. 6 is the shirt worn by the accused. P.W. 4 Nirmal Kumar is a Clerk in M/s. Baywoods Company and also a relative of P.W. 2. P.W. 4 met the accused prior to the date of occurrence and asked him to give the file relating to the ship M. V. Digipul which the accused gave him. The accused asked about P.W. 2. P.W. 4 replied that his uncle was not well. P.W. 5 Mr. A. K. Datta is the Conservator of Forest in the Andaman Nicobar Government at Port Blair. He knew the accused. M/s. Bay Woods is one of the stockists for Andaman Government Depot at Madras. As per the terms of the agreement recoveries have been made by the accused who was the then Assistant Conservator of Forest. The accused was in-charge of the timber depot and it is one of his duties to make recoveries if there is any violation of the agreement. Ex.D-1 shows the deduction made as per Cl. 7(2)(1) of the Agreement. It is seen from Ex.D-2 that refund of deduction cannot be done by the accused. Ex. D-3 the letter dated 7-9-1981 is as follows :

'We hereby reject outright your irrelevant and insane imagination contained in your above letter.'

Ex. D-4 dated 27-7-1981 is as follows :

'We resent your unfounded and defamatory remarks therein and hope better sense will prevail upon you hereafter.'

In Ex. D-5 letter it is stated as follows :

'Further, it is noted that the language used by you in the official correspondence with the A.C.F. (D.D.) Madras is rather intemperate. Kindly refrain from using such language in official correspondence in future.'

P.W. 5 deposed that he had not received any report from the police and that if the accused was allowed to work, it would not prejudice the departmental enquiry.

4. P.W. 6 is the Deputy Superintendent of Police. He was formerly Inspector of Police, C.B.I., Madras. According to him on 11-6-1982 at 12.30 p.m. he was entrusted with the complaint given by P.W. 2. He registered the case in R.C. No. 34 of 1982 under S. 161 of the Indian Penal Code and sent a copy of it to the Chief Metropolitan Magistrate on the same day. He examined P.W. 2 and asked him to come to his office with a sum of Rs. 500/- and then he asked P.W. 3 Muthukumar to be the witness of the occurrence. When P.W. 2 returned to his office with a sum of Rs. 500/- he conducted phenolphthalein test and went to the house of P.W. 2 and made arrangements for trapping the accused. After that the accused came and had some discussion with P.W. 2. On seeing the signal shown by P.W. 2, P.W. 6 went near them and asked the accused whether he had received a sum of Rs. 500/- from P.W. 2 and then again conducted phenolphthalein test, and then he seized the M.Os. and on 13-6-1986 being a holiday the material objects were entrusted with the Chief Judicial Magistrate on 14-6-1986 and then he went to the office and seized four files under mahazar Ex. P-12. Subsequently the investigation was transferred to some other police officer, hailing from Kerala on 15-6-1982 as per the direction of the superior officials. P.W. 7 is the Vigilance Officer. He took up investigation from P.W. 6 on 15-6-1982, enquired into the matter and examined the concerned witnesses. He visited the place of occurrence and prepared a plan of the site and also examined the accused. On 29-7-1982 he sent a request to the Court for forwarding M.Os. 7 and 8 to the Forensic Science laboratory for chemical analysis. Ex.P. 17 is the requisition. Ex.P. 18 is the chemical analysis report. Ex. P-19 is the log book relating to vehicle T.M.T. 714. On finalisation of the investigation charge-sheet was filed on 31-3-1983. The accused was questioned under S. 313, Cr.P.C.

5. Learned counsel for the appellant would contend that P.Ws. 2, 4 and 7 are from the same place and hence the case has been foisted on the accused falsely. This suggestion cannot be countenanced and I am unable to accept this argument as tenable. It is also suggested to P. W. 7 that P.W. 2 had deliberations in his office and that a false complaint was preferred by P.W. 2. It was also suggested that Ex. P-14 printed F.I.R. and Ex. P6 original complaint were typed with the same typewriter in P.W. 7's office. These suggestions were denied. Learned counsel also would contend that even though P.W. 7 had examined Raman, and Chandrasekar Nair, yet they were not cited as witnesses. The explanation offered by P.W. 7 for not examining Raman, and Chandrasekar Nair, Clerk and Forest Ranger respectively is that after examining P.W. 4 Nirmal Kumar he came to know that these witnesses were not necessary. Moreover it is argued that since it is stated by P.W. 4 that P.W. 2 is suffering from illness the accused went to his house to see him and at that time the currency notes thrust upon his pocket. The investigation done by P.W. 7 is not fair and he failed to cite Raman and Chandrasekaran Nair as witnesses in Court. P.W. 7 failed to place the report of P.W. 5 before the sanctioning authority maliciously.

