State of Himachal Pradesh Vs. Inder Mohan

State of Himachal Pradesh Vs. Inder Mohan

SooperKanoon Citation : sooperkanoon.com/890885

Court : Himachal Pradesh

Decided On : Sep-06-2005

Reported in : 2006CriLJ1720

Judge : K.C. Sood, J.

Acts : Prevention of Corruption Act, 1988 - Sections 2, 5, 5(1), 5(2), 7, 13(1) and 13(2); ;Indian Penal Code (IPC) - Section 161

Appeal No. : Criminal Appeal No. 417 of 2003

Appellant : State of Himachal Pradesh

Respondent : inder Mohan

Advocate for Def. : Anup Chitkara, Adv.

Advocate for Pet/Ap. : Ashok Chaudhary, AAG

Disposition : Appeal dismissed

Judgement :

K.C. Sood, J.

1. This appeal is directed against the judgment of acquittal recorded by the learned Special Judge (Forests), Shimla, dated 23rd May, 2003,

2. Respondent-Inder Mohan, hereinafter referred to as 'the accused,' was tried by the learned Special Judge, Shimla for offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 ('Act' for short), The learned Special Judge acquitted the accused by his impugned Judgment.

3. Prosecution case:

Accused was posted as Senior Assistant in the Education Branch of HP Secretariat. Complainant, Om Parkash, was a Junior Basic Teacher in the year 2001 and posted in Government Primary School Thalathar of District Shimla. He belongs to village Bainia, Tehsil Barsar of District Hamirpur. The complainant was interested in his transfer from the aforesaid school to any other school in the District of Bilaspur, under 5% Transfer Quota of the Transfer Policy. The complainant made a representation (Ex. P.W. 3/A) along with the medical certificate to the Director Education (Primary) to the Government of Himachal Pradesh for his transfer in the District of Bilaspur.

4. In July, 2001 he went to the Directorate to inquire about his representation, where he was told that his case for transfer has been referred to the Government and is pending in the HP Secretariat. He visited 'C' Branch of the Education Department in the Secretariat on 20th July, 2001 and met the accused. The complainant inquired about his transfer case from the accused. Accused asked him to come on the next day. On the following day the complainant visited the accused. Accused took him to some other official in the Secretariat. Accused spoke to that official about the transfer of the complainant. Both the accused and that official talked to each other for some time and thereafter the complainant was informed by the accused that his work would be done, if he pays Rs. 10.000/-. The complainant expressed his inability to pay this amount. The accused and that official again talked to each other and the complainant was informed that his work cannot be done for less than Rs. 8.000/-, The complainant left the Secretariat and went to the Vigilance Office where he met Deputy Superintendent of Police (Anti-Corruption Zone) Kahan Singh (P.W. 15) and told him that accused has demanded Rs. 8.000/- as bribe, for getting him transferred from Government Primary School, Thalathar to District Bilaspur. Statement of the complainant (Ex.

P.W./C) was recorded. Naib Tehsildar Bhawani Singh (P.W. 6) and Manoj Kumar (P.W. 5) were called in the Police Station. A trap party was constituted. Complainant handed over Rs. 8,000/- in the denomination of Rs. 500/- each to the Deputy Superintendent of Police Kahan Singh. Serial numbers of these currency notes were noted and a memorandum (Ex. P.W. 5/A) to this effect was prepared. A trap was organized and the currency notes were treated with phenolphthalein powder. Treated currency notes were handed over to the complainant with the direction that he should not touch either the currency notes or any other person and should hand over the currency notes to the accused only on demand. Manoj Kumar (P.W. 5) was made shadow witness. He was directed to hear the conversation, which may take place, between the accused and the complainant. He was directed to give signal, by fingering his ear, the moment currency notes are handed over to the accused. Thereafter on 25th July, 2001, the complainant, shadow witness, Investigating Officer and other witnesses came to the Secretariat. Complainant spoke to the accused on telephone and called him outside the Secretariat. Members of the trap parry were standing at some distance from the Secretariat. After about 15 minutes accused came out of the new HP Secretariat building. Accused met the complainant. Both of them conversed for some time and then proceeded towards the Mall Road. Madan Gopal Constable and shadow witness Manoj Kumar followed the complainant and accused. Bhawani Singh and Investigating Officer also followed the complainant and the accused keeping distance. When accused and complainant reached near the office of Scheduled Tribes Corporation both of them stopped. Accused asked the complainant to give him the agreed amount. Complainant handed over the treated currency notes to the accused. Accused put these currency notes in his pant pocket. The complainant gave agreed signal. Investigating Officer and other members of the trap party came to the accused. The complainant caught hold of the accused by his arms. Investigating Officer searched the accused and recovered the treated currency notes from the ticket pocket of the pant of the accused. Accused was made to wash his hands in a plate. The colour of the water remained unchanged. Thereafter, solution of Sodium Carbonate was prepared and hand wash of the accused was taken with this solution. The hand wash turned pink. The pink solution was poured in a nip, sealed and taken into possession vide memo Ex. P-

