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Court : Chennai

Decided On : Dec-10-1984

Reported in : 1985CriLJ1567

Judge : David Annoussamy, J.

Appellant : The State

Respondent : Varadarajan

Judgement :

David Annoussamy, J.

1. This is an appeal against the order of acquittal. The case of the prosecution was summarily as follows:

The accused is a Head Clerk in the office of the District Health Office, Tirunelveli at Palayamkottai. P.W.1 who was a Health Assistant in the Shencottah Group in the same office was suspended by an order of the Health Officer for some grave negligence in the performance of his duty; while so, the Head Clerk offered to help him to come out of the difficulty provided he gave him Rs. 1000; P. W. 1 paid Rs. 200 as part of that amount and in the course of the payment in accordance with the trap arranged upon the information of P.E.1 the amount of Rs. 200 paid by P.W.1 was recovered from the accused. Thereupon, the accused was charged for an offence punishable under Section 161 of the I.P.C. and Section 5(2) read with

Section 5(1)(d) of the Prevention of Corruption Act, hereinafter referred to as the Act. The trial Court by judgment dated 30th December, 1978, acquitted the accused of the offences. It is against that judgment that the appeal has been preferred by the State.

2. At the outset it is to be noted that 'the : charge proceeds on the basis that the offence punishable under Section 161 of the I.P.C. and the offence punishable under Section 5(2) read with Section 5(1)(d) of the Act are one and the same This is not the correct position of law. They constitute two different offences. In fact, there are vast differences between the two, though both the sections are meant to curb corruption. In the first place, the offence under Section 161 is punishable with imprisonment of either description for a term which may extend to three years, or with fine or with both, whereas an offence under Section 5(2) read with Section 5(1)(d) of the Act is punishable with imprisonment which may extend to seven years and also with fine; there is also a provision for minimum punishment of imprisonment of one year in the latter case. While determining the amount of fine for an offence under Section 5(1)(d), the court has to take into consideration the amount or the value of the property which the accused person has obtained by committing the offence, j whereas there is no such prescription while determining the fine under Section 161. Secondly, as per Section 5(l)(a) of the Act, if the offence under Section 161 has been habitual that fact has been made a separate offence called 'criminal misconduct' which name applies also to the offence under Section 5(1)(d) of the Act. The habitual offence under Section 161 I.P.C. and a single offence Bunder Section 5 (1)(d) of the Act are punishable in the same manner which would again show that the offence under Section 5(1)(d) of the Act is different from one under Section 161 I.P.C. The abetment of of fence under Section 161 is punishable under Section 165-A, whereas abetment of offence under Section 5(1)(d) is not punishable under the Act. The attempt for an offence under Section 161 is punishable in the same manner as the main offence itself, whereas the attempt of an offence under Section 5(1)(a) is punishable only with imprisonment which may extend to three years or with fine or with both, whilest the punishment for J&P; offence may be seven years of imprisonment with fine.

3. It is also to be noted that under the Act the law maker has also dealt with the offence under Section 161 in several other ways, in making the proof easy by creating a presumption against the accused, in modifying certain rules in the Code of Criminal Procedure and also in providing that a statement made by a person in any proceeding against the public servant for an offence under Section 161 to the effect that he offered or agreed to offer any gratification shall not subject him to prosecution under Section 165-A of the Code. Therefore, Section 5(1)(d) of the Act was not enacted in ignorance of Section 161, without taking it into account. It was made purposely in order to complement Section 161, to meet the circumstances which would not be covered by Section 161. It is far from being an unnecessary duplication with Section 161.

4. Looking at these provisions from a different angle one can see from the reading of Section 5(1)(d) as contrasted with Section 161, that an offence under Section 5(1)(d) may exist without any profit or benefit for another person, whereas Section 161 implies such a profit or benefit. Secondly, that offence does not unnecessarily imply that another person suffers any monetary loss. The offence may occur by mere diversion of money which otherwise would have come to the coffer of the State, or by depriving the State of the services or of the quality of services which it paid for. The offence may thus occur without anybody paying out of his packet and yet the Officer gaining advantage to the detriment of the State by skilful exploitation of the loopholes in the law and procedure.

5. Another difference is that under Section 161 I.P.C., mere acceptance is an offence whereas under Section 5(1)(d) of the Act, only obtainment is made an offence. In the case of acceptance the initiative vests in the person who gives and in the case of obtainment the initiative vests in the person who receives. We have seen earlier that the offence under Section 5(1)(d) may exist without another person being directly involved. This naturally excludes acceptance which implies an active attitude by another person.

6. On the other side, the fact that the act of obtaining is essential for the offence, explains the insistence in Section 5(1)(d) on the means used. The means listed disclose on their part an active involvement in the accomplishment of the offence.

