

indu Bhusan Chatterjee Vs. the State

indu Bhusan Chatterjee Vs. the State

SooperKanoon Citation : sooperkanoon.com/854952

Court : Kolkata

Decided On : Dec-01-1954

Reported in : AIR1955Cal129,1955CriLJ1169

Judge : Sen and ;Renupada Mukherjee, JJ.

Acts : [Prevention of Corruption Act, 1947](#) - Section 6; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103 and 165

Appeal No. : Criminal Appeal No. 322 of 1953

Appellant : indu Bhusan Chatterjee

Respondent : The State

Advocate for Def. : J.M. Banarjee, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Bejoy Ranjan Mitra, Adv.

Disposition : Appeal dismissed

Judgement :

Sen, J.

1. This is an appeal from an order of Sri J.C. Lodh, Judge, First Special Court at Alipore, convicting the appellant Indu Bhusan Chatterjee under Section 161, Penal Code, and sentencing him to suffer rigorous imprisonment for three months and to

pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for one month more. The Judge also convicted the appellant under Section 5(2) read with Section 5(1)(d) of Act 2 of 1947 but passed no separate sentence thereunder.

2. The prosecution case was briefly as follows: One V. G. Doraiswami, a retired railway employee, set up a firm at Vizianagram known as Commercial Claims Bureau for dealing with claim cases of the public against the then B.N. Railway now amalgamated with the Eastern Railway. He had several cases pending from 1949 and as there was delay in final settlement, he came down to Calcutta Headquarters of the B.N. Railway in October 1951 and met H. Chatterjee, Assistant Commercial Superintendent of the B.N. Railway in connection with claims that he was dealing with and on that occasion he was introduced to the appellant Indu Bhusan Chatterjee who was then acting as Assistant Supervisor of claim cases of B.N. Railway, Vizianagram section. The appellant then had power to deal finally with claims upto Rs. 75/- and he had to report on other claims to his superior Officer, the Assistant Commercial Superintendent.

In October 1951, Doraiswami met the appellant at Calcutta and according to Doraiswami the appellant then asked for some gratification for speedy and favourable disposal of the cases and Doraiswami then paid the appellant a sum of Rs. 10/-, and also dictated the numbers and other details of the claim cases that he was dealing with. Doraiswami again came to Calcutta in January 1952 and again met the accused in his office and then at the Coffee House in front of the Hindustan Buildings on the Central Avenue, after some discussion, Doraiswami paid another sum of Rs. 15/- to the appellant for expeditious disposal of the claim cases pending with the appellant Indu Bhusan Chatterjee and belonging to Vizianagram section. Doraiswami then left for Vizianagram and from there he carried on some correspondence with the appellant.

In the meantime on receipt of secret information the Deputy Superintendent of Police, of Special Police Establishment at Puri, directed Inspector G.N. Brahma of the Special Police Establishment then attached to Puri to go to Vizianagram and contact Doraiswami in connection with the alleged report of dishonesty by Railway Officials. Brahma accordingly went to Vizianagram and on 29-4-1952 he met

Doraiswami and had a discussion with him and Doraiswami filed a complaint with some letters purporting to have been written by the appellant. Brahma asked Doraiswami to meet him in Calcutta on 10-5-1953 where he would contact other Officers of the Special police Establishment of the Calcutta section and take further steps. At Calcutta, Inspector Brahma met the Superintendent of the Special Police Establishment Calcutta section and other Officers, and Inspectors K.C. Mukherjee, and N.K. Mukherjee were deputed to take up the investigation.

These Inspectors obtained the permission of the Chief Presidency Magistrate, Calcutta, for taking cognisance of the case and investigating the case, such special permission being required under the proviso to Section 3 of Act 2 of 1947. Doraiswami met the appellant in Calcutta and it was settled between them that Rs. .100/- would be paid by Doraiswami to the appellant at about 6 P.M. on 12-5-1953 at the Indian Coffee House where the parties were to meet. Doraiswami informed the Police Officers about this arrangement, and the Police Officers noted the numbers of the ten-rupee notes in which payment was to be made to the appellant by Doraiswami. It was also arranged that after the payment had been made, Doraiswami would make a signal by placing his hand behind his head.

