

In Re: S. Krishnamurthy

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Court : Chennai

Decided On : Aug-26-1959

Reported in : 1960CriLJ363; (1960)1MLJ339

Appellant : In Re: S. Krishnamurthy

Judgement :

Somasundaram, J.

1. The appellant was tried by the Special Judge, Madras for offences under Section 161, Indian Penal Code and Section 5(i)(d) read with Section 5(a) of Act II of 1947 and convicted. He was sentenced to imprisonment till the rising of the Court and a fine of Rs. 300/-

2. The prosecution case may be briefly stated as follows:

The appellant was a Clerk employed in the Records Section of the Chief Engineer's Office, Southern Railway. P.W. 2, Kulasekharan, a young man of about 22 years is said to have been trying for a job. Having heard that there was recruitment for the the post of Khalasi in the General Mechanical Department of the Southern Railway, he is said to have gone to that office for the purpose of getting the necessary information and applying for the post. P.W. 2 is a stranger to the accused. But when he went to the office he is said to have been seen by the accused in the office. The accused came out immediately on seeing P.W. 2 and asked him what he wanted. P.W. 2 told him that he was in need of a job and

immediately the accused told him to come to his house that evening and gave him his address. But P.W. 2 did not meet the accused that evening in his house as he says that he sustained an injury while playing football. Three days later, on the 27th he went to the house of the accused. Then the accused is said to have given him a draft application asking him to make out such an application in his own handwriting. The accused also asked P.W. 2 to bring his Section S.L.C. Book. More than all these he demanded from P.W. 2 Rs. 50 to try for the job. P.W. 2 is stated to have pleaded poverty and finally the bargain was struck at Rs. 30.

3. P.W. 2 is said to have taken Rs. 30 from his father the next day. He is also said to have written a fair application Exhibit P-4. But suddenly he realised that it was wrong and virtuous sentiments overtook him all of a sudden and he decided that he should not pay a bribe and get a job. He immediately went to the Special Police Establishment after hearing that there was a such a department constituted by the Government, to detect offences of this type, and gave information to them. The Officer who was naturally on the look out for such culprits, took a written complaint and asked him whether he brought the money and when P.W. 2 showed him the thirty rupees, the officer noted down the number of the currency notes in a paper and got P.Ws. 3 and 4 to attest the same. Then he is said to have given the modus operandi, as to how P.W. 2 should pay the money and where they would wait. The next day, in accordance with the directions given by the police, P.W. 2 went to the house of the accused for the purpose of paying the money but the accused was not in his house. The Police Officers asked P.W. 2 to wait till the accused returned home. The accused returned home at 9 P.M. After a little while he came out wearing only a banian and made enquiries of P.W. 2. P.W. 2 gave the application form and Rs. 30 to the accused. All this happened while they were walking together leaving the house. After getting the money the accused is said to have promised to get P.W. 2 the job. In the meantime P.W. 2 informed the Police Officer of the payment of the money to the accused. The Police officers went past the accused and stopped him. On being questioned, the accused at first denied but subsequently took out the application form and Rs. 30, from inside his banian. The witnesses whom the officer took, attested the mahazar. After further investigation the accused was charge-sheeted for the offences mentioned above. There can be no doubt that this Rs. 30 was recovered from the accused under the

circumstances mentioned by prosecution witnesses, that is, P.W. 2 paid Rs. 30 at the place mentioned and they were found inside the accused's banian along with the application. But the rest of the story is all a put up one, that is to say, it is not as if on seeing P.W. 2 the accused came out immediately and that P.W. 2 suddenly became virtuous in his sentiments and wanted to prove to be the right type of citizen. It must all have been arranged by the Special Police Establishment. That the trap was laid and the police succeeded in the trap cannot be disputed. The result is that the accused undoubtedly was in possession of Rs. 30 given by P.W. 2, which was certainly given for the purpose of getting a job for P.W. 2 as a Khalasi.