2. The serial numbers of currency notes were compared with the serial numbers, as reflected in the memo prepared by the Investigating Officer earlier. The ticket pocket of the pant of the accused, from where currency notes were recovered, was washed with sodium carbonate solution which solution also turned pink. This solution too was taken into possession and sealed with seal 'T.

5. It is in this background that the accused was put to trial for offences punishable under Sections 7 and 13(2) of the Act.

6. Learned Special Judge, on appreciation of the evidence on record, found the accused guilty for offences punishable under Sections 7, 13(1)(d) and 13(2) of the Act. However, he held that sanction accorded by the Government for prosecution of the accused was not a valid having been accorded in a mechanical manner and acquitted the accused.

7. Apparently the learned Special Judge misdirected himself in law. If the sanction was invalid, it was not given to the learned Special Judge to have gone into the merits of the case and in any event the learned Special Judge could not have acquitted the accused on the ground that the sanction was invalid. Only course open to the learned Special Judge was to discharge the accused. Accused could not be acquitted for the reason that the sanction was invalid. It is basic that the prosecution can always ask for the trial of the accused, in case of discharge, after obtaining a valid and legal sanction.

8. Mr. Chitkara, learned Counsel for the accused contends that there is no acceptable evidence on record to show either any demand of illegal gratification by the accused or its acceptance.

Section 13(1) of the Act reads:

13. Criminal misconduct by a public servant.-- (1) A public servant is said to commit the offence of criminal misconduct.--

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transferred or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or

d) If he,--

i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-- For the purpose of this section, 'known sources of income' means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may

extend to seven years and shall also be liable to line.

9. A reading of this section shows that public servant commits misconduct under Section 13(1)(a) of the Act if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person any gratification other than legal remuneration as a motive or reward as mentioned in Section 7 of the Act. Section 7 of the Act reads:

7. Public servant taking gratification other than legal remuneration in respect of an official act.

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation.--

(a) 'Expecting to be a public servant.' If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

b) 'Gratification.' The word 'gratification' is not restricted to pecuniary gratifications or to gratifications estimable in money.

c) 'Legal remuneration.' The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but Include all remuneration which he is permitted by the Government or the organization, which he serves, to accept.

d) 'A motive or reward for doing.' A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

e) Whether a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

10. A bare perusal of Section 7 shows that if a public servant accepts any gratification other than legal remuneration as a motive or reward for doing or for forbearing or abstain from doing any official act in spite of his official obligation then he is liable to be punished with imprisonment which is not to be less than six months but which may extend to five years and also to pay fine.

11. It is the case of the prosecution that accused made a demand of Rs. 8.000/- as illegal gratification, for getting the complainant transferred to his desired District. Defence of the accused is that he has falsely been implicated.

12. Shadow witness Manoj Kumar (P.W. 5) in his cross-examination by the learned Public Prosecutor states that the accused asked the complainant, to hand over the amount in question directly to the official who was to do his work. It is his evidence 'none else than myself was present at a hearing distance and had heard the accused stating so.' It may be noticed, accused was not posted in the branch of the Department of Education which was to deal with the transfer of the complainant. In the examination-in-chief also he states that when they were standing near the gate of HP Secretariat, he went ahead and stopped in a rain shelter. Both the accused and complainant then started towards the Mall Road. He followed them at a distance of 200-300 meter away near the office of Scheduled Tribe Corporation. He heard accused-Inder Mohan stating to the complainant 'to hand over the money himself to somebody.' This clearly indicates that there was no demand or acceptance on the part of the accused. This witness has been

cross-examined by the learned Public Prosecutor, as noticed earlier, but the shadow witness maintained his stand. In the cross-examination by the accused, this witness is categorical that the accused had asked the complainant to hand over the amount in question directly to the official concerned. At that point of time, other members of the raiding party were at a distance of 40-50 meters behind him. The accused was apprehended at a distance of about 250-300 meters ahead from the place where the conversation took place between the accused and the complainant. He reiterated 'at the time of handing over of the money in question the accused had again told to pay the money directly to some official but P.W. 3 Om Parkash insisted to pay the amount to that official and to get his work done.' Witness goes on to say that when the accused was apprehended by the police he informed the police that he was innocent and money has been demanded by some one else.