Those means as per the Act are corrupt or illegal means or by otherwise absuing his position as a public servant. The phrase 'corrupt and illegal means' is also found in Section 162 of the I.P.C. Though illegal means and means consisting of abusing the position as a public servant are quite clear and definite, the word corrupt does not disclose easily its contours. It does not imply necessarily a bribe. There may be corrupt practices other than those of bribery. In fact, in the very title of the Act, it is stated that it is enacted for more effective prevention of 'bribery and corruption' making it clear that they are two different concepts. The concept of corruption is wider in its ambit, but the prosecution has to show that the means used are corrupt.

7. The purpose of Section 5(1)(d) is also different from that of Section 161. After dealing with the habitual offences under Section 161 and under Section 165 respectively under Sub-clauses (a) and (b) of Section 5(1) of the Act, the law maker deals under Section 5(1)(c) with the act of the Government servant dishonestly or fraudulently mis appropriating or otherwise converting for his own use any property entrusted to him. Section 5(1)(d) which comes thereafter is to deal with the cases which could not have been covered under Section 5(1)(c), that is to say, the cases in which the money diverted is not State money or has not yet become State money. Sub-clause (e) which comes at the end is meant to deal with the money in possession of a public servant for which he cannot satisfactorily account. So, as per the Act, corruption can take place in four different ways, listed under sub-els, (a) to (d) and when such acts of corruption could not be detected, a safety valve is provided under Sub-clause (e). This makes clear that in the scheme of the Act, Section 5(1)(d) deals with a specific set of acts different from the ones contemplated under Section 161. Its scope is being lost sight of in merely assimilating it to Section 161. The investigating machinery has the duty to ponder over the real scope of this clause in order to bring to book several persons guilty of offences tinder that clause which for the time being are not dealt with, and thus make the Act fully effective. It is true that the prostitution of offices for sordid motives contemplated in this clause is effected usually in an insidious manner which throws a challenge to the investigation. But that is no reason for closing the eyes. If the hunt is unsuccessful, recourse can always be made to Sub-clause (e).

8. The above short analysis of the two provisions of law makes it clear that the offence under Section 161 I.P.C. and the offence under Section 5(1)(d) are two different offences, their respective ingredients being not exactly the same. No doubt, the same set of facts may sometimes be punishable under both the provisions, but it is not so in all cases. For establishing the offence under Section 5(1)(d) the prosecution should clearly prove the prohibited means, and also that the pecuniary advantage was obtained and not merely accepted. Therefore, it would not be proper in all cases where only an offence under Section 161, I.P.C. if appears to have been committed to charge mechanically also for an offence under Section 5(1)(d) the Act. Courts also should be careful before framing a charge in order to find out whether in the report filed by the police there is anything to infer that an offence under Section 5(1)(d) might have been committed.

9. Now I shall reproduce the charge framed by the trial Court:

That you on or about 3rd day of October, 1976, at 9.40 A.M. at the Pottal (Maidan) near the Raman Temple, Palayamcottai, being the Head Clerk, Office of the District Health Office, Tirunelveli at Palayamcottai, a public servant, directly accepted to the tune of Rs. 200/- from Thiru K. Vadivelu, Health Assistant, Shencottal Group, Shencottai (under suspension from 17-7-1976), or favourable disposal of the disciplinary proceedings against the said Vadivelu, a gratification other than legal remuneration as a motive or reward for doing official functions and you as a public servant by corrupt or illegal means or by otherwise abused your position as such a public servant and thereby committed an offence punishable under Section 161 of the I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act.

It is seen that the charge does not even contain a recital that the accused person obtained any pecuniary advantage. Secondly, the charge is too vague regarding the means which would! have been made use of by the public servant. Therefore, it is obvious that in the present case there is no prima facie case that the offence under Section 5(2) read with Section 5(1)(d) of the Act has been committed.

10. As far as the offence under Section 161 I.P.C. is concerned, the learned Public Prosecutor, who is appearing for the appellant in this case, would contend that the

case of the prosecution was satisfactorily proved, and that the trial Court misdirected itself in its approach while acquitting the accused. In this connection, she placed before me two decisions Gian Singh v. State of Punjab : 1974 CriLJ789 and State of Maharashtra v. Narsingrao Gangaram Pimple : 1984 CriLJ4 . The substance of the first decision is that the court while dealing with bribery cases, has to view the evidence in the light of the probabilities and the intrinsic credibility of those who testify. The substance of the second decision is that where in a trap case the Judge magnified every minor detail or omission to falsify or throw even a shadow of doubt on the prosecution evidence then, it would be the very antithesis of a correct judicial approach to the evidence of witnesses in such a case, that if such a harsh touchstone is prescribed to prove such a case it will be difficult for the prosecution to establish any case at all.

