

In Re: R.G. Jacob

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Court : Chennai

Decided On : Dec-14-1960

Reported in : AIR1961Mad482; 1961CriLJ778; (1961)2MLJ547

Judge : Anantanarayanan, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 165; [Evidence Act, 1872](#) - Sections 133

Appeal No. : Criminal Appeal No. 933 of 1959

Appellant : In Re: R.G. Jacob

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : S. Mohan Kumaramangalam, ;G.K. Damodara Rao and ;S. Krishnamurthi, Advs.

Judgement :

Anantanarayanan, J.

1. The appellant (R. G. Jacob) was an Assistant Controller of Imports and Exports in the office of the Joint Chief Controller of Imports and Exports, Madras. In respect of a certain incident, charges were framed against him under Section 161 I. P. C., Section 5(1)(d) read with Section 5(2) of Central Act II of 1947 and Section 165 I. P. C. The learned Special Judge, Madras, acquitted him of the charges

under Sections 161 I. P. C. and 5(1) (d) read with Section 5(2) of Act II of 1947, but convicted him under Section 165 I.P.C. alone, and sentenced him to undergo rigorous imprisonment for one year. The facts of the particular incident which gave rise to the prosecution are as follows:

2. One K. R. Naidu, (P. W. 8) a merchant in provisions, applied on 21-1-1958 to the Joint Chief Controller of Imports and Exports for a licence for export of chillies (Ex. P. 1). The chief witness in this case, Arumugham, (P. W. 1) whose antecedents I shall refer to later, had an authorisation from P. W. S. (Ex. P. 2) with regard to this matter. The application of P. W. 8 was rejected (Ex. P. 4), and the question mooted was an appeal to the Joint Chief Controller who had powers to reverse the decision. It is alleged that in this connection P. W. 1 met the accused and solicited his help in getting a permit. At a later meeting, the accused divulged that an appeal had to be made for reversing the earlier decision, and that if he (accused) was given a bribe of two bags of cement and Rs. 50, the accused would help P. W. 1 and P. W. 8 to obtain the permit. The accused is supposed to have handed over a chit (Ex. P. 5) to P. W. 1 containing his house address, as P. W. 1 was ignorant where exactly the appellant lived.

3. According to the prosecution evidence, P. W. 1 immediately established contact with the Deputy Superintendent of Special Establishments (P. W. 9) whom he knew earlier, and divulged the facts to that officer. As arranged by that officer, a trap was set, and P. W. 1 actually succeeded in delivering the cement bags (which contained cards of identification put into them previously) and currency notes of Rs. 50 (the numbers of which were previously noted by the police) to the appellant, in pursuance of the arrangement to give illegal gratification. At that moment, the Deputy Superintendent of Police and two mahazar witnesses (P. Ws. 2 and 3) practically raided the house of the accused, and recovered both the cement bags and currency notes from an almirah upstairs. The main question of fact, upon the evidence and probabilities, is whether this incident should be accepted as true and if so, whether any offence is established upon the testimony.

4. I must immediately refer to the defence of the accused, for that largely relates to the merits. According to the appellant, though it is true that the cement bags and

the currency notes were recovered from his house by the police, there was no incident of illegal gratification having been furnished to him by P. W. 1. On the contrary, all that happened was that P. W. 1 placed these objects in the house of the appellant, apparently temporarily and as his own possessions, and then called in the Deputy Superintendent of Police and the mahazar witnesses as though the appellant had succumbed to the trap set. Naturally, this defence would depend, to a considerable extent, upon the question whether the currency notes were recovered, as the prosecution alleges, from the upstairs almirah of the appellant.

If they were so recovered, the appellant could hardly pretend that the currency notes and the cement bags were articles temporarily kept by P. W. 1 in the house, without the accused taking charge of them as articles of illegal gratification-Upon this aspect, several arguments have been offered by learned counsel for the appellant, Sri Kumaramangalam. It is pointed out that P. W. 1 is a man of very doubtful, even shady antecedents. The Deputy Superintendent (P. W. 9) concedes this, and admits that P. W. 1 was not merely convicted under Section 420 I. P. C. in the court Of the Additional First Class Magistrate, Kulltalai, but also that P. W. 1 had been convicted in 1957 in Madras in S.C. 28 of 1958 for offences of forgery and cheating (Sections 420 and 468 I. P. C.).

