

P. Sabbaraj Vs. the State

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Court : Chennai

Decided On : Sep-27-1994

Reported in : 1995CriLJ3440

Judge : Rengasamy, J.

Acts : Indian Penal Code (IPC), - Sections 161, 162, 163, 165 and 409; Code of Criminal Procedure (CrPC) , - Sections 482; Prevention of Corruption Act, - Sections 5(2)

Appeal No. : Crl. M.P. No. 4307 of 1990

Appellant : P. Sabbaraj

Respondent : The State

Advocate for Def. : P. Rajamanickam, Adv.

Advocate for Pet/Ap. : M/s. R. Sivaprakasam and ;K. Selvarangam, Adv.

Judgement :

ORDER

1. This petition is filed under Section 482 Code of Criminal Procedure to quash the proceedings in C.C. No. 5/88 pending on the file of the VII Additional Special Judge, Madras.

2. The petitioner was working as Junior Accountant in the office of the Director of Accounts, Tamil Nadu Postal Circle, situated in Commander-in-Chief Road, Madras, and the respondent police has filed a charge-sheet against him for the offences under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 161 of Indian Penal Code alleging that on or about 13-10-1987, he demanded and collected Rs. 500/- from one Natarajan as illegal gratification promising to secure a job for him at P.W.D. office at Vellore, by abusing his position as a public servant.

3. The prosecution has been launched against this petitioner on the complaint of one C. Natarajan. The said Natarajan has alleged that he is an educated unemployed person, that he came to know through a person that this petitioner is capable of securing jobs for the unemployed, that therefore, he met him at Madras and explained his difficulties as he is unemployed, that the petitioner stated that he is having influence and connection with political personalities and it would not be difficult for him to secure a job for the complainant, that he obtained his bio-data and asked him to meet at intervals so that in the meanwhile, he could arrange for his job, that on 6-9-1987, he took him to Vellore P.W.D. office stating that he had arranged for a job as M.N.R., that making him to wait outside the P.W.D. office, he alone entered into the office and came out within 10 minutes telling him that he had told the officer to appoint him in the same office and the orders would be issued in two or three days and before that he should meet him at Madras. It is further stated in the complaint that he did not go to Madras to meet him, but even after two weeks as he did not receive the order of appointment, he met the petitioner, who scolded him for not meeting him within two days as directed and unless he was paid Rs. 4,000/- as bribe, he would not get the order of appointment from the P.W.D. office, that the complainant expressed his inability to pay Rs. 4,000/- as he is very poor and thereafter the petitioner ultimately asked him to pay Rs. 500/- within two days and pay the balance after the receipt of the orders for the job. The prosecution version is that on this complaint of the complainant, a trap was arranged and the petitioner was caught by the Inspector of Police when he received Rs. 500/- from the complainant.

4. The petitioner accused would challenge this proceedings on the ground that as he did not abuse his position as a public servant in discharging of his duties for securing a job to the complainant, that as the job offered to the complainant was in the P.W.D. office at Vellore with which he has no connection, that as he is working as Junior Accountant in the office of the Director of Accounts, Tamil Nadu Postal Circle, which has nothing to do with the P.W.D. office in Vellore., there is no question of abusing his position as a public servant while discharging his duties, to secure job by corrupt or illegal means and even according to the complaint as it is alleged that he has political influence to secure job, his influence in P.W.D. office at Vellore is Independent influence unconnected with his duties as a public servant and therefore, the prosecution under Section 161 Indian Penal Code and Section 5(1)(d) of Prevention of Corruption Act of 1947 is not sustainable and is liable to be quashed.