Accordingly, from before 6 P.M. on 12-5-1952, the Police Officers lay in wait at the entrance to the Coffee House Building, while Doraiswami was Standing near the gate of that building. Shortly before 6 P.M. the appellant arrived there and Doraiswami met him and they both went inside and sat at a table where coffee was ordered by Doraiswami Sri G.N. Gnash, Assistant Director of Postal Services, and some Police Officers also followed Doraiswami and the appellant into the Coffee House and took: their seats at tables 'adjoining the table at which Doraiswami and the appellant sat. At the table there was talk between Doraiswami and the appellant over expediting the claim cases and Doraiswami gave a list of claim cases which he was dealing with and the appellant put the list in his own pocket.

Doraiswami then handed over the bundle of ten-rupee notes which the appellant took and put In the left upper-pocket of his shirt. Thereafter the accused and the appellant- both stood up and Doraiswami gave the pre-arranged signal by placing

his hand behind his head. Thereupon Inspectors N.K. Mukherjee and S.B. Mitra rushed into the Coffee House, and other members of the party, e.g., Sri G.N. Ghosh and Brahma who were at neighbouring tables also went up to the table at which Doraiswami and the appellant were seated. The Police Officers disclosed their identity and challenged the appellant saying that he had received the ten ten-rupee notes as bribe and asked him to bring out the amount.

The appellant remained silent for a time and then brought out the ten-rupee notes together with the list of pending claim cases which had been handed over to him by Doraiswami. The numbers of the notes were checked and it was found that the numbers were the same as had been noted before by Sri G.N. Ghosh and the Police Officers. Thereupon a seizure list was prepared and the appellant was taken to his house. His house was searched but nothing objectionable was found at the dwelling house of the appellant. Sri N.K. Mukherjee took up the investigation and completed the same and a case was started. The case was allotted to the file of Sri J.C. Lodh by a Government notification. Thereupon a charge-sheet was filed before this Court on 28-6-1953. The appellant was then summoned and placed on his trial.

3. The appellant pleaded not guilty. He stated when questioned under Section 342, Criminal P.C., that he took his seat at a table in the Coffee House and within a minute Doraiswami came and sat at the same table. After paying for the coffee, as the appellant was moving for going home Inspector N.K. Mukherjee intervened and wanted him to produce his purse. He produced Rs. 43 which he had in the purse from the breast pocket of his shirt and which he had received as refund of the special provident fund contribution which had been discontinued.

He stated that he had not received Rs. 100/- as alleged from Doraiswami nor could he receive the list Ext. 4/1 of claim cases with which Doraiswami was dealing, that after he had produced Rs. 43/- from the breast pocket of his shirt, Inspector N.K. Mukherjee put his hand quickly into the appellant's breast pocket, brought out his hand again and then disclosed the ten ten-rupee notes and the list Ext. 471 in his hand. In other words, according to the appellant the ten ten-rupee notes and the list were planted by Sri N.K. Mukherjee and had never been received by the

appellant from Doraiswami at the Coffee House or elsewhere. The defence therefore was that the police in conspiracy with Doraiswami had falsely implicated the appellant.

4. The learned Special Judge discussed the evidence and the points of law urged before him in detail and came to the conclusion that the charges under Section 161, Penal Code, and Section 5(2), read with Section 5(1)(d) of Act 2 of 1947 had been sufficiently proved against the appellant and he therefore convicted and sentenced the accused-appellant as described already.

