

In Re: M.S. Mohiddin

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Court : Chennai

Decided On : Sep-26-1951

Reported in : AIR1952Mad561; (1952)2MLJ11

Judge : Panchapakesa Ayyar, J.

Acts : India Penal Code (IPC), 1860 - Sections 161; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 363 and 423

Appeal No. : Criminal Appeal No. 866 of 1950

Appellant : In Re: M.S. Mohiddin

Advocate for Pet/Ap. : K.S. Jayarama Aiyar, Adv. for ;C.K. Venkatanarasimham, Adv.;Public Prosecutor

Judgement :

Panchapakesa Ayyar, J.

1. This is an appeal by one Mohideen, who was a tram movement Inspector in the M. & S. M. Railway and had jurisdiction over all stations between Guntakkal and Bezwada and Macherla, against his conviction, under Section 151, I. P. C., by the Sessions Judge, Guntur, for having received Rs. 30 'mamool,' or bribe, from P. W. 7, the station master, Perecherla, for showing favour to him and not sending reports against him and bringing into trouble, and the sentence of six months

rigorous imprisonment. He had been charged also with the offence of criminal misconduct 'in the discharge of his duty by habitually accepting or obtaining or attempting to obtain illegal gratifications like that from P. W. 1 Chelapathi Naidu, while he was station master at Bethamcherla, for showing favour by not sending reports against him, and of bargaining to obtain a bribe of Rs; 200 from P. W. 3 for enabling him to, transport green chillies illegally and actually securing a part payment of Rs. 50 out of that bribe, an offence punishable under Section 5(2) of Central Act II (2) of 1947'. The learned Sessions Judge found that the evidence regarding the alleged offence under Section 5(2) of Central Act U (2) of 1947 was false or unreliably and acquitted him of that offence while convicting him of the offence under Section 151, I. P. C., in appeal here.

2. I have perused the entire records, and heard Mr. K.S. Jayarama Iyer, the learned counsel for the appellant, and the learned Public Prosecutor, 'contra'. The facts are briefly these:

3. The appellant, as train movement inspector, had the duty of checking train detentions, movement of luggage, including unauthorised luggage, and delays in loading and unloading of goods, and sending reports against railway officials regarding all these & suspected acts of misconduct. The reports sent by him would be inquired into by the authorities concerned and suitable punishment awarded to station masters etc. The prosecution alleged that, taking advantage of the power given to him by virtue of his post and underlying his power by sending reports against the station masters etc., and showing what he could do, the appellant was asking the station masters to pay bribes, which he called 'mamools', to him every month. He asked P. W. 7 to pay him a bribe or 'mamool' of Rs. 15 a month two or three months after he joined duty as station master at Perecherla in October 1948, in the same way as his predecessor was paying, so that he might cover up all irregularities & derelictions of duty and not send reports against him & bring him to trouble. P. W. 7 said that he was a man with a large family and with onerous liabilities, and could not afford to pay the bribe demanded.

4. The appellant used to pass Perecharla station often and every time he passed he used to ask P. W. 7 for the 'mamool' bribe. P. W. 7 went on refusing. After two

or three months, finding that P. W. 7 could not be induced to pay anything like Rs. 15 per month, the appellant climbed down and said that it would be enough if P. W. 7 would pay a bribe of Rs. 5 per month. Meanwhile, the appellant had also sent a report against P. W. 7 for sending ghee as luggage, against the rules, and P. W. 7 had been warned by the authorities for irregularity. P. W. 7, therefore, agreed to pay the lesser bribe demanded then. He said in Court that he agreed unwillingly and that he sent a petition about the appellant's demand for the bribe to the Anti-corruption Branch but the officer in charge of that branch stated that no such petition was received by him. Any way, P. W. 7 showed no eagerness to pay Rs. 5 every month, in spite of repeated demands by the appellant. Finally, In the middle of September 1949, P. W. 7 took leave for a week in order to attend to his wife's delivery at Guntur. Then, of course, the appellant saw that no time should be lost, and asked that at least Rs. 30, that is six months 'mamool' at Rs. 5 per month, should be paid to him, and P. W. 7 promised to pay it at Guntur on 15-7-1949 but got in touch with the Special Branch Police and the Magistrate '(P. Ws. 11 and 9) and had a trap laid by them for the appellant.