11. The learned Counsel for the accused contended that in the present case there was not a trap in the usual way and that there was a deliberate temptation of the person. The learned Counsel cited a decision in Ramjanam Singh v. State of Bihar : 1956 CriLJ1254 in which it was held that m a case where the trap is not laid in the usual way for a man who was demanding a bribe but amounted to deliberately tempting a man to his own undoing, there would not be an offence under Section 161 I.P.C. He relied on the same case as well as on many other well-known cases in support of his stand that in the case of appeal against acquittal the appellate Court should not interfere when the view taken by the trial Court is a possible one.

12. With the principles laid down in these decisions in mind, I shall turn to the facts of the case. The offence of bribery was attempted to be proved by the prosecution in two ways. First it was at the stage of the talk. In this case P.W.1 stated in the chief examination that he on his own initiative approached the accused for help but in the cross-examination-he turned to say that it was the accused who called him and said that he would be in a position to help him out of the difficulty. P.W.1 being a person who has arranged the trap against the accused, his evidence has to be scrutinised with much circumspection and would require corroboration. The prosecution examined P. W.2 who is none other than the cousin brother of P.W.1. He deposed regarding the second meeting between the accused and P.W.1 and he said that on that occasion the accused insisted on immediate payment, at least

an instalment of Rs. 200 out of the amount of Rs. 1000 initially asked for. The evidence of P.W.2 suffered from two vices. First P.W.1 did not explain as to why, for a dealing which should normally remain secret, he has taken P.W.2 with him and it is also rather difficult to believe that the accused has come out with this bold claim of money without ensuring first who was P.W.2 and for what purpose P.W.2 accompanied P.W.1. Secondly, P.W.2 deposed that he learnt about the trap and the recovery of money from the accused from the paper published on the 3rd October, 1976, while the occurrence did not take place by that time. Therefore, as far as the talk and the agreement between P.W. 1 and the accused regarding the bribe are concerned, the contradictions in the deposition of P.W.1 between his own assertions and the unreliability of the deposition of P.W.2 led the trial Court not to believe the case of the prosecution regarding that aspect. I do not find anything wrong in the conclusion arrived at by the trial Court.

13. As far as the recovery is concerned, the learned public prosecutor contended very strenuously that the fact of recovery was really proved and that after the recovery of the amount the hands of the accused showed that he had manipulated the amount of Rs. 200 which were given by P.W.1 and which were smeared with appropriate powder. It is true that this aspect of the recovery is adequately proved. But the case of the learned Counsel for the accused is that the seizures of the notes by the Investigating Officer was done much later and that such delay threw much doubt about the veracity of the version of the prosecution. He relied for this purpose on the decision of the Supreme Court in Gulam Mahmood A. Malek v. State of Gujarat : 1980 CriLJ1096 wherein it was held that the delay among other things in effecting recovery of the money would make the case of the prosecution unacceptable. In the present case, the version of the prosecution is this on the appointed day P. W. 1 went to the residence of the accused, stayed there for 10 minutes : then P.W.1 and the accused went to a restaurant and after taking meals the accused stated that they would go to the office and for that purpose they boarded a bus; they got down near the house of the Personal Assistant to the District Health Officer (P.W.4); while they were crossing an open space, on their way to the house of P. W.4, the accused demanded money and the money was handed over to him; then they went to the house of P.W.4 and P.W. 1, gave a signal to the Investigating Officer ten minutes afterwards; the Investigating Officer

came ten minutes later and effected the seizure. In this case there is not only delay but there has also been change of place. P.W.1 and the Investigating Officer (P.W.6) did not act as per the scenario contemplated earlier. As per the scenario the arrest and the recovery was to be made immediately after the payment of money. It is also to be observed that as per the version of P.W.1 the accused was very impatient in his demand of money and that when he met him for the second time with P.W.2 he was asked whether he had brought the money, but when he effectively brought the money during the third stage as per P.W.1, the accused never asked whether he had brought the money. In view of the difficulty expressed earlier by P-W4 in getting the money and in view of the insistence of the accused that he should bring the money so that he could help him in one way or the other, normally the accused would have first ensured that he had brought the money before proceeding further in this matter. It is also difficult to believe that the accused received the money in the open space while he had many occasions earlier to get the money from P.W.1 especially when he was in his own house. Therefore the view taken by the trial Court that there was a sizeable element of doubt hovering over the case of the prosecution cannot be reversed in appeal.

14. In the result, the appeal is dismissed. Appeal dismissed.