5. According to the learned counsel for the petitioner, had the petitioner misused his position as Junior Accountant in the office of the Director of Accounts for providing job to the complainant, it would amount to an offence against him under Section 161 Indian Penal Code and Section 5(1)(d) of Prevention of Corruption Act but his influence in the P.W.D. office at Vellore, which is not in any way connected with the discharge of his duty, will not attract the offence under the abovesaid provisions and therefore the proceedings against the petitioner has to be quashed. The learned counsel relied upon certain decisions in support of this contention. The first decision relied upon by him is *Manshanker v. State*, : AIR1970 Guj97 , in which case a College Lecturer was asked to attend a College as Examiner of practical examinations conducted by the University and this Lecturer collected Rs. 500/- from a student as bribe for giving him more marks. The Gujarat High Court took the view that as the accused was a Government Servant working as a senior lecturer in the Government College, but the alleged offence was committed by him when he was acting as Examiner deputed by the University, he was not a public servant as the University was paying him for acting as Examiner and therefore, he was not a public servant while committing the offence, within the meaning of Section 5(1)(d) of Prevention of Corruption Act. That view of the Gujarat High Court was upheld by the Supreme Court also when that case was taken up before the Supreme Court as reported in : 1972 CriLJ1247 . It is true that this decision is

in support of the petitioner as he was unconnected with P.W.D. office, Vellore, where he exerted influence for securing the job for the complainant. But the Supreme Court has taken a different view in the later decisions, which I am going to refer to and for the present, I am giving the decisions relied upon by the learned counsel or the petitioner.

6. The next decision cited by him is *Narayana Nambiar v. State of Kerala*, : (1963) IILLJ660SC , wherein an observation was made that every benefit obtained by a public servant for himself or for any other person by abusing his position as a public servant falls within the mischief of the clause under Section 5(1)(d) of the Prevention of Corruption Act. According to the learned counsel, as the Supreme Court observed that the benefits would have been obtained by the public servant by abusing his position as a public servant, the abusing of the powers by the accused must be in his own position as a public servant of the office to which he is attached. In that case, the accused, who was a Special Revenue Inspector for land assignment got assignment for certain extent in the name of his brother-in-law, one Gopinathan Nambiar, misusing his position and also undervalued the worth of the standing trees therein. As the accused himself was the Special Revenue Inspector for land assignment and he obtained assignment in the name of his brother-in-law, the question took up for consideration was whether the accused had obtained benefits by the alleged misuse of his position. Therefore, the question did not arise for consideration whether a public servant should misuse his position in his capacity as a public servant of that office. However, in that decision the Supreme Court observes as follows : (para 9)

'As it is a socially useful measure conceived in public interest, it should liberally be construed so as to bring about the desired object, i.e., to prevent corruption among public servants and to prevent harassment of the honest among them'.

So, in the view of the Supreme Court, the construction of the provisions of the Prevention of Corruption Act have to be liberally construed to achieve the object of putting an end to the corruption among the public servants. But this decision does not touch upon the point raised by the learned counsel for the petitioner.

7. The next decision relied upon by the petitioner is Ramakrishna Rao v. State, 1981 MLJ (Cri) 104. That was a case in which the accused, who was employed in Port Trust, collected money from the complainant promising him to secure job in some of the departments. The Andhra Pradesh High Court in that case took the view that the accused who was working in the Port Trust promised to secure job in some other department and therefore he did not misuse his position as public servant but acted in his individual capacity and therefore Section 5(1)(d) of the Prevention of Corruption Act is not attracted. Similar view has been taken by this Court also in Balasubramaniam v. State, 1988 Mad LW (Cri) 400. The accused, who was employed as Lower Division Clerk in State Insurance Corporation, was also acting as Secretary of the Employees' Cooperative Thrift Credit Society, which was an honorary post and he, along with the another Clerk, made false entries in the books of account of the society and misappropriated amounts to the tune of Rs. 18,000. Bellie, J., has observed :

'3a. that the appellant accused did not commit the offence alleged as a public servant. He found that it is the case of the prosecution that he committed the alleged offences in respect of the funds of the society as a Secretary of the Society, which was an honorary post and he has not committed any offence in his capacity as an employee of the State Insurance Corporation and therefore he cannot be charged under Section 5(1)(c) and (d) of the Prevention of Corruption Act and under Section 409 Indian Penal Code. No appeal has been filed by the State against the acquittal of the accused under Section 5(1)(c) & (d) of the Prevention of Corruption Act and under Section 409 Indian Penal Code. The said findings of the learned Special Judge is absolutely correct. No doubt, the accused was an employee of the State Insurance Corporation and there he was a public servant. But he was not a public servant as a Secretary of the society. The charge is that he committed the offence as Secretary of the Society and not as an employee of the State Insurance Corporation. It is argued that as per Bye-law of the society, only employee of the State Insurance Corporation can be a secretary. That may be so, but because of that the appellant-accused cannot be said to be, as a Secretary to the Society, a public servant. therefore, if really he has committed offences as alleged against him, he did it not in his capacity as a public servant. The offence under Section 5(1)(c) & (d) of the Prevention of Corruption

