

In Re: Sathiaseelan and ors.

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Court : Chennai

Decided On : Dec-06-1968

Reported in : (1969)2MLJ379

Appellant : In Re: Sathiaseelan and ors.

Judgement :

R. Sadasivam, J.

1. Appellants have been convicted under Section 161, Indian Penal Code, read with Section 34, Indian Penal Code, and under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947, read with Section 34, Indian Penal Code, and sentenced to rigorous imprisonment for one year under the latter count alone and no separate sentence was awarded in respect of former count.

2. Accused 1 and 2 were Sanitary Inspectors of the 6th and 19th Wards of the Coimbatore Municipality, and they were deputed by the Health Officer, P.W. 4 Dr. Francis Xaxier, to take samples of milk and butter in the latter's ward. The third accused Rangaswamy was the Sanitary Maistry working under the second accused. On the morning of 7th March, 1966, at about 7-30 a.m. the accused met P.W. 1 K. Subramaniam, a milk vendor, took him to the Delhi Hotel to the west of the North Coimbatore Railway level-crossing and there they are alleged to have taken milk from P.W. 1 Subramaniam for analysis and put them in three sample bottles. The fact that P.W. 1 Subramaniam was taken to the Delhi Hotel, to take

milk samples is not in dispute. Though Exhibits P-1 to P-4 were prepared at the time and Exhibit P-4 alone remained to be signed by P.W. 1 Subramaniam, the claim of the accused is that no milk sample was taken. But the evidence of P.W. 1 Subramaniam is that milk samples were taken from him for analysis and that, at that time, the first accused demanded a sum of Rs. 200 as illegal gratification for letting him off without charging him, and, on his expressing difficulties to raise that sum, he was told that he should at least give Rs. 100. When P.W., 1 was about to sign the document Exhibit P-4, the first accused is alleged to have stated that he was going to put his last signature in Exhibit P-4 and then only stated that at least Rs. 100 should be given. P.W. 1 Subramaniam claims to have met his uncle and secured Rs. 100 for paying the bribe. Then he thought of informing the matter to the vigilance authorities and proceeded to the vigilance office, and gave the complaint Exhibit P-5. In due course, the trap was laid in this case. P.W. 7 Raghavan Nair, Inspector of Police, Vigilance and Anti-Corruption, Coimbatore, prepared a mahazar for the currency notes M.O. 1 series, brought by P.W. 1 Subramaniam, and went with two witnesses P.W. 2 Chinnaswamy and P.W. 3 Balasubramaniam, then Assistant Engineers' in the Electricity Department. The evidence of P.W. 1 Subramaniam and the three witnesses P.Ws. 2, 3 and 7 is that P.W. 1 met the third accused near the jutka stand. When questioned by the third accused P.W. 1 told him that he had brought the money and then they both proceeded on cycles to Murugan Stores. The first accused came out of the Stores and asked P.W. 1 Subramaniam whether he had brought the money. He then pointed out the second accused standing in the opposite platform and asked him to give the money to him. But when P.W. 1 Subramaniam gave the money M.O. 1 series, into the hands of the second accused, he received the same and handed them over to the third accused. On P.W. 1 Subramaniam giving the agreed signal by scratching his head, P.W. 7 Raghavan Nair went there with P.Ws. 2 and 3 and questioned the third accused, who produced the currency notes M.O. 1 series. This in short is the prosecution case.

3. The sanction in this case was given by the Municipal Health Officer, P.W. 4 Dr. Francis Xavier. It was urged before the Special Judge and also before me that P.W. 4 was not competent to accord sanction to prosecute the accused and that the Commissioner of the Coimbatore Municipality was the competent authority to

grant the sanction. But towards the end of the arguments, Sri V. T. Rangaswami Ayyangar went further and urged that the State Government alone was competent to accord sanction for prosecution in this case.