It is urged that the Deputy Superintendent of Police (P. W. 9) claims knowledge of P. W. 1 from sometime prior to this incident, and hence that P. W. 1 was practically a police informant. It is further urged that, according to a communication received from the Government of India, the integrity of P. W. 1 in relation to certain permits that he sought to obtain was gravely under question and P. W. 1 himself was reported to be then underground; the suggestion is that P. W. 1 in those circumstances, could hardly have gone openly to the office of the Joint Chief Controller, or held any parleys with the appellant. These arguments have some force; but they do not detract in any manner from the truth of the actual offence. It is clear enough that P. W. 1 is not a person of savoury repute.

It is also clear that the Deputy Superintendent (P. W. 9) was perfectly aware of this, but that does not imply that P. W. 9 is speaking any falsehood when he states that, on P. W. 1 divulging the facts to him, he (P. W. 9) set this trap for the

appellant. As regards the communication from the Government of India, there is no clear evidence that the appellant was aware of this, or that even P. W. 1 was aware of it to the extent of inhibiting him from proceeding to the office of the Joint Chief Controller. It is further true that the local mahazar witnesses have not been examined, but only P. Ws. 2 and 3 who accompanied the Deputy Superintendent. But there are no grounds to distrust or reject their testimony. In brief, the actual incident appears to be fully established.

5. Nor can it be seriously suggested that the defence of the appellant is likely to be true. Was have the chit (Ex. P. 5) in the handwriting of the appellant, though he chose to deny it, delivered to P. W. 1 and containing his home address. The evidence is uniformly to the effect that the previously marked currency notes were recovered from the almirah in the upstairs part of the appellant's house. This practically negatives the suggested explanation that P. W. 1 merely kept the articles there, and that the appellant never took them. Hence, I certainly have to accept the evidence that the trap was completely successful, and that the appellant did receive the articles to question from P. W. 1, as a form of illegal gratification.

6. Two other arguments have been pressed before me by Sri Kumaramangalam for the appellant. They are of considerable importance, and of the character of mixed issues of fact and law the first argument relates to the ingredients of the offence defined under Section 165 I. P. C. in relation to the facts of this case. The second argument relates to the legitimacy of the trap set in this particular case, and the extent to which it could legally prove any offence.

7. AS regards the first argument, it might be expressed in the following form. The decision of the Supreme Court in *State of Ajmer v. Shivji Lal*, : 1959 CriLJ1127 , is authority for the view that, as far as an offence under Section 161 I. P. C. is concerned, it must be established that the appellant told the agent that he would render service by approaching a particular public servant, which is one of the essential ingredients of the offence. I might also refer to *K. Prasad v. State*, 1955 MLR 455 CrL., which is to the effect that a connection between the payment and the performance of the official duty must be established, for proof of guilt under

Section 165 I. P. C.

The point is that the second clause of Section 165 I. P. C. refers to 'business transacted or about to be transacted by such public servant, or having any connection with the official function of him-self or of any public servant to whom he is subordinate.' In the present case, one of the admitted features is that the appellant had nothing to do with the export licence in question, its cancellation, or the reversal of that decision in appeal. This is very clear from the evidence of K. Vasudevan (P. W. 4) who categorically states,

'Officially he (accused) had no connection whatsoever with. K. R. Naidu's application or the issue of export permit for chillies. The right is mine and my superiors. Accused had nothing to do with it either at that stage or at the stage of appeal.'

No doubt, the Joint Chief Controller had everything to do with the matter, and the appellant is admittedly his subordinate. The argument of the learned Public Prosecutor is that, in this sense, the ingredient is complete and fulfilled upon the Facts, The argument of Sri Kumaramangalam is that it is not enough that the appellant should be a general administrative subordinate of the Chief controller. He must be a subordinate in respect of the matter in question, in the sense that the matter must belong to that sphere of duties which is common to both, the subordinate and superior officers.