Act and under Section 409 Indian Penal Code, relate to only offences committed in the capacity as a public servant and not otherwise. Therefore, if the accused has committed any offence with regard to the funds of the society as a Secretary thereof, he cannot be said to have committed an offence under Section 5(1)(c) and (d) of the Prevention of Corruption Act or under Section 409, I.P.C. Therefore, rightly the learned Special Judge has acquitted the accused of the charges under Sections 5(1)(c) & (d) of the Prevention of Corruption Act and under Section 409, I.P.C.'

8. Another decision cited by the learned counsel for the petitioner is State of Ajmer v. Shivajilal, : 1959 CriLJ1127 . It has been overruled by the decision in Dhaneswar Narain Saxena v. Delhi Admn, : (1962)ILLJ142SC . Therefore, I am not referring to that decision.

9. Another decision relied upon by the learned counsel for the petitioner is the decision of this Court in In Re Krishnamurthy, : (1960)1MLJ339 . In that case, the accused was employed as Clerk in the Records Section of the Chief Engineer's Office, Southern Railway, and he was accused of taking money from the complainant promising him the job of Khalasi. This Court took the view that when the allegation was that the accused was attempting to render service with any public servant, whose name is not referred to in the charge and was not spoken in the evidence and also in the complaint, the accused cannot be punished. In other words, if the accused is alleged to have attempted to influence any other department for securing job, the name of the public servant through whom he tried to influence, must be given in the complaint and in the evidence. According to the learned counsel for the petitioner, in this case, even though it is alleged that the complainant was taken to Vellore P.W.D. office and was made to stand outside the office, there is no allegation in the complaint or in the charge-sheet that whom he influenced to secure the job for the complainant and therefore, the prosecution case is not sustainable. But the Supreme Court in State of Maharashtra v. Jagat Singh, : [1964]4SCR299 , has held that though the charge should specify the other public servant who has to be approached by the accused for rendering service or disservice, for the reason that the name is not divulged in the charge, it will not affect the trial because such a defect would be curable under Section 537 of the

Code of Criminal Procedure of 1898. In this decision, it is observed that in such case, the person would be taking money for himself or for any other person in his office, in order to do any official act or get it done and it is enough if it is shown that money was paid to the public servant in a particular department by which an order would be made and if it was taken for doing any official act in that department. In this case, it is the specific case of the prosecution that the accused demanded money for appointing the complainant as a Mazdoor in the P.W.D. Office at Vellore. Therefore, in the above view, it cannot be contended that for the reason that the name of the Officer through whom the accused exerted pressure is not given, the proceedings has to be quashed.

10. On a reading of Section 5(1)(d) of the Prevention of Corruption Act, abusing his position as a public servant is one of the category of the corrupt practice of the public servant. The Section 5(1) reads,

'5. Criminal misconduct. - (1) A public servant is said to commit the offence of criminal misconduct -

(a) to (c)

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.'

The clauses, viz., corrupt, illegal means, otherwise abusing his position as a public servant are different categories of corrupt practices and are conjuncted by the word 'or' indicating that they are alternate misconduct on the part of the public servant. Therefore, if a public servant obtains any valuable thing or pecuniary advantage either by corrupt practice or by illegal means or by abusing his position as a public servant, any one of these categories will constitute an offence, under the section. If the public servant obtains pecuniary advantage by illegal means, that itself is sufficient to constitute the offence and it is futile to argue that he should have abused his position as a public servant while discharging his duty, to attract the penal clause in the section. The accused is a public servant and if he collects money from a person promising him to secure a job, certainly, the

pecuniary advantage he obtained is by illegal means because he exercises his influence illegally in another department to secure a job. Therefore, the contention of the learned counsel for the petitioner that the petitioner had exercised his influence in his individual capacity, as he had political influence, does not carry any weight. This aspect has been considered by the Supreme Court in *Ram Krishna v. State of Delhi*, : 1956 CriLJ837 . while referring to Section 161 Indian Penal Code, the Supreme Court has observed in that case, (at p. 840 of Cri LJ).

