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Court : Kolkata

Decided On : Jan-14-1955

Reported in : AIR1955Cal430,1955CriLJ433

Judge : Chakravartti, C.J. and ;Lahiri, J.

Acts : [Prevention of Corruption Act, 1947](#) - Section 6; ;[Constitution of India](#) - Article 134(1)

Appeal No. : Appeal No. 322 of 1953

Appellant : indu Bhusan Chatterjee

Respondent : The State

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

Advocate for Pet/Ap. : S.S. Mukherjee and ;Sukumar Sen, Adv.

Judgement :

Chakravartti, C.J.

1. We are of opinion that this is a case where we ought to grant leave to appeal under Article 134(1)(c) of the Constitution.

2. The application is against an order of a Division Bench of this Court, dated 1-12-1954, by which the conviction of the petitioner under Section 161, Penal Code as

also under Section 5(2), read with Section 5(1)(d) of Act 2 of 1947, by a Special Judge was upheld.

3. Briefly stated, the prosecution case was that one Doraiswami, who had himself been a Railway Officer at one time, set up after his retirement something like a business of acting on behalf of persons lodging claims with the Railway. That profession or vocation brought him into contact with the petitioner who was an Assistant Supervisor of the Bengal Nagpur Railway and whose duty it was to deal with claims. It was alleged that on various occasions the petitioner accepted illegal gratification from Doraiswami as a consideration for showing him favour in respect of the claim cases in which Doraiswami was interested. The sums were small, such as Rs. 10/- on one occasion and Rs. 15/- on another, but they were, nevertheless, illegal gratification. After these dealings had proceeded for some time, they appeared to have attracted the attention of the police and an Officer from Puri is said to have visited Doraiswami at his place of business in Vizianagaram, which led to the enquiry resulting in the present prosecution. Doraiswami, it is said, informed the police of what had been going on between him and the petitioner and thereupon it was decided to lay a trap in order that the petitioner might be caught red-handed.

Negotiations were opened with the petitioner by Doraiswami in respect of some claim cases still pending and it was alleged that a bribe of Rs. 100/- was agreed to. In the meantime, the police completed their arrangements for laying a trap and requisitioned the services of one Mr. Ghose, who is an officer of the Postal Department, to assist them in the arrest of the petitioner and the seizure of illegal gratification from his person. It is said that on 12-5-1952, the petitioner and Doraiswami went to a coffee house at Chittaranjan Avenue by arrangement and took their seat at a table for purposes of refreshment. After coffee had been ordered, drunk and paid for, Doraiswami is said to have handed over to the petitioner a sum of Rs. 100/- in currency notes, the numbers of which had previously been taken down by the police officers and Mr. Ghose. A large body of police officers were lying about and when they saw money passing, they immediately surrounded the petitioner and challenged him about his having received Rs. 100/- as bribe. Nonplussed by that sudden challenge, the petitioner is

said to have produced the notes and also a list of cases on which were entered the numbers of the claim cases in respect of which the bribe was being paid.

4. The petitioner's defence was that he was wholly innocent and that the notes and the list alleged to have been found on his person had not, in fact, been so found, but had been planted on him by one of the police officers by means of a sleight of hand.

5. The defence did not appeal to the trial Judge, nor to this Court on appeal. The petitioner was convicted and sentenced in the manner I have already stated.

6. In support of the present application, Mr. Mukherjee took a number of points, but I think one of them is sufficient for the purpose of granting his client the leave asked for.

7. It was contended that the sanction on which the prosecution was founded was not a sanction in accordance with law and that being so, the entire proceeding had been fundamentally bad. There can be no question, in view of the clear terms of Section 6 of Act 2 of 1947, that a valid sanction is an essential requisite for a valid prosecution under the Act. The sanction that was actually relied on in this case is to be found at page 9 of the paper book prepared for the appeal. It was granted by one Mr. R.K. Bokil, who described himself as the Chief Commercial Superintendent, Eastern Railway, Calcutta. It is not disputed that he was competent to grant the sanction, but what was argued by Mr. Mukherjee was that Mr. Bokil had not applied his mind to the facts of the case or any facts at all. In aid of that argument, reference was made to the evidence of Bokil. It is true that in the course of his examination-in-chief he gave what I may call, evidence of the routine type and said that before according sanction, he had gone through all relevant papers and had been satisfied that in the interest of justice the petitioner should be prosecuted.

In cross-examination, however, he admitted that he had not called for any record from his office, not had he called for the connected claim cases and he had not made any enquiry as to the position in which those cases stood at the moment. Mr. Mukherjee's argument was that if the sanctioning authority did not refer himself

to the connected materials, it is impossible to see how he could have gone through all relevant papers and he satisfied that the prosecution of his client was required in the interest of justice. According to Mr. Mukherjee what actually happened would appear from a further admission made by Mr. Bokil in the course of his cross-examination. He stated that the sanction had been prepared by the police and had been put before him by the Personal Branch of his office. The argument naturally was that all the application of mind which Mr. Bokil permitted himself was an application to the fact that a signature of his was required on the ready-made sanction and that it did not appear that he had applied his mind to any other paper or any other problem.