6. The question now is whether the explanation offered by the accused can be accepted or not and whether the prosecution has proved its case. It is the admitted case that P.W. 2 is not getting on well with the forest officials. It is also admitted that P.W. 2 has used defamatory language in his correspondences with the department. Even P.W. 5 has told that the case was a put up case as against the accused and that the accused was not guilty. Even though, P.W. 7, the investigating officer had looked into these files but there is no evidence that he forwarded these documents to the authority for grant of sanction for prosecution of the accused. Even P.W. 1 did not say that the entire files were forwarded to the sanctioning authority. This case was filed in the year 1982 under S. 5(1)(d) of the Prevention of Corruption Act, 1947. There is no evidence that the sanctioning authority had perused all the records and that the investigating officer had forwarded all the records. There is no application of mind before granting sanction. There is also no documentary evidence to show that the sanctioning authority has signed the papers and also there is no signature of the Lt. Governor. It is also contended that the lower Court has failed to consider the evidence of P.W. 5 in

which it is stated that the accused is not guilty and the case is a foisted one. In the abovesaid circumstance I am unable to accept the case of the prosecution that there was a demand of bribe and that it was paid to the accused. The entire case of the prosecution is false and malicious.

7. Learned counsel for the appellant contended that there is no valid sanction and that the conviction and sentence are illegal on that ground also. Ex. P-1 is the sanction order and it was produced by P. W. 1 in the lower Court. Ex. P-1 was signed by N. K. Nampoothiry, Assistant Secretary. At the end of that order it is mentioned as 'by order and in the name of Lt. Governor, Andaman and Nicobar Island. The relevant portion of the order reads as follows :-

'Whereas the Lt. Governor, Andaman and Nicobar Islands being the authority competent to remove the said Sri S. Rajeswaran from office, after fully and carefully examining the materials placed before him, in regard to the said allegations and circumstances of the case, considers that the said Sri S. Rajeswaran should be prosecuted in a Court of Law for the said offences :

Now the Lt. Governor, Andaman and Nicobar Islands, hereby accords sanction under S. 6 of the Prevention of Corruption Act (Act II of 1947) for the prosecution of the said Sri S. Rajeswaran for the said offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offences by a Court of competent jurisdiction'.

The remaining portion of Ex. P-1 narrates about the facts of the case. P.W. 1 in cross-examination had stated that he had not seen the concerned file and that he did not recollect what were the papers which he had perused in the said file. He further added that he did not know what papers he had perused in the said file. He further added that he did not know on what basis the Lt. Governor had accorded sanction order which had been authenticated by him. According to him, Mr. N. M. Hedge, Junior Analyst (Vigilance) was the person who submitted the papers in the concerned file. According to him, the Lt. Governor did not sign in the sanction order and Ex. P-1 was signed by him. P.W. 1 deposes that Ex. P-1 is the original. P.W. 1 admitted in the cross-examination that he did not remember to have seen a note signed by the Chief Conservator of Forests for dropping the proceedings

against while perusing the concerned file. Ex. P-1 does not contain the signature of the Lt. Governor, Andaman and Nicobar Islands. P.W. 1 also admitted in cross-examination that there is no record to produce in Court to show that he was empowered to authenticate the orders of the Lt. Governor. Ex. P-1, sanction order does not have any annexure showing the particulars of documents and materials placed before the sanctioning authority. Even P.W. 1 was not able to say as to what are the papers that were placed before the sanctioning authority for according sanction. He was also not able to say on what basis the Lt. Governor had issued the sanction order. The prosecution has not examined Mr. N. M. Hedge, Junior Analyst (Vigilance) who is stated to have submitted the papers and the concerned file and no explanation was offered by the prosecution for non-examination of this material witness. Therefore, it is not P.W. 1 who placed the relevant file before the sanctioning authority. P.W. 1 therefore would not support the prosecution that all the material papers connected with this case were placed before the sanctioning authority. In the absence of oral evidence to show that all the material papers were placed before the sanctioning authority and in the absence of any annexure attached to the sanction order Ex. P-1 to show that all the material papers were placed before the sanctioning authority, the sanction order could not have been issued after perusing all the material papers. It cannot be stated that the sanctioning authority had applied his mind before issuing the sanction. The mere words in the sanction order Ex. P-1 'after fully and carefully examining the materials placed before him in regard to the said allegations and circumstances of the case', cannot be taken to be correct when there is no oral or documentary evidence to support that portion of the order.

8. Learned counsel for the appellant submitted the decision reported in *Hazari Lal v. The State (Delhi Admn.)* : 1980 CriLJ564 . The Supreme Court observed in the said decision that it is not necessary that the passing of money should be proved by direct evidence. The mere recovery of money from the accused is not enough to entitle the drawing of the presumption under S. 4(1) of the Prevention of Corruption Act. But where the recovery of money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the Court would certainly be entitled to draw the presumption under S. 4(1) of the Act. No doubt, there was recovery of money from the accused. But it

is not enough for the prosecution to satisfy with that only. There are other circumstances in this case that the accused went to the houses of P. W. 2 to enquire about his illness, and therefore, the recovery of money from the accused, is not in the manner in which the prosecution has now come forward before this Court. The defence of the accused is that the money was thrust into the pocket by the prosecution witness.