5. The first point urged by Mr. Mukherjee appearing for the appellant is that there was no proper sanction given under Section 6 of Act 2 of 1947 and therefore cognisance of the case was not properly taken by the learned Judge. The sanction order was duly proved in the case and was marked Ex. 6. It recites all the facts of the case and states that the sanctioning authority Mr. R.K. Bokil, Chief Commercial Superintendent, Eastern Railway, having applied his mind to the facts of the case was satisfied that it was necessary in the interest of justice that the appellant Indu Bhusan Chatterjee should be prosecuted for the offence. Mr. Mukherjee has referred to the statement of R.K. Bokil in cross-examination and has urged that this would show that Mr. Bokil did not really apply his mind to the facts of the case and that therefore the sanction was not proper.

Mr. Bokil was examined as P. W. 5 in the case. He stated in his examination-in-chief that before according sanction he went through all the relevant papers and was satisfied that in the Interest of justice Sri Indu Bhusan Chatterjee should be prosecuted, but in cross-examination he stated that he did not call for any record in connection with the matter in the office and he did not call for connected claim cases and that the sanction order Ex. 6 was prepared by the police and was put before him by the Personal Branch of his office. This does not show that he did not apply his mind to the facts of the case. The evidence only shows that he did not investigate the truth of the case. There is no authority for the proposition that the sanctioning authority : must investigate the truth of a case before he can grant sanction. All that the sanctioning authority is required to do is that he should apply his mind to the facts of the case as stated to him and decide whether on the facts

stated to him there should be a prosecution.

This was laid down by the Privy Council In the case of -- 'Gokulchand Dwarkadas v. The King . It was laid down In that case that it must be proved that the sanction was given in respect of the facts constituting the offence charged and that it is plainly desirable that the facts should be referred to on the face of the sanction itself; but if the facts constituting the offence charged are not shown on the face of the sanction the prosecution must prove by extraneous evidence that the facts were placed before the sanctioning authority.

Thus all that is necessary is that the facts should be placed before the sanctioning authority and should be considered by him, and not that the sanctioning authority should hold any enquiry to satisfy himself as to the truth of the facts alleged. Mr. Mukherjee refers to the Calcutta ruling in the case of -- 'Pramatha Nath v. Emperor', AIR 1946 Cal 330 (B). The only thing laid down therein is that the sanctioning authority must consider the case of each accused person and that the sanction granted in respect of one individual would not be sufficient to cover the case of a co-accused, This case does not appear to have any application in the present case.

6. Mr. Mukherjee has also urged that under Section 6 it is necessary that sanction for prosecution should be given by an authority which is competent to remove the person complained against from his office and that it was not proved that Mr. Bokil who gave the sanction had such authority. Mr. Bokil stated in his examination-in-chief that he was competent to remove the Assistant Supervisor of Claims from his office, the designation of Mr. Bokil being the Chief Commercial Superintendent, but in cross-examination when he was asked about the specific rule under which he had the authority to remove the appellant from his office he was unable to cite the rule in the course of his cross-examination, but it appears that the Public Prosecutor subsequently produced the relevant Railway Code before Mr. J.C. Lodh, and pointed out the specific rule. This appears under Order No. 13, the number of the rule referred to 'being 1705. (c) of Vol. I. Accordingly it must be held that it was duly proved that sanction was given by competent authority. Thus we must held that the sanction was in order and cognizance of the case was rightly

taken.

7. The next point urged by Mr. Mukherjee is that¹ the provisions relating to search were not observed although one of the Police Officers stated that he was cognisant of the provisions of Section 103, Criminal P. C. In this case Ex. 2 is the seizure list. It bears the signature of the Inspector of Police, Special Police Establishment, namely, N.K. Mukherjee, K.C. Mukherjee and G.N. Brahma and the signature of one other search witness Sri G.N. Ghosh, Assistant Director of Postal Services. Mr. Mukherjee has drawn our attention to the provision of Section 103, Criminal P. C., that the search shall be made in the presence of two or more respectable inhabitants of the locality in which the place to be searched is situate. In this case there was only one non-police witness Sri G.N. Ghosh and not two witnesses of the locality. Mr. Mukherjee has drawn, our attention to the evidence therein that the Manager of the Coffee-House and other employees and some customers were present at the timewheri the bundle of notes and the list Ex. 4/1 were recovered from the- appellant.

