

Amar Chowdhury Vs. the State

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SooperKanoon Citation : sooperkanoon.com/882043

Court : Kolkata

Decided On : Dec-05-1984

Reported in : 1985CriLJ1163

Judge : N.G. Chaudhuri and ;G.C. Chatterjee, JJ.

Appellant : Amar Chowdhury

Respondent : The State

Judgement :

N.G. Chaudhuri, J.

1. Convicted of an offence under Section 420 I.P.C. and sentenced to R.I. for one year in Special Court Case No. 1 of 1978 by Additional Special Judge, Howrah, by his judgment dt. 22-6-1971 the appellant has come up in appeal. He faced the trial on twofold charges; the first charge was under Section 420 I.P.C. for cheating Sunil Pal by dishonestly inducing him to deliver Rs. 200A on 6-5-1971 on the assurance of securing a job for him in the E.S.I. Hospital. The second charge was under Section 5(2) of the Prevention of Corruption Act for misconduct manifested in the above noted Act. The prosecution relied on Ext. 18 purported to be a sanction under Section 6 of the Prevention of Corruption Act which was a primary requisite for the prosecution. The learned Judge, however, held that the same sanction was illegal and invalid and, therefore, acquitted the appellant of the charge under the Prevention of Corruption Act. In short, the point for consideration

in this appeal is if the appellant's conviction under Section 420 I.P.C. is maintainable.

2. The prosecution case may briefly be stated as follows : At the relevant time the appellant was a General Duty Assistant attached to Balitikuri E.S.I. Hospital and as such a public servant. This point is not disputed. It is further alleged that P. W. 1 Sunil Pal, the de facto complainant, was unemployed and in dire need of a job in May 1971 when he happened to meet the appellant at a bus stand at the mouth of Bellilious lane, Howrah. It was alleged that at the bus stand a conversation ensued between the P. W. 1 and the appellant in course of which P. W. 1 informed the appellant that he was in need of a job and the appellant assured him with a job and requested him to see him at his residential quarters within the compound of Balitikuri E.S.I. Hospital. After several meetings with the appellant the informant pursuant to the appellant's advice handed over to him a sum of Rs. 200/- for registration of his name for the job assured and granted him a kutchra receipt under his signature. The receipt has been marked Ext. I. It is the further prosecution case that sometime later the appellant gave him a letter purporting to be an appointment letter signed by the Director of E.S.I. Mr. Kader Newaz. Prior to that when the informant had demanded a pucca receipt for the money handed over the appellant had stated that on receipt of a further sum of Rs. 400/- he would give him a pucca receipt. However, on receipt of the purported appointment letter Sunil Pal became suspicious as he was not called for an interview by any authority for any job nor any police verification regarding him was made. Sunil Pal against above background met Mr. Kader Newaz, showed him the purported appointment letter and was informed that the appointment letter was forged as it did not bear the signature of Mr. Newaz. Then and there Mr. Kader Newaz obtained an application in writing from Sunil Pal to enable him to make further investigation into the matter and on receipt of such application investigation was entrusted to the police. On the basis of materials collected during the course of investigation, the Special Court Case was filed on complaint made by Ranjit Kumar Das, S. I. of Police, Central Investigation and the result of the trial arising out of the complaint has already been indicated.

3. In the complaint an offence under Section 161 I.P.C. was alleged. An offence under Section 161 I.P.C. is contemplated in Section 5(1) of the Prevention of Corruption Act 1947 and as such along with the complaint a sanction of the Director of E.S.I. contemplated under Section 6 of the aforesaid Act was filed. Before trial however, two charges were framed against the accused as earlier noted.

4. Mr. Ahindra Kumar Addy the learned Advocate appearing on behalf of the appellant initially made a feeble attempt to argue that the appellant being undisputedly a public servant and no sanction for his prosecution under Section 420 I.P.C. having been obtained as contemplated under Section 197 Cr. P. C. the conviction of the appellant under Section 420 IPC was illegal and untenable. Mr. Addy in his fairness, however, gave up his attempt when his attention was drawn to the provisions of Section 197 Cr. P. C. Section 197 Cr. P. C. is attracted when two conditions are satisfied. The first condition is that the accused prosecuted must be a public servant. In this case there is no dispute on this point. The second condition is that he must not be removable from his office save by or with the sanction of the government. The sanction under Prevention of Corruption Act (marked 18) recites expressly and clearly that the accused was removable from service by the Director of E.S.I. On the basis of the above statement it cannot be argued that the appellant was not removable from service except with the sanction of Government. Considering this aspect Mr. Addy gave up his attempt to argue on behalf of the appellant on this line.

5. Mr. Addy next argues that under Section 5(a) of the Prevention of Corruption Act the offence charged should have been investigated by an officer of the category mentioned in the aforesaid sanction. We do not seriously consider this argument of Mr. Addy because the judgment under appeal for our consideration is not a judgment of conviction under the Prevention of Corruption Act and as such we are not required to look into the applicability of that Act. We deal with the judgment of conviction which has been rendered under Section 420 I.P.C. independently of the Prevention of Corruption Act.