5. P. W. 19 the Stationary Sub-Magistrate, & P. W. 11, Sub-Inspector. Special Police establishment, got the numbers of the four currency notes representing Rs. 30 bribe noted and asked P. W. 7 to go and pay them to the appellant at the Guntur, railway station platform. P. W. 7 went to Guntur railway platform, where the appellant was waiting, and paid the four currency notes for Rs. 30 as bribe to the appellant at about 10 a. m. on 15-9-1949. P. W. 8, the Assistant Parcel Clerk of Guntur railway station and the brother-in-law of one Mangiah, said to be an enemy of the appellant owing to his strict enforcement of his duties, was also present on that occasion. The details of the occurrence were these; The appellant asked P. W. 7 whether he had brought the 'mamool' of Rs. 30 & P. W. 7 replied that he had, and paid the money. P. W. 8 heard the question of the appellant and the reply of P. W. 7, and witnessed the payment of the money, and went and told P. W. 9, the Magistrate, about the payment. P. Ws. 9 to 11 linen went to the railway platform and saw the appellant there. P. W. 9 asked him, in the presence of P. Ws. 10 and 11 'where is the bribe amount you received from Santanam (P. W. 7)?' and the appellant at once took out the four currency notes from his purse and handed them over. He also handed over another sum of Rs. 52 and odd with

which we are not concerned in this case as they must, for the purpose of this case, be held to be the money of the appellant, whatever be the source. The appellant told P. W. 9 shortly afterwards that the Rs. 30/- given to him in the shape of four currency notes by P. W. 7 represented the return of a loan he had given to P. W. 7 on 13-9-1949 (on Ex. P. 7) but did not give the purpose of the loan or the names of the persons present then. In the committing Magistrate's Court he said that P. W. 7 had asked him to lend him that sum to meet the expenses in connection with his wife's confinement and that he lent it on 13-9-1949 but he did not say that D. Ws. 9 and 10 had seen him lend it. In the Sessions Court he examined P. Ws. 9 and 10 a chief guard and the manager of the book stall, to say that they saw the appellant give the loan of Rs. 30 to P. W. 7 on 13-9-1949 at about 7 p.m. on P. W. 7 asking him for a loan. The learned Sessions Judge was not at all impressed with the demeanour of these witnesses and rejected their testimony as untrustworthy and interested. He believed the prosecution evidence and held that the offence under Section 151, I. P. C. had been proved and convicted him and sentenced him, as stated above.

6. Mr. Jayarama Iyer, for the appellant raised several contentions. The first was that this was a 'trap case' where corroboration by untainted evidence would be required under the law, and there was no such corroborative evidence and as such the case must fail in view of the ruling in 'Lakshminarayana Iyer v. EMPEROR', 1917 Mad W N 831 and the ruling in 'Brannan v. Peek', (1947) 2 All E R 572, where Lord Justice Goddard has observed that unless authorised by an Act of Parliament no trap can be laid by the Police or the magistracy to find out whether a man will commit an offence, and that persons trapping him like that would be accomplices liable for punishment themselves. But I have held in several cases already that there are two kinds of traps 'a legitimate trap', where the offence has already been born and is in its' course, and 'an illegitimate trap', where the offence has not yet been born and a temptation is offered to see whether an offence would be committed, succumbing to it, or not. Thus, where the bribe has already been demanded from a man, and the man goes out offering to bring the money but goes to the police and the magistrate and brings them to witness the payment, it will be 'a legitimate trap', wholly laudable and admirable, and adopted in every civilized country without the least criticism by any honest man. But where

a man has not demanded a bribe,' and he is only suspected to be in the habit of taking bribes and he is tempted with a bribe, just to see whether he would accept it or not and to trap him, if he accepts it it will be 'an illegitimate trap' and, unless authorised by an Act of Parliament, it will be an offence on the part of the persons taking part in the trap we will all be 'accomplices' whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent as the case may be before a conviction can be had under a rule of Court which has ripened almost into a rule of law. But, in the case of a legitimate trap, the officers taking part in the trap, like P. Ws. 9 to 11, and the witnesses to the trap, like P.W. 8 would in no sense be 'accomplices' and their evidence will not require under the law, to be corroborated as a condition precedent for conviction though the usual rule of prudence will require the evidence to be scrutinised carefully and accepted as true before a conviction can be had. Therefore this contention fails.

