

K. Narasaiah Vs. State

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Court : Chennai

Decided On : Feb-22-1995

Reported in : 1995CriLJ2512

Judge : Rengasamy, J.;Mr. K.S. Rajagopalan, Adv.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313; Prevention of Corruption Act - Sections 5(2)

Appeal No. : Crl. A. No. 993 of 1986

Appellant : K. Narasaiah

Respondent : State

Advocate for Pet/Ap. : Mr. N. Ranfanathan, Adv. for ;Mr. P. Rajamanickam, Spl. Public Prosecutor and ;Mr. Govindarajan, Government Adv.

Judgement :

1. These two appeals arise from the order of the learned Special Judge (9th Additional Sessions Judge), City Civil Court, Madras, in C.C. No. 42/95 for the offences under Sections 161 Indian Penal Code and Section 5(1)(d) of Prevention of Corruption Act. The accused was convicted to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- for the offence under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, whereas he was acquitted of the charge under Section 161 Indian Penal Code. As against the conviction, the

accused has filed the Appeal C.A. No. 993/86 and the State, Challenging the acquittal of the accused for the offence under Section 161, Indian Penal Code, has filed the Appeal No. 568/91.

2. The accused was working as an office Superintendent in Railway Hospital at Perambur, Madras. The Prosecution case is that P.W. 1, who is a native of Chittoor Taluk, Andhra Pradesh, was unemployed. He applied for the post of Khalasi in Integral Coach Factory Perambur in 1984 but how as not selected. As his villagers were telling that this accused, who is a neighbouring villager, was able to secure jobs, he approached him on 2-5-1985 with a request to secure some job in the railway department. The accused agreed to provide him job but demanded Rs. 3,000/- as bribe for securing a job. But P.W. 1 expressed his inability to pay Rs. 3,000/- and his capacity cannot go beyond Rs. 1,000/-. He again met the accused on 11-5-1985 in his house in Railway Quarters, Perambur and the accused prepared and application form Ex. P. 11 for the Hospital Attendant post. After preparing the application, he demanded money from P.W. 1 but P.W. 1 said that he would come on 13-5-1985 with money. On 13-5-1985 when he went to his office in Ayanayaram, making enquiries about the accused, the persons therein were talking that the person who pay the illegal gratification as well as the person who receives it, are being prosecuted. When he enquired them to give him further details, they asked him to go to Shastri Bhavan to make enquiry about it. He went to Shastri Bhavan and the police constables there guided him to the Superintendent of Police, Central Bureau of Investigation, to whom he narrated the facts. He asked him to give a complaint and he wrote Ex. P. 1 complaint in Telugu as his mother tongue is Telugu. He was directed to meet P.W. 6, the Inspector, C.B.I., who asked him to come by 3.30 p.m. with the cash of Rs. 1,000/- which was demanded by the accused. As he had already brought this money M.O. 1 series, he met him in the evening as directed by P.W. 6. In the meanwhile, P.W. 6 met the Senior Superintendent Post Master for providing two officers of his department to be the witnesses for the trap of a person and P.W. 3 and one Adhinarayanan were deputed to C.B.I. Office. They were introduced to P.W. 1 and in the presence of P.Ws. 1 and 3, P.W. 6 demonstrated how the phonophthalone powder, when dipped in sodium carbonate solution, changed the colour and prepared a Mahazar Ex.I.4 for the demonstration. He also prepared the currency