4. P.W. 4 Dr. Francis Xavier deposed that he is competent to remove the accused from service, but it was elicited from him that he could do so only subject to the approval of the Municipal Commissioner. In *Sailendranath Bose v. State of Bihar* (1969) 1 S.C.J. 133 : (1969) M.L.J. 153 : A.I.R. 1968 S.C. 1292, it was held that the sanction of the head of the department who was not proved to be competent to remove from service the accused, who was an Assistant Medical Officer in the Railways, was not valid. It was observed by the Supreme Court that on the materials placed before it, it was not possible to come to the conclusion that P.W. 1 the Chief Medical Officer was competent to grant sanction under Section 6 (1) of the Prevention of Corruption Act. The Special Judge relied on the decision in *Rash Behari v. The State* A.I.R. 1951 Ass 42, but that decision is clearly distinguishable and cannot be used as an authority in this case. It is clear from the decision that Executive Engineers had the power to appoint or remove the Upper Division Clerks and that the mere fact that the Chief Engineer had issued a circular that the said power should be exercised subject to his approval cannot in any way affect the authority of the Executive Engineer as the appointing authority to accord sanction to prosecute the accused, an Upper Division Clerk. In *Nyalchand Kevalram v. State* A.I.R. 1955 Sau. 117, relied on by the prosecution, it was held that, even though the sanction of the General Board was required before a nakadar could be appointed or removed, yet the actual power of appointment or removal was with the President of the Municipality and consequently he could sanction the prosecution of the nakadars (persons employed to collect octroi duty at the octroi outpost). This decision taken along with the evidence of P.W. 4 Dr. Francis Xavier supports the claim of the learned Public Prosecutor that the sanction is valid.

5. Section 75 of the Madras District Municipalities Act provides:

Subject to the provisions of Section 77 and to such control as may be prescribed by the State Government the Executive Authority may censure, fine, withhold

promotion from, reduce, suspend, remove or dismiss any municipal officer or servant in its service except a health officer or a municipal engineer, a municipal electrical engineer or an assistant municipal electrical engineer for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct....

6. 'Executive Authority ' has been defined in Section 3 (8-C) of the said Act to mean in the case of municipalities included in Schedule IX or notified under Sub-section (1) of Section 12-C, the Commissioner or if there is no Commissioner in charge, the Chairman, Coimbatore Municipality is the very first municipality mentioned in the list of municipalities in Schedule IX of the said Act for which Commissioners shall be appointed. These provisions show that the Municipal Commissioner has authority to dismiss the employees of the Municipality. There can be no doubt in this case that the accused were such employees. Sri V. T. Rangaswamy Ayyangar referred me to a circular issued by the Rural Development and Local Administration Department of the Government of Madras, Memo. No. 30045/M-7/67, dated 25th May, 1968, in support of his contention that the Municipal Commissioner is competent to frame charges against a Sanitary Inspector of the Municipality. In view of what I have stated viz., that the Commissioner of the Municipality has power, by virtue of Section 75 of the District Municipalities Act, this circular is not of importance.

7. The question for consideration in this case is whether P.W. 4 Dr. Francis Xavier, the Municipal Health Officer, Coimbatore Municipality, is competent to sanction the prosecution of the accused in this case. Section 13 (1) of the Public Health Act defines the powers of the Director of Public Health over public health staff of local authorities. In Section 7 of the Public Health Establishment (Local Authorities) Regulations, 1940, it is provided that subject to the provisions of Clause (a) of Sub-section (1) of Section 13 of the Madras Public Health Act, 1939, and the Rules prescribed thereunder, appointment etc. shall be made by the Executive Authority in a municipality which has no Health Officer of its own and by the District Health Officer in consultation with the President of the Panchayat in a Panchayat which has no separate Health Officer; and by the Health Officer subject to the approval of the Executive Authority as required by Sub-section (2) of

Section 14 of the Madras Public Health Act, 1930, in other cases. The last clause is the one relevant to this case. In the Madras Service Manual, Volume III, which consists of special rules with regard to the subordinate services, the appointing authorities with regard to several categories of the Madras Public Health Subordinate Service are mentioned. It is clear from Rule 3 of Section 26 dealing with the Madras Public Health Subordinate Service, that the Director of Public Health is the appointing authority in respect of particular categories of service and the appointing authority, for posts other than the posts mentioned as coming under Director of Public Health is the Assistant Director of Public Health in respect of the Staff in the office of the Director of Public Health, and the officer concerned in the category of Health Officer in respect of staff in other offices. Thus P.W. 4 Dr. Francis Xavier, Health Officer of the Coimbatore Municipality as the appointing authority for Sanitary Inspectors and Sanitary Maistries, is competent to accord sanction in this case.