7. The next contention was that, under the ruling in 'H.T. HUNTLEY v. EMPEROR', 1944 Mad W N Cri 102 , every reasonable possibility of innocence must be excluded before the accused is convicted, and that, in this case, all reasonable possibility of innocence has not been excluded because the appellant had stated that Rs. 30 given to him by P.W. 7 on 15-9-1949 was only the return of the loan given by him to P.W. 7 on 13-9-1949, as spoken to by D.Ws. 9 and 10, and that P.W. 7's own statement to the Sub-Magistrate in Ex. P. 5, a short time before the payment, contained a recital that he had not taken any loan from the appellant and that he owed nothing to him and that was a tell tale, confirmation of the story of the appellant regarding the loan. (His Lordship discussed the evidence and Proceeded:) It was urged by Mr. Jayarama Iyer that the learned Sessions Judge was wrong in his finding of fact against the loan and in favour of bribe, and in believing the statements of P. Ws. 7 and 8 regarding the appellant's asking P.W. 7 whether he had brought the 'mamool of Rs. 30, and the statement of P. Ws. 9 to 11 that P. W. 9 asked the appellant whether he had received the 'bribe' from P. W. 7, and the appellant's producing the currency notes without a word of protest of innocence. I cannot agree.

8. The law regarding the findings of 'fact' by the trial Court is well settled by the Privy Council, Supreme Court and High Courts. The findings of fact by the trial

Court, which sees the witnesses, hears their evidence and observes their demeanour, should not be set aside by the appellate Court which sees the evidence 'only in cold print', unless (1) they are 'manifestly wrong' and there is no evidence at all on record to support them; (2) the trial Court has overlooked and not adverted to clinching pieces of evidence running contrary to its findings; (3) the trial Court has not scrutinised the evidence properly and has simply jumbled the evidence together ' and come to a conclusion which is a 'non-sequitur'; and (4) where the appellate Court allows additional evidence of a clinching nature, contrary to the findings of the trial Court, to be admitted in appeal.

9. In 'Pearey Lal v. Nanak Chand', 3 D L R , it has been observed by the Privy Council that while a finding that a witness is speaking the truth is of the greatest value when it is made by a Judge who saw the witness, and observed his demeanour, a finding by a Judge who never saw him is of very small value. In 'Rajanandini v. Aswini Kumar', ILR (1941) Cal 457, it is rightly observed that the trial Court's view as to which set of witnesses is to be believed is to be adopted unless there are 'weighty reasons' showing the trial Court's view to be clearly wrong. (His Lordship then discussed the entire evidence and found that the evidence of the prosecution witnesses was true. His Lordship then proceeded:) It was lastly urged that there was no proof that the 'mamool' demanded by the appellant was an illegal gratification or a bribe. I have already held in 'IN RE Varadade-Sikachariar : (1949)2MLJ443 , that modern law attaches little importance to terms like 'Mariada, mamool', etc., but will get into the core of the matter and see what the nature of the payment is, and if it is 'illegal gratification', or a bribe, taken by an officer for doing a favour or abstaining from doing a disfavour, it will come within the scope of Section 151, I. P. C. No doubt, some 'mamools like 'Pongal', 'Deepavali', 'Dasara' and Christmas 'mamools', paid to peons as 'baksheesh', may not come within the term 'illegal gratification' or 'bribe' as they are not paid for showing or forbearing to show favour or disfavour in the exercise of official functions. Mr. Jayarama Iyer finally conceded that if this 'mamool', in the circumstances alleged, was proved, it will be nothing but a bribe or illegal gratification falling within the scope of Section 151, I. P. C.

10. After a thorough scrutiny of the entire evidence I am satisfied that the conviction of the appellant under Section 151, I. P. C. is amply borne out by the evidence on record and that it is correct. I accordingly confirm the conviction. It was urged by Mr. Jayarama Aiyar that the sentence was far too severe, taking all the circumstances into consideration, and especially the fact that the appellant had put in 28 years of service and that this was his first offence, and that he is sure to be dismissed from service, and that the amount involved is only Rs. 30, and that P. W. 7 had himself promised -to pay the amount and had fixed it for payment at Guntur platform on 15-9-1949 and then trapped the appellant and that there is no need to send the appellant back to jail to become a hardened criminal and a problem to society. I agree. After hearing the learned Public Prosecutor on the point, I modify the sentence passed On the appellant into imprisonment till the rising of the Court and a fine of Rs. 500 or, in default, further rigorous imprisonment for three months. Time given till 3 p.m. on 25-10-1951 for the payment of the fine into the Sessions Court, Guntur, as prayed for.

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