numbers of M.O. 1 series in Ex. P. 4. Mahazar. Phenolphthaleine powder was applied in M.O. 1 series currency notes and was handed over to P.W. 1 by P.W. 6 with direction to hand over this currency to the accused only if he demanded and thereafter make a signal to him if the amount was paid. P.W. 6 also handed over the application from Ex. P. 2 to P.W. 1 for the job. P.Ws. 1 and 3, Adhinarayana and the police party went in a van to Ayanavaram Joint Office and P.Ws. 1 and 3 were asked to go and meet the accused first. They both went to the house of the accused at about 5.30 p.m. and when accused was informed through his wife about their arrival, the accused came to receive P.Ws. 1 and 3. P.W. 1 told him that he had brought the cash and also the application form the job. The accused asked whether he has brought atleast Rs. 1,000. P.W. 1 paid the cash M.O. 1 series and the application form Ex. P. 2. The accused receiving the cash M.O. 1 series and application form Ex. P. 2 kept them within his letter pad kept on the table. P.W. 1, came out and gave Signal to P.W. 6, who entered into the house of the accused and revealing his identity, questioned him whether he received the cash from P.W. 1. The accused got porploxod and did not answer. Immediately he prepared sodium carbonate solution and asked the accused to dip his fingers into that and when the accused dipped his fingers, it turned to Pink colour. He collected that in two bottles M.Os. 3 and 4. He asked the accused to handover the cash Rs. 1,000 received from P.W. 1. The accused opening the letter pad M.O. 2 took out the M.O. 1 series cash and handed over to P.W. 6. P.W.6 prepared a Mahazar for the seizure of M.O. 1 cash and also the sodium carbonate solution M.Os. 3 and 4 under Ex. P. 5. M.Os. 3 and 4 were sealed with the key that was possessed by P.W. 3. The sample seals are Exs. P. 6 and P. 7. The Inspector seized the letter pad of the accused M.O. 2. He brought the accused to his office and registered the case against the accused and prepared the First Information Report Ex. P. 12. He obtained the sanction Ex. P. 8 from the Chief Medical Officer P.W. 4 to prosecute the accused. P.W. 7 took up the investigation and filed the charge-sheet against the accused.

3. After the evidence was over, the accused was questioned under Section 313, Code of Criminal Procedure to explain the incriminating circumstances found against him in the evidence of the prosecution witnesses. The accused said that P.W. 1 came with one Ramasoshiab, who is also employed in his office, that on

the request of Ramasoshiab, he prepared an application form for P.W. 1 but he never demanded money from him. He has also stated that as he wanted to contest the post of Director of the Credit Society against one Madhavan, who did not like it, he had set up one Raniaseshiah to implicate him in this offence to avoid the contest against him, and that when P.W. 1 offered him the caash for securing the job, he rejected it and pushed the cash from the table and the cash was recovered only from the table where the cash was left against his will. He also examined two witnesses on his side, D.Ws. 1, and 2. D.W. 1, who is the brother of D.W. 1, has stated that Ramaseshiah was arranging to realise the illegal gratification which he and some others had paid to one Rajarathnam of I.O.W. D.W. 2 has stated about the warning given by Madhavan against this accused for contesting the Railway Co-operative Credit Society.

4. The learned Special Judge after going through the evidence has found that the accused is guilty of the offence under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act and convicted him in the manner stated above but not acquitted him of the charge under Section 161 Indian Penal Code.

5. The learned counsel appearing for the accused Mr. Rajagopalan submitted that even though the accused would admit that P.W. 1 came to his house seeking his help in securing a job and the accused helped him by preparing the application form Ex. P. 11, to apply for the post of Hospital Attendant, the accused never demanded any money from P.W. 1 but when he offered the money Rs. 1,000 and placed it on his table, he rejected it by pushing it aside and he never received the cash willingly and this has been distorted by the prosecution as though he received the cash Rs. 1.000/- (M.O. 1. series) from P.W. 1 to implicate him in this offence.

6. Though it was argued for the accused that P.W. 1 is a total stranger to the accused that he himself would not have come to the house of the accused unless he was brought by somebody and that somebody namely Ramaseshiah is behind for the entire connection of this case, the fact remains that admittedly by P.W. 1 had approached the accused in his house to help him in securing a job. In the cross-examination of P.W. 1 it was suggested to P.W. 1 that Ramaseshiah himself

brought him to his house. Further in the questioning under Section 313, Code of Criminal Procedure also, accused admits the facts and would say on 13-5-1985 he prepared the application form for P.W. 1 for securing job. However, he has explained that as Ramaseshiah requested him to prepare the application form, he did it innocently to help P.W. 1. Anyhow these admissions of the accused himself would reveal that P.W. 1 came to his house seeking the help of the accused in securing a job and the accused also had prepared the application Ex. P. 11 on behalf of P.W. 1 for the post of Hospital Attendant, Railway Hospital, Perambur, where he is employed as Office Superintendent. In this background, now we have to probe the evidence of the prosecution witnesses to find out the truth of the prosecution case.