8. Sri V. T. Rangaswamy Ayyangar relied on Section 9 of the Prevention of Food Adulteration Act and contended that the Central Government or the State Government may, by notification in Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors and urged that the State Government alone is the competent authority to accord sanction. It should be noted that the State Government does not appoint Food Inspectors and by G.O. No. 3591, Health, dated 26th November, 1955, published at page 628 Part I-A of the Fort St. George Gazette, dated 7th December, 1955. Municipal Health Officers and Sanitary Inspectors have been appointed as Food Inspectors under the Act, and this fact is notified in every complaint filed under the Prevention of Food Adulteration Act. Thus the Sanitary Inspectors or Food Inspectors by virtue of their posts held as Sanitary Inspectors in the Municipality, and if they are removed from the posts of Sanitary Inspectors ipso facto they cease to be Food Inspectors.

9. For the foregoing reasons, I find that the sanction accorded by P.W. 4 Dr. Francis Xavier as Health Officer is valid, though sanction could have also been accorded by the Commissioner of the Coimbatore Municipality. However, in order to remove doubts in such matters, it is better that clear instructions are given

whether the Commissioner or the Health Officer is the authority to accord sanction to prosecute the Food Inspectors.

10. There is only the evidence of P.W. 1 Subramaniam that a demand for bribe was made by the first accused and that it was supported by the other accused. Suggestions have been made to P.W. 1 Subramaniam as to why he should depose falsely against the accused. It is clear from the evidence of P.W. 1 Subramaniam that he agreed to give bribe and wanted to give it to the accused in this case, to avoid prosecution under Prevention of Food Adulteration Act. If he had only pure milk for sale, he need not agree to give bribe even if sample had been taken from him. The evidence of such a person cannot be accepted without corroboration by other evidence or surrounding circumstances. According to P.W. 1 Subramaniam, milk was taken from his can and put in three different bottles. But this fact is denied by the appellants. It is, no doubt, strange that accused 1 and 2 should have prepared Exhibits P-1 to P-4, without even taking milk samples. The recitals in Exhibits P-2 and P-4 are not consistent with the version put forward by accused 1 and 2. But even the evidence of P.W. 1 Subramaniam is that he did not receive 47 paise, after his having given milk. Exhibits P-1 to P-4 mention the sample number as 3776. But it is clear from Exhibit P-20 and the bottle M.O. 3 that the said number 3776 was assigned to the butter sample taken at Murugan Stores. If the accused had really taken milk samples, it is unlikely that they would have assigned the number 3776 mentioned in Exhibits P-1 to P-4 to the butter sample. If the milk bottles had been seized in this case and if they contained the number 3776 or anything so connected to them within Exhibits P-1 to P-4, the said circumstance would lend some corroboration to the version of P.W. 1 Subramaniam. P.W. 6 Kunhisooopi, working as a cashier in the Delhi Hotel, stated that he attested Exhibits P-1 to P-4 along with one Balakrithna Iyer, in connection with the seizure of milk from P.W. 1 Subramaniam and that the three bottles were found corked and sealed and kept on a table at a distance of six feet from the cash counter. In cross-examination, he stated that he did not know what the bottles contained, and that he could only speak to the fact that the bottles contained a white substance. P.W. 5 Pankajakshan working as a Sanitary Maistry in the Sixth Division of the Coimbatore Municipality was examined to speak to the fact that the milk bottles concerned in this case were sent by the first accused to his house. But

the said witness turned hostile and he did not support the prosecution case. P.W. 7 Raghavan Nair, Inspector of Police, Vigilance and Anti-corruption, Coimbatore, searched the house of the accused but he did not recover any milk bottle concerned in this case. Thus, there is nothing to support the version of P.W. 1 Subramaniam that milk samples were actually taken from him, though, having regard to Exhibits P-1 to P-4, it appears probable.

11. P.W. 1 Subramaniam deposed that the first accused asked him Rs. 200 and then finally when he was about to put his signature in Exhibit P-4 reduced the demand to Rs. 100. It is clear from his evidence that, at the time when he was asked to pay Rs. 200 there was a person at the cash counter of the Delhi Hotel and an Iyer was also standing nearby. P.W. 6 Kunhisooopi was the person then working at the cash counter of the Hotel and he referred to Balakrishnan Iyer as the other person who was with him. The non-examination of Balakrishna Iyer and the non-mention of the demand by P.W. 6 Kunhisooopi were adversely commented in the lower Court, but the lower Court has brushed it aside in paragraph 28 of its judgment. I am unable to follow the observations of the Special Judge that it is not the evidence of P.W. 6 that he heard the conversation that took place between P.W. 1 and accused 1 and 2. Unless P.W. 6 Kunhisooopi was deaf, he could not have failed to hear what was spoken in his presence. The evidence of P.W. 1 Subramaniam about the presence of a person at the cash counter and an Iyer standing nearby evidently referred to P.W. 6 Kunhisooopi and Balakrishnan Iyer respectively. Learned Advocate for the accused was justified in adversely commenting upon the prosecution case that there is nothing to corroborate the evidence of P.W. 1 Subramaniam with regard to the alleged demand of bribe.