Had the document, in which the sanction is embodied, itself shown the facts on which it was considered justified, I might not be prepared to accede to Mr. Mukherjee's argument, though I do not say that I would reject it. The provision for sanction is a most salutary safeguard. The sanctioning authority is placed somewhat in the position of a sentinel at the door of criminal Courts in order that no irresponsible or malicious prosecution can pass the portals of the Court of justice. It is, therefore, essential that persons charged with the responsible duty of granting sanction, which is a duty of deciding whether or not the credit and reputation of another citizen should be put in peril by means of a criminal prosecution, should bring to the discharge of their duty a sense of responsibility and the industry required to examine the relevant materials. I can hardly imagine the duty of granting a proper sanction being properly discharged by merely putting one's signature on a ready-made sanction presented by the police. It is not, however, necessary to confine ourselves to that aspect of the matter in the present case. A glance at the paper embodying the sanction would show that before the prosecution could sustain the proceedings launched against the petitioner, they would have to establish by reference to other documents that there was a valid sanction in the case.

8. It has now been authoritatively decided that where the terms of a sanction are as imperative as those of Section 6 of Act 2 of 1947, a valid sanction is a condition precedent to a valid prosecution. A valid sanction means sanction given after a consideration of all relevant facts. Those facts, it has been laid down, may appear

on the face of the sanction itself and where they do so appear, the task of the prosecution is easy. Where they do not appear on the face of the sanction, the prosecution has the liberty of proving such facts by other evidence, but it is not liberty alone. It is also a duty, because unless the prosecution proves by reference to other evidence that the sanctioning authority had in fact applied his mind to the relevant facts, a proper sanction cannot be made out and it cannot be proved that the foundation of the prosecution had been well and truly laid.

The present case is one where no fact whatever appears on the face of the sanction. It appears that the word 'whereas' and the long sentence commenced with that word merely say that a complaint had been made against the petitioner to a certain effect and that therefore the sanctioning authority, having applied his mind to the facts of the case, is giving the sanction. What the facts are one would not know from the terms of the sanction. Indeed, the sanction does not amount to Mr. Bokil's saying anything more than that the petitioner had been accused before him of having behaved himself in a certain way and therefore he was sanctioning his prosecution.

Had it been said that Doraiswami had made a complaint of the petitioner systematically demanding illegal gratification and that such gratification had on occasions been paid, that there was 'prima facie' no reason to disbelieve Doraiswami, that subsequently a trap had been laid and some incriminating material was said to have been seized from the person of the petitioner, which, if proved, would show that he had, in fact, accepted the illegal gratification and that the sanctioning authority thought that these matters ought to be investigated in a Court of law, the sanction would have been unexceptionable: But not one of these facts appears on the face of the sanction and not one of them was proved by reference to any other material or evidence as having been considered by Mr. Bokil. That being so, it appears to us that whether or not there was a proper sanction in this case is a question serious enough to justify our giving the petitioner leave to appeal to the Supreme Court, apart from any other question.

9. Mr. Mukherjee also contended that the evidence of the alleged seizure of the currency notes from the person of the petitioner ought not to have been believed,

because the so-called search had not been properly conducted. He put his argument in two branches, one of which was constructed as a question of law and the other as a question of the credibility or weight of the evidence. While it was not disputed that failure to comply with the provisions of Section 103, Criminal P, C. would not necessarily invalidate a search or make independent evidence of the search inadmissible, it was contended that where respectable witnesses of the locality were 'in fact available but were still not called in, the search ought not to be held to have been a search conducted in accordance with law.

It was contended, in the second place, that where the police failed to requisition the services of independent witnesses of the locality in fact available but supplied themselves with a search witness of their choice before launching upon their expedition, the evidence of the search should be treated with the greatest suspicion. Mr. Mukherjee did not overlook the fact that this was a question of fact, but his complaint was that the decision against his client given by the Courts on this point had not been given with the above considerations present to the minds of the learned Judges concerned. It is not necessary for us to discuss the second point taken by Mr. Mukherjee, inasmuch as we are not an appeal court and are only asked to grant a certificate for a further appeal to the Supreme Court. The first point to which I have referred at some length is sufficient to justify our granting leave and, therefore, I need not deal further with the second point.

10. For the reasons given above, this application is allowed and leave to appeal to the Supreme Court is granted.

11. Let the necessary certificate under Article 134(1)(c) of the Constitution be drawn up and issued.

12. Pending the decision of the appeal by the Supreme Court let the petitioner be released on bail to the satisfaction of the Special Judge, West Bengal, first Special Court, Alipore.

Lahiri, J.

13. I agree.

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