7. The learned counsel for the appellant Mr. Rajagopal contended that though P.W. 3, who is employed in the postal department, would state that he is expected to maintain a diary for his official work and that accompanying P.W. 1 on 13-5-1985, has been recorded in his diary, the said diary has not been produced before the Court though summon was taken to the Superintendent of Post Offices for production of this diary maintained by P.W. 3 and this creates a doubt in the version of P.W. 3 that he was present in the house of the appellant on 13-5-1985 as a trap witness. This question has been considered by the trial Court also. No doubt P.W. 3 has stated that as Inspector of the Postal Department, he had to maintain a diary, that he made entry with regard to this affair in that diary and that the same was forwarded to the Senior Superintendent of Post Offices as per the rules. It is only thereafter summon was taken to the Senior Superintendent of Post Offices for production of that diary maintained by P.W. 3. But Ex. D. 3 reply from the Senior Superintendent of Police reads that P.W. 3 did not submit the diary during his tenure. According to the learned counsel for the appellant, if the diary was not submitted to the Senior Superintendent of Post Offices, the same must be only in his office and he could have produced the document to support his version that he accompanied P.W. 1 on 13-5-1985 and as he has not chosen to produce the document though it is in his custody, the version of the prosecution that he was a trap witness cannot be true. In the evidence as P.W. 3 stated that the diary maintained by him was sent to the Senior Superintendent of Post Offices, the summon was taken to the said office for production. But Ex. D. 3 reveals that he

did not send the diary to that officer during his tenure of service. P.W. 3 might have stated by mistake that the said diary was forwarded to his superior officer for his perusal as that must be the practice also though actually without sending the record he said that he had sent it. The summon for production of this diary was taken to the Senior Superintendent of Post Offices only after the evidence of P.W. 3 was over. After the reply from Senior Superintendent of Post Offices under Ex. D. 3, no steps were taken to direct P.W. 3 to produce this diary from his office as the same was not sent to his superior officer. By oversight or by mistake he might not have sent it to his superior officer. After Ex. D. 3, no step was taken to trace the diary maintained by P.W. 3. Therefore, for the non-production of the diary maintained by P.W. 3, the Court cannot completely reject his testimony for his presence as trap witness. The lower Court has given reasons to accept that P.W. 3 should have been present at the time of seizure of M.O. 1 arises from the house of the appellant as he has signed in the Mahazars Exs. P. 4 and P. 5. It is also his evidence that the key which he possessed was used for using as a seal over the bottles M.Os. 3 and 4. I too agree with this reasoning given by the lower Court for his presence with P.W. 1.

8. The learned counsel for the accused contended that P.W. 1 would state that he was poor and he approached the accused for seeking his help in securing the job of Hospital Attendant, he has not shown how he was able to raise funds of Rs. 1,000/- namely M.O. 1 series for payment to the accused and therefore M.O. 1 series could not have been the money belonging to P.W. 1. As observed by the lower Court even if P.W. 1 is a poor man, when the appellant gave hope that he would secure a job for him if Rs. 1,000/- was paid, naturally, he might have somehow arranged for the same as the job was important for him. P.W. 1 also has stated in his evidence that he got this money from his father. There is nothing to disbelieve this version. Even if he had borrowed this money from somebody or stolen it from someone for the purpose of paying to this appellant, the prosecution case cannot be disbelieved because the appellant himself has admitted that P.W. 1 had offered M.O. 1 series currency to him and he rejected it by pushing it. Therefore, the argument that P.W. 1 had no capacity to raise the funds of Rs. 1,000 has lost its value.

9. The third contention raised by the learned counsel for the appellant is that as found from the evidence of P.W. 4, the appellant was only an office Superintendent to administer the office and initiate proceedings as per the instructions of the Medical Superintendent and as P.W. 4 has specifically mentioned that the appellant had no powers to call for applications for the appointment of a job or appoint even the sweepers, who are being appointed by the Screening Committee of the hospital and when the appellant had no powers to appoint the Hospital Attendant, the appellant would not have demanded money from P.W. 1 and similarly P.W. 1 also without verifying whether this appellant would be able to secure the job, would not have paid the amount and therefore the whole case seems to be a stage managed affair. The learned counsel further argues that in this background, if the defence version is considered, the appellant's version that he refused to accept the money when offered by P.W. 1, and rejecting it by pushing it by his hand, seems to be more probable and therefore when the defence version appears to be more probable and acceptable, the Court has to accept only the defence version. This argument carries no weight because it has become the order of the day that even if a person has no powers to appoint a person, he tries to influence somebody for that purpose for illegal gratification. Though the appellant had no powers to appoint the Hospital Attendant, he might have thought of approaching the Appointing Authority by exercising his influence and access to them for this purpose or he might have even thought of deceiving P.W. 1 after collecting this money from him. Therefore, the incapacity of the appellant to provide job itself cannot be a ground to disbelieve the prosecution case. In *Trilokchand v. State of Delhi* : AIR 1977 SC666 , the Supreme Court has hold that when the illegal gratification had been received by the accused as a motive or reward for committing an act or impression in connection with his official functions, there was an understanding that the bribe was given in consideration of some official act or conduct. It further points out,