He has therefore urged that the 'police Officers had no justification for not calling some of them and having two respectable witnesses of the locality, and that they deliberately avoided bringing two respectable witnesses and accordingly the search must be held to have been illegally held and therefore should not be taken into consideration. Mr. Mukherjee has also urged that in this case there was no search warrant, and the search was apparently held under the provisions of Section 165, Criminal P. C., but that section requires that the Police Officer should record his reasons for holding the search before actually conducting the search; that in the present case there were no reasons recorded, and that therefore the search was illegal.

8. In this connection we have to consider whether the recovery of the bundle of ten-rupee notes and the list of claim cases Ex. 4/1 was the result of a proper search. It appears that the police did not actually search the person of the appellant but the police told the appellant that he had hundred rupees on his person and the list and thereupon the appellant after some minutes of silence handed over the bundle of notes and the list of claim cases to the police. In the

case of -- 'Malak Khan v. Emperor', the Privy Council observed as follows

'Where, as here, it is alleged and proved that the articles were produced by the accused man himself. Section 165 does not apply. That section is meant to be used in cases where a search warrant would be made use of in the ordinary course, but lack of time renders it impolitic to use it.'

In the case before us also the articles were produced by the accused himself. Mr. Mukherjee has however sought to distinguish the facts of the present case by pointing out that in -- 'Malak Khan's case (C)', the Police Officer did not know that Malak Khan was in possession of the articles which were produced by him, whereas in the present case the Police Officer knew definitely that the bundle of notes and the list of claim cases were with the appellant and he specifically asked for these articles to be produced and would have searched the person of the appellant if he had not produced them voluntarily.

Even conceding that this makes a difference and conceding that Sections 165 and 103, Criminal P. C., would apply we would observe that Section 165 provides that the provisions of Section 103 should be applied as far as may be, so that the statute recognises circumstances in which the police may not find it possible to observe the provisions of Section 103 in full. There is authority for the proposition that a failure to observe the provisions relating to search does not make the evidence relating to the search inadmissible. This was held in the case of -- 'Legal Remembrancer, Bengal v. Mamta Uddin Ahmed', ILR (1947) 1 Cal 439 (D) It was held therein as follows:

'When in conducting a search, the procedure laid down in Section 103, Criminal P. C., is not strictly followed, the evidence discovered by the search does not thereby become inadmissible nor is the conviction based upon such evidence illegal. It may only be reasonable to view with more than ordinary caution the evidence of those persons who made the illegal, search.'

In the Privy Council case, namely -- 'Malak Khan's case (C)', it was held that the absence of search witnesses would not necessarily make the evidence of the search inadmissible. In their Lordships' opinion

'the presence of witnesses at a search is always desirable, and their absence will weaken, and may sometimes destroy, the acceptance of the evidence as to the finding of the articles, but their attendance at the search is not always essential in order to enable evidence as to the search to be given.'

Accordingly we must hold, even conceding that the provisions of Section 165 and 103, Criminal P. C., are applicable to the present case, that the non-observance of the strict provision of the Code does not make the evidence as to the result of the search inadmissible.

(His Lordship reviewed the evidence and concluded:)

9-15. On a review of the evidence we must hold that a charge under Section 161, Penal Code, was sufficiently proved against the accused-appellant. The charge under Section 5(2) taken with Section 5(1)(d) of Act 2 of 1947 is almost identical with the charge under Section 161, Penal Code, and the same must be regarded as duly proved also. As regards the sentence it cannot be regarded as unduly severe.

16. This appeal therefore fails and it is dismissed. The appellant must now surrender to his bail and serve out the sentence.

Renupada Mukherjee, J.

17. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com