'The word 'obtains' is used in Sections 161 and 165 of the Penal Code. The other words 'corrupt or illegal means' find a place in Section 162. Apart from 'corrupt and illegal means', we have also the words 'or by otherwise abusing his position as a public servant'. If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under sub-clause (d). Sections 161, 162 and 163 refer to a motive or a reward for doing or forbearing to do something, showing favour to, any or disfavoured person, or for inducing such conduct by the exercise of personal influence. It is not necessary for an offence under Clause (d) to prove all this. It is enough if by abusing his position as a public servant, a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour. To a certain extent, the ingredients of the two offences are common, no doubt.'

In *Dhaneshwar Narain Saxena v. The Delhi Administration*, : (1962)ILLJ142SC , the Supreme Court has categorically held that the misconduct of the public servant need not be in discharge of his own duty and if he takes money from a third person by corrupt or illegal means or otherwise abusing his official position, he commits the offence under Section 5(1)(d) of the Prevention of Corruption Act. I am repeating the words of the Supreme Court hereunder : (at p. 207 of Cri. L.J.).

'..... This Court, therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public

servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other Public servant, without there being any question of his mis-conducting himself in the discharge of his own duty, he has not committed an offence under Section 5(1)(d). It is also erroneous to hold that the essence of an offence under Section 5(2) read with Section 5(1)(d) is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.'

The same view has been repeated by the Supreme Court in the subsequent decision in *Dalpat Singh v. State of Rajasthan*, : 1969 CriLJ262 , holding as follows :

'The words 'in the discharge of his duty' occurring in Section 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under Section 5(1)(d) of the Act. The ingredients of the offence under Section 5(1)(d) are : (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage and (4) for himself or any other person.'

So once again the Supreme court has emphasized the applicability of the section holding that it is not necessary to prove that the acts complained of were done by the accused in the discharge of his own official duty. The Delhi High Court also has taken the same view in *Ramesh v. State*, 1986 Cri LJ 1101, holding that to constitute an offence under Section 161, Indian Penal Code and Section 5(1)(d) of the Prevention of Corruption Act, it is enough if the public servant, who received the money, took it by holding out that he would render assistance to the giver with any other public servant and the giver gives the money under that belief and where the accused public servant accepted a bribe by assuring the complainant that his interest would be attended to, the public servant would be guilty under Section 5(1)(d) of the Act. In *Shiv Raj Singh v. Delhi Admn*, : 1969 CriLJ1 , the Supreme Court has observed that if a public servant obtains money from anybody, he is guilty of grossly abusing his position as a public servant within the meaning of Section 5(1)(d) of the Prevention of Corruption Act. In that case, an illegitimate

child born to a girl was brought up by her close relative in another house and the accused police officer in his uniform threatend that he would take action for non-disclosing the birth of the illegitimate child and unless Rs. 1,000 was paid to him to make some settlement, he would take action though the birth of an illegitimate child or bringing up an illegitimate child, will not constitute an offence. However, as the police officer demanded money to suppress the above facts, the Supreme Court has found that the police officer had abused his position as a public servant within the meaning of Section 5(1)(d) of the Prevention of Corruption Act.

11. In view of the consistent view of the Supreme Court in the above decisions, for the reason that the petitioner told that to the complainant that he had influence through the political personalities to secure him a job and the influence exerted by the petitioner was not in his capacity as a public servant but in his individual capacity, he cannot escape the' mischief of the section and the allegation against the petitioner falls within the ambit of Section 161 Indian Penal Code and Section 5(1)(d) of the Prevention of Corruption Act. The proceedings, therefore, cannot be quashed.

12. In the result, the petition is dismissed.

13. Petition dismissed.