'it is true that in law, the incapacity of the Government servant to show any' favour or render any service in connection within his official duties does not necessarily takes the case out of the mischief of these provisions. Nevertheless it is an important fact bearing on the question as to whether the accused had received the gratification as a motive or reward for doing or forbearing to do any official act or

for showing any favour or disfavour in the exercise of his official functions. This question as to whether the Government servant received the money had the requisite incriminatory motive, is one of fact.'

Therefore, when the amount was demanded by the Government servant as a reward or motive for his doing an official act, the reward becomes illegal gratification attracting the punishment under the Prevention of Corruption Act. As the appellant has stated that he refused to accept the money and pushed it aside, that will not make his case acceptable and probable. P.W. 1 being a poor man would not have brought Rs. 1,000 to pay to the appellant unless the amount was demanded from him. I can understand small amounts of Rs. 5 or Rs. 10 being offered as tips. But here is a poor man from Andhra Pradesh who has brought Rs. 1,000 and unless this amount was demanded by the appellant, he would not have brought this money to the house of the appellant. As the phenolphthaleine test proves that the appellant had touched this cash M.O. series, to escape from this entanglement, he tries to explain that he pushed the cash aside by his hand. There was no need to push the cash by him by touching the cash. The phenolphthaleine test establishes the fact that he received the cash by his hand from P.W. 1 and as he had kept these currencies under his letter pad, when P.W. 6, C.B.I., Inspector asked him to produce the cash, he took out this cash from beneath his letter pad. Therefore, it cannot be said that the defence version is probable and acceptable. On a through consideration of entire circumstances and the evidence, I fully agree with the learned Government Advocate that the charges, against the accused are clearly established.

10. Then coming to the appeal C.A. No. 568/91 filed by the State, the lower Court had acquitted the appellant for the charge under Section 161, Indian Penal Code holding that as the accused had no powers to appoint anybody, the payment of Rs. 1,000 cannot be said to be for rendering any service in his official capacity and therefore Section 161, Indian Penal Code is not attracted. I have already referred to the observation in *Trilokchand v. State of Delhi* (referred supra), wherein the Supreme Court has observed that when a Government servant received money as a reward or motive for doing an act, it becomes illegal gratification attracting the punishment under Section 161, Indian Penal Code. In *Chaturdas v. State of*

Gujarat (1976 Criminal Law Journal 1180) also, the Supreme Court has observed that to constitute an offence under Section 161, Indian Penal Code, it is enough if the public servant who accept the gratification, takes it by inducing a belief or by holding out that he would render assistance to giver with any public service and the giver gives the gratification under that belief. It is further observed that it is immaterial if the public servant receiving the gratification does not intend to do the act, favour or forbearance and he hold himself out as capable of doing. In view of these clear observations of the Supreme Court, as the appellant had prepared Ex. P. 2, application form for P.W. 1 and induced P.W. 1 to bring money for securing the job, certainly the offence under Section 161, Indian Penal Code is attracted and the Court below is not correct in acquitting the appellant for the offence under Section 161, Indian Penal Code. Therefore, the order of acquittal has to be set aside.

11. The Court below has awarded punishment of one year rigorous imprisonment and Rs. 500/- as fine for the offence under Section 5(1)(d) of Prevention of Corruption Act. I feel that the substantial sentence can be reduced to six months rigorous imprisonment. The same punishment of six months rigorous imprisonment can be imposed for the offence under Section 161, Indian Penal Code also.

12. In the result, C.A. No. 568/91 is allowed setting aside the order of acquittal and the appellant is convicted to undergo rigorous imprisonment for six months for the offence under Section 161, Indian Penal Code. C.A. No. 993/86 is dismissed subject to the modification of the sentence to six months rigorous imprisonment under Section 5(1)(d) of the Prevention of Corruption Act. The sentences to run concurrently.

13. Order accordingly