The point is bare of authority and, had the legislature intended such a restricted meaning, I do not see why words to that effect should not have been used in the section. Undoubtedly, if we were to apply Section 161 I. P. C. the present facts would not be enough, for there is no evidence that the appellant said that he would use his influence with the Joint Chief Controller or his own colleague (P. W. 4), or with any designated public servant. The evidence is that the appellant merely stated that he would use his influence to see that the export permit was finally issued. But the facts do appear to be sufficient to establish the ingredients under Section 165 I. P. C. in the strict sense of the language employed. Hence, this argument would seem to lack foundation.

8. The second argument of Sri Kumaraman-galam is an even more vital and significant one, which relates to the matter of traps in general, and the legitimacy of these methods. I find from a review of the case-law upon the subject that these methods have been repeatedly deplored in decisions of courts. But the courts have equally and regretfully acknowledged the necessity for such methods, in order to see that corrupt officials are brought to book. It may be sufficient to refer to the following authorities in this connection: Shiv Bahadra Singh v. State of Vindhya Pradesh, : 1954 CriLJ910 , State of Bihar v. Basavan Singh, : 1958 CriLJ976 , Ramanlal Mohanlal v. State of Bombay, : AIR 1960 SC961 , Rainkrishna v. Delhi State, (S) : 1956 CriLJ837 and Ram-amam Singh v. Bihar State, (S) : 1956 CriLJ1254 -

Certain of these decisions suggest a line of distinction between legitimate traps and illegitimate traps; and the principles are broadly indicated. The argument with reference to the present facts, is this. Since P. W. 1 cannot be believed without due corroboration, we have only his word for the version that the appellant agreed to receive illegal gratification in this case for obtaining permit, and moreover, that the appellant suggested this. On the contrary, since P. W.

I was already known to the Deputy Superintendent, it is at least possible that P. W. 1 took the initiative, and attempted to seduce the appellant, and actually won him over into the taking of the bribe, by pressing temptation before the public servant.

This has been deprecated as practically amounting to the abetment of an offence. It is sufficient to refer to the observations of their Lordships of the Supreme Court in (S) : 1956 CriLJ1254 to the effect that, whatever the criminal tendencies of a man might be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law, and that this is all the more heinous where the temptation is at the instance of those who are the guardians and keepers of the law.

As I have already stated, this kind of trap really amounts to the creation of an artificial crime, and the abetment of that crime, either by the police authorities or their tools. I would certainly agree that, where such a method is employed, it is reprehensible in the extreme; practically this alone might make the conviction

illegal. The question is whether the trap designed in the present case actually fell within this category.

9. After a careful consideration of the facts on record, I am of the view that we cannot come to the conclusion that the trap designed in this case was really founded upon a solicitation of the appellant and the pressing pf temptation upon him, instead of the appellant himself suggesting the bribe in the first instance. The evidence is to the effect that the appellant suggested the bribe, and even stipulated the form of bribe. We have no particular reason to disbelieve P. W. 1 on this point, whatever His antecedents might otherwise be. Nor do we have any ground to assume that P. W. 1 suddenly took it into his head to tempt the appellant by proffering the suggestion himself, that P. W. 1 first broke down the integrity of the appellant, and then divulged the scheme to the appellant.

Hence, upon the probabilities, I am inclined to the view that it must have been the appellant who suggested illegal gratification and the form of it; since the form included two cement bags, it seems most unlikely that the suggestion came from P. W. 1, inclusive of this specific detail. Consequently, I do not think that the trap designed in this case falls within the mischief of the prohibited category, repeatedly condemned in the decisions referred to above.

10. In resulting analysis, therefore, I find that the conviction is correct, and must be confirmed. As regards the sentence, I think that we must bear in mind the grievous penalties already suffered by the appellant, who had hitherto an unblemished record. It must be remembered that for a man who has previously lived an honourable life, at least in outward semblance, the very disgrace of a conviction of this kind and dismissal from employment are grievous penalties. Bearing these in mind, as also the protracted nature and suspense of the proceedings suffered by the appellant and his total dismissal from service, I reduce the sentence to a fine of Rs. 400 or to rigorous imprisonment for three months in default. Time for payment of the fine, one month.