12. The learned Special Judge has pointed out in paragraph 29 of this judgment that no one was present, when the third accused asked P.W. 1 to bring the money as demanded by the other accused. But the fact remains that the said, demand spoken to by P.W. 1 Subramaniam is also not corroborated by any evidence. Having regard to the fact that the evidence of P.W. 1 Subramaniam could have been corroborated by P.W. 6 Kunhisooopi and Balakrishna Iyer and in the absence of such corroboration, it is difficult to rely on the evidence of P.W. 1 Subramaniam about the alleged demand of bribe.

13. There is only the evidence of P.W. 1 Subramaniam that he went and received Rs. 100 from his uncle. But he has not even examined his uncle to corroborate his version. The only other evidence which requires to be considered is the recovery of M.O. 1 series. The evidence of P.Ws. 1, 2, 3 and 7 about the recovery of M.O. 1 series appears to be artificial. P.W. 1 Subramaniam met the third accused near the jutka stand. The third accused has rightly mentioned in his statement that, if bribe was to be taken, he would not have taken P.W. 1 Subramaniam along with him. According to P.W. 1 Subramaniam, when he went to Murugan Stores, the first accused came out and questioned P.W. 1, Subramaniam, whether he had brought the money. But curiously enough, he did not receive the money. The first accused is alleged to have pointed to the second accused standing in the opposite platform. It is not as though P.W. 1 did not know the second accused and required the assistance of the first accused to point out the second accused. We have to rely only on the evidence of P.W. 1 Subramaniam. as to what he asked the first accused. The alleged conduct of the first accused in pointing at the opposite direction cannot be taken as an incriminating circumstance at all, unless one accepts the version of P.W. 1 Subramaniam. The first accused denied having made any demand for bribe or having pointed out the second accused standing in the opposite platform. If really P.W. 1 Subramaniam brought Rs. 100, in pursuance of the prior demand made by the first accused in the presence of the second accused and the second accused was also pointed out by the first accused, there is no reason why the second accused should receive the money and hand it over to the third accused. The second accused stated that P.W. 1 Subramaniam thrustured forcibly M.O. 1 series on him, that he dropped them and asked the third accused to take them and throw the money, and that what was stated by P.W. 1 is false. The third accused has stated that P.W. 1 Subramaniam brought the money and thrustured M.P. 1 series in the arm-pit of the second accused, that the second accused threw it down, that it fell on him and the second accused asked him to throw it away and that he accordingly threw it away and that at that time P.W. 7 Raghavan Nair, Inspector of Police, came and caught hold of his hands. It is true that P.Ws. 1, 3 and 7 speak to the fact that P.W. 1 Subramaniam gave the money to the second accused and the second accused handed it over to the third accused and that the third accused produced the money when he was questioned.

The witnesses do not say whether the third accused had the money in his pocket or in his hands. It appears as if the third accused had the money only in his hands which is not inconsistent with his plea. It is significant that P.W. 3 Balasubramaniam has stated even in his chief examination that the third accused handed over the money to P.W. 7 Raghavan Nair and protested that he had nothing to do with the money. It is significant to note that the other witnesses P.Ws. 1, 2 and 7 have not spoken to it. The evidence of P.W. 3 Balasubramaniam that the third accused protested even at that time is consistent with the case of the third accused. If the other witnesses suppressed that fact it only shows that it is not possible to place much reliance on their evidence. It looks artificial that when the demanded bribe was given by P.W. 1 Subramaniam, the first accused should ask P.W. 1 to give it to the second accused and that the second accused should hand it over to the third accused. It looks as though the persons in charge of the investigation were keen that there should be evidence that every one of the accused handled the currency notes M.O. 1 series in some manner or other. There are very grave doubts about the guilt of the accused in this case. Even assuming that the third accused did receive Rs. 100 from P.W. 1 Subramaniam and was caught at that time, he cannot be convicted under Section 161 read with Section 34, Indian Penal Code, or under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act read with Section 34, Indian Penal Code, if the charge against the other accused fails.

14. For the foregoing reasons, the appellants are entitled to the benefit of doubt in this case. The convictions of the appellants and the sentences imposed on them are set aside and the accused are acquitted. The Criminal Appeals are allowed.

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