9. For the same proposition of law, learned counsel for the appellant relied upon the judgment reported in *Suraj Mal v. State (Delhi Admn.)* : 1979 CriLJ1087 . Learned counsel for the appellant also relied upon a judgment reported in *State of Maharashtra v. Wasudeo Ramachandra*, : 1981 CriLJ884 for the proposition that preponderance of probability as to possession set out by the accused is sufficient and that the accused need not prove his innocence beyond reasonable doubt and it is his duty to account satisfactorily about his possession of assets disproportionate to his income. In the said decision, their Lordships of the Supreme Court found that accused is not bound to prove his innocence beyond all reasonable doubt and that all that he need to do is to bring out the preponderance of probability and such being the law, the question whether or not the appellant had established the preponderance of probability is a matter relating to appreciation of evidence. On a consideration of the evidence adduced by the prosecution in this case, it is found that the accused has established such preponderance of probability. The same view is found in the decision reported in *Man Singh v. Delhi Admn.*, : 1979 CriLJ1118 which is relied upon by the learned counsel for the appellant. In that decision, their Lordships of the Supreme Court held that it is sufficient if the accused offers probable explanation or defence and that strict standard of proof is not necessary. It is observed in the above case that it is well settled that in such cases the accused is not required to prove his defence by the strict standard of proof of reasonable doubt but it is sufficient if he offers an explanation or defence which is probable and once that is done, the presumption under S. 4 stands rebutted. In the present case from the evidence referred to above, the defence of the appellant has been clearly proved under S. 3 of the Act. The Supreme Court in the above case has allowed the appeal and acquitted the accused of the charges framed under sections 5(1)(d) and 5(2) of the Prevention of Corruption Act read with 161 I.P.C.

10. Learned counsel for the appellant also relied upon the judgment reported in *Bhagat Stores, Panaji v. State*, in support of his contention that there was no valid sanction. In that decision, it is held that before giving a written sanction, the concerned authority should apply its mind to the facts of the case and satisfy itself that there was prima facie case to prosecute the offender in the Court. He should also consider the reasonableness and propriety of the prosecution, that is to say, that the case is not frivolous; but deserved to be presented before Court for trial. This decision is rendered relying upon the judgment reported in *State of Bombay v. Parshottam Kanaiyalal*, : [1961]1SCR458 and *Dian Singh v. Municipal Board Saharanpur*, : 1970 CriLJ492 .

11. Learned Public Prosecutor relied upon a judgment reported in *Indu Bhusan Chatterjee v. State of West Bengal*, : : 1958 CriLJ279 in answer to the contention of the learned counsel for the appellant that the sanction for prosecution was not valid because the officer competent to sanction prosecution had not applied his mind to the facts and circumstances of the case, but merely perused the draft prepared by the police and that he did not investigate the truth of the offence. According to the contention of the learned Public Prosecutor, the evidence of P.W. 1 would show that the sanctioning authority went through all the papers placed before him which gave him necessary materials upon which he decided that it was necessary in the interest of justice to accord sanction and that therefore, Ex. P. 1 is valid sanction. As pointed out by me earlier Ex.P. 1 does not disclose the particulars of documents and other material records which were said to have been perused by the sanctioning authority. Even P.W. 1 in his evidence has not stated that all material papers were placed before the sanctioning authority. According to P.W. 1 it was only Mr. Hedge who submitted the papers and the concerned file before the sanctioning authority when Mr. Hedge, Junior Analyst (Vigilance) was not examined by the prosecution in this case. Learned Public Prosecutor also relied upon another judgment reported in *State of Rajasthan v. Tarachand Jain*, : 1973 CriLJ1396 . That is the case where the sanction order was issued after perusal of material papers. Their Lordships found from the evidence available in that case as follows (at pp. 1403-1404 of Cri LJ) :

'It is clear from a perusal of sanction p. 34 that the facts constituting the offence have been referred to on the face of the sanction. As such it was not necessary to lead separate evidence to show that the relevant facts were placed before the Chief Minister. The evidence of the Office Superintendent showed that the formal sanction p. 34 filed in the Court bore the signature of the Special Secretary to the Government. The fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the Court made no difference. It was proved on the record that the sanction for the prosecution of the accused had been accorded by the competent authority after it had duly applied its mind to the facts of the case.'

In this case, there is not acceptable evidence that the sanctioning authority had even perused the records and applied its mind.

12. As discussed above, the judgments relied upon by the learned Public Prosecutor are not helpful to the case of the prosecution since they do not apply to the facts of the present case. I am of the view, that the prosecution has not established that there is a valid sanction and that therefore, I hold that the sanction order is illegal and invalid and the prosecution based on that sanction, is not sustainable. Therefore I hold that the prosecution case is false and that it is not proved beyond reasonable doubt.

13. In the result, the conviction and sentence imposed on the accused are set aside and the appeal is allowed. The fine amount if paid already, is directed to be refunded to the accused/appellant.

14. Appeal allowed.