6. Mr. Addy points out that the charge framed against the accused by the Special Judge on 18-12-1978 clearly indicated that the alleged cheating of Sunil Pal took place on 6-5-1971. Continuing his argument he contends that when precisely giving the date of cheating in the petition of complaint it is recited therein that the occurrence took place in May 1971. Thereafter Mr. Addy places before us the deposition of Sunil Pal examined as P. W. 1, In the examination-in-chief portion of his deposition he deposed that he came to know the appellant in June/July 1971 at 7-30 P.M. In cross-examination Sunil Pal clarified that while he was waiting in the bus stand in July he met the accused and the appellant was not known to him from before. Mr. Addy, therefore, builds up the argument that on the basis of the testimony of P. W. 1 it is evident that he came to know the appellant for the first time in July 1971 and cheating, if any, must have taken place subsequent thereto. But the charge recited that the cheating took place on 6-5-1971. Mr. Addy, therefore, argues that the charge as framed was not proved. Mr. Chakraborty the learned Advocate for the State respondent relies on the provisions of Section 464 Cr. P.C. and contends that for an error in charge a judgment of conviction cannot be set aside in an appeal. He contends that such an argument does not appear to have been advanced in the court below. Mr. Chakraborty argues that there was no prejudice caused to the accused and from the charge framed and deposition on record the judgment understood clearly that he was called upon to meet a case of cheating indulged in July 1971. This part of the argument of Mr. Chakraborty has force. We cannot, therefore, dispose of the appeal in a summary way.

7. Coming to the facts Mr. Addy pin points that from the deposition of various witnesses on record it is abundantly clear that there was a rivalry amongst two groups of employees in the E.S.I. Hospital. The appellant was of the group known as 'Federation' and the prosecution witnesses like P. W. 10 Dhaneswar Mondal and Hrishikesh Pal (P. W. 2) were of the group known as 'Co-ordination Committee' Mr. Addy proceeds on to argue that the appellant was a victim of the conspiracy of the Co-ordination group. He proceeds on to argue that the prosecution case is totally unbelievable and the evidence adduced did not prove the guilt of the accused beyond reasonable doubt. He argues that P. W. 1 Sunil Pal is not an illiterate rustic. He is not, therefore, a gullible man, From the evidence of P. W. 1 it transpires that he has passed the School Final Examination, he

received training in I.I.T. and at the relevant time he was in service in a small factory at Bellilious lane. Such a man, according to Mr. Addy was not in urgent need of job and was most unlikely to be cheated. It is again unbelievable that in course of a casual conversation during the period of waiting at the bus stand the appellant would assure P. W. 1 with a Government job and would ask him to see him at his residential quarters. Next unbelievable phase of the case according to Mr. Addy is the story of P. W. 1 that borrowing Rs. 200/- from his uncle (P. W. 2) he made over the same to the appellant. Mr. Addy contends that P. W. 1 was himself employed and had no necessity of borrowing money; even if he was short of funds he could get the money from his father who is alive but it is strange that he borrowed the money from his uncle. Further, a significant feature of the case is that neither P. W. 2 nor P. W. 1 gives the precise date on which the sum was lent by P. W. 2 or the same was made over to the appellant. The money alleged to have been handed over to the appellant has been described differently at different times - sometimes it has been described as donation, sometimes as registration fee. There is, again, discrepancy in the evidence as to what sum actually paid, Sometimes it has been alleged that he demanded a sum of Rs. 500/- towards which a sum of Rs. 200/- was paid and sometimes it has been said that after receiving a sum of Rs. 200/- the appellant made a further demand of Rs. 400/-. To drive home his contention Mr. Addy places before us the kutchra receipt (Ext. 1). The receipt for all practical purposes was written out in Bengali script. It mentioned the sum of Rs. 500/- as the amount of donation required and recited actual payment of Rs. 200/-. The receipt bears date 30-6-1971 with the signature of the appellant in English for the payment above it. In this connection it is worthy of note that in course of his examination under Section 313 Cr. P. C. appellant gave out that he did not know Bengali, particularly Bengali script in manuscript. Mr. Addy accordingly argues that it is highly probable that writing out something prejudicial to the appellant who was ignorant of the Bengali script Sunil Pal prevailed upon him to give his signature on the paper written out taking resort to false representation. He points out that in course of his deposition P. W. 1 stated that he handed over Rs. 200/- to the appellant without mentioning the date and deposed further that he demanded a further sum of Rs. 400/-. Thus, Ext. 1 and the oral deposition of P. W, 1 are discrepant. Only 9 or 10 days after the grant of

purported receipt (Ext. 1) P. W. 1 met Kader Newaz and handed over to him his written complaint marked Ext. 2. Here Sunil Pal referred to a demand of Rs. 500/- by appellant and handed over a sum of Rs. 200/- in part payment thereof. But the notable feature of this document is that therein there is no averment that on 30-6-1971 a kutchra receipt was given by the appellant or that after receiving Rs. 200/- appellant made a further demand of Rs. 400/-. Mr. Addy then proceeded on to argue that apart from the oral testimony of P. W. 1 who stands discredited because of the discrepancies in his oral deposition and the documentary evidence, there is no other reliable eyewitnesses that the purported appointment letter which was not exhibited in this case but was simply marked for identification was handed over to Sunil Pal by the appellant. The features of the case as discussed above raise grave doubts in our mind regarding authenticity of the prosecution case. The handwriting expert examined as P. W. 7 could not give a firm and definite opinion that the Exhibit 1 was signed by the appellant although in view of the decision in *Sunil Kumar Singh v. Life Insurance Corporation* : AIR1976 Cal224 , the Court's opinion regarding handwriting reached after comparison in some circumstances overrides the opinion of an expert yet in view of the attending facts and circumstances peculiar to this case we cannot place our reliance on Exl. 1. We reach the conclusion that the prosecution failed to prove the guilt of the accused Under Section 420 I.P.C. beyond reasonable doubt for which the trial court convicted him, The judgment under appeal will, therefore, be set aside. In the result, the appeal succeeds and is allowed on contest. The judgment of conviction and sentence under Section 420 I.P.C. under appeal is set aside. The appellant is found not guilty of the said offence and is acquitted. He will be discharged from the bail bond and will be set at liberty.

8. Inform all.

Gobinda Chandra Chatterjee, J.

9. I agree.