4. The learned Counsel Mr. Sivakaminathan appearing for the accused has taken a point of law and that is that in the charge as framed by the Special Judge there is no mention that the money was taken by the accused for the purpose of using his influence with a particular public servant or any public servant. The first charge as framed is as follows:

That you being a public servant, employed as a Clerk in the Record section of the Chief Engineer's Office, Southern Railway, Madras, on or about the 28th day of February, 1957, at Madras (near Mambalam) Railway Station did demand and accept a sum of Rs. 30 (thirty only) from Shri N. Kulasekharan as gratification, other than legal remuneration, as a motive for getting him a Khalasi's post in the Railway in pursuance of earlier demands made by you, and thereby committed an offence punishable under Section 161, Criminal Procedure Code and within my cognizance.

The relevant portion of Section 161 Indian Penal Code runs as follows:

Whoever, being...a public servant, accepts or obtains...any gratification whatever, other than legal remuneration, as a motive...for doing...favour...to any person ,or for rendering...any service...to any person,...with any public servant, as such....

The contention is that the charge does not contain the words 'with any public servant' mentioned in Section 161, Indian Penal Code. Normally, I should have thought that when a person accepts money saying that he will get a job for him it

carries with it necessarily the implication that he is going to use his influence with the concerned public servant. In my opinion, there is really no need to add the words or mention the words 'with any public servant' in the charge. But the learned Counsel is supported in his contention by a decision of the Supreme Court in State of Ajmer (Now Rajasthan) v. Shivji Lal (1959) M.L.J. (CrL.) 589. In that case the charge that was framed was more or less similar to the one framed in this case and there was no reference to 'Public servant' therein. His Lordship Wanchoo, J., observed as follows at page 592: the first two ingredients set out above are clearly established in this case; but the third ingredient, (namely, that the gratification should have been taken as a motive or reward for rendering or attempting to render any service with any public servant) is not even charged against the accused. The charge merely says that he took the money as a motive for securing a job for Prem Singh in the Railway Running Shed, Abu Road. It does not disclose who was the public servant whom the accused would have approached for rendering or attempting to render service to Prem Singh in securing a job for him. Even in the complaint made by Prem Singh to the Deputy Superintendent of Police all that was said was that the accused told Prem Singh that he would secure a job for him at Abu Road, because he had considerable influence there. It was not disclosed as to who was the public servant on whom the accused had influence and whom he would approach in order to render service to Prem Singh. In his statement also Prem Singh did not say that the accused had told him that he had influence on any particular public servant at Abu Road whom he would influence in order to render this service to Prem Singh, namely, procuring him a job. It is true that the application was addressed by Prem Singh to the Divisional Mechanical Engineer and was given to the accused who said that it was all right; but Prem Singh did not even say that the accused has asked him to address the application to the Divisional Mechanical Engineer. It seems that the application was addressed to the Divisional Mechanical Engineer, simply because, he was obviously the officer in charge of the Railway Running Shed at Abu Road. Thus, Prem Singh did not say either in his complaint or in his statement that the accused had told him that he would render service to him by approaching a particular public servant. In the Charge sheet submitted by the Police as well as in the charge framed by the Court, it was not disclosed whether any public servant would be

approached to render service to Prem Singh, i.e., by securing him a job. In the circumstances one of the ingredients of the offence under Section 161 was neither alleged, nor charged, nor proved against the accused. The mere fact that a person takes money in order to get a job for another person somewhere would not by itself necessarily be an offence under Section 161, Indian Penal Code unless all the ingredients of that section are made out. As in this case one of the main ingredients of that section has not been made out, the accused would be entitled to acquittal.

5. These observations of Wanchoo, J., apply with equal force to the facts of this case, because one of the main ingredients of the section, namely, rendering or attempting to render any service with any public servant is not referred to in the charge, is not spoken to by the witnesses and is not mentioned in the complaint. Therefore in this case the accused is entitled to acquittal on the principle laid down by the decision of the Supreme Court referred to above. The convictions and sentences must be set aside and the accused must be acquitted. The convictions and sentences of the accused are set aside and he is acquitted.

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