13. Bhawani Singh then Naib Tehsildar (Rural), Shimla (P.W. 6) states that he was at a distance of about 40 meters from the accused and the complainant and he did not see the complainant handing over the currency notes nor he saw any signal being given by the shadow witness or complainant. It is his evidence that 'he did not hear any conversation between the complainant and accused.

14. A perusal of Section 13(1)(a) of the Act shows that the prosecution is obliged to prove that the accused accepted or obtained or agreed to accept or agreed to obtain any gratification as motive or rewards as contemplated under Section 7 of the Act. It is therefore necessary for the prosecution, in order to secure conviction, to prove that the accused demanded and accepted illegal gratification. The prosecution has failed to prove any demand having been made by the accused. It is not the evidence of the shadow witness that the accused made any demand from the complainant. On the other hand it was the complainant, who sought to give the money to the accused but the accused told him to give directly to the concerned person. The Apex Court in C.K. Damodaran Nair v. Govt. of India : 1997 CriLJ739 interpreting the expression 'obtain' held that prosecution has to prove that the accused 'obtained' the valuable things or pecuniary advantage without the aid of the statutory presumption. 'Obtain' means to secure or gain (something) as the result of request or effort. Their Lordships observed:

In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(i) (d) of the Act unlike an offence under Section 161. I.P.C. which, as noticed above, can be, established by proof of either 'acceptance' or 'obtainment.

(Emphasis given)

15. In Babu Lal Bajpai v. State of U.P. : 1994 CriLJ1383 accused was prosecuted for an offence under Section 5(2) read with Clause (a) of Sub-section (1) of Section 5 of the Prevention of Corruption Act (old) read with Section 161, I.P.C. for allegedly having accepted an amount of Rs. 75/- as a bribe for sanctioning the bills of the complainant-contractor. A trap in that case was laid. The accused was caught in the act of accepting Rs. 75/- which were paid by the complainant as bribe to him. At the trial, no independent witness, except the Magistrate who had accompanied raiding party, was examined. The trial Court taking into consideration version of the accused that complainant tried to thrust money into his pocket acquitted the accused. The High Court in appeal reversed the acquittal and convicted the accused. The matter was carried to the Apex Court. In this background their Lordships held:

The case of the accused is that the complainant had tried to thrust the money in his pocket and he had resisted and said attempt, and thrown down the money on the floor. This version of the accused has been supported by the prosecution witness Raghubir Singh who is the adjacent shopkeeper and in whose shop the testing of ultraviolet rays on the currency notes was made. Since he was aware of what was going to happen he had naturally moved near the shop of the trap. According to this witness he was standing outside the said shop and had heard the conversation inside the shop where the trap was laid. There is no reason why this witness who is a stranger both to the prosecution as well as to the accused would support the version of the accused, as stated above, if that was not the true version. The trial Court has also relied upon, and according to us rightly, this version of the said prosecution witness. These are two of the most important reasons given by the trial Court for acquitting the accused. The High Court has ignored these reasons and has tried to substitute its own finding which unfortunately is based on surmises. We are, therefore, more than satisfied that this was not a case where any interference with the finding of the trial Court was called for. In the circumstances, we are of the view that the impugned order of the High Court deserves to be set aside and the appellant-accused should be acquitted of both the charges.

16. In the present case, as noticed earlier, there is not a whisper of evidence to show that the accused made any demand and accepted Rs. 8.000/- from the complainant as bribe. The prosecution evidence show that the accused told the complainant to pay the amount to the concerned person directly. In the cross-examination even the complainant, appearing as P.W. 3 admits, that he knew that accused-Inder Mohan was not competent either to transfer him or to get him transferred from Thalathar to Bilaspur. He also states in his cross-examination that the concerned official had told him to hand over the money to accused-Inder Mohan, Investigating Officer (P.W. 15) in his cross-examination states that it was Manoj Kumar (P.W. 5), who was to act as shadow witness and to hear the conversation between the accused and complainant. He also admits that the complainant had told him that the accused was sent by some official of the Secretariat to bring the money in question from the complainant. In this view of the matter there is no question of accused having made any demand of illegal gratification or acceptance of the same.

17. In Meena (Smt.) w/o Balwant Hemke v. State of Maharashtra : 2000 CriLJ2273 their Lordships observed:

Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see, but also overhear what happens and how it happens also.

18. There is no evidence, much less credible evidence, from which it may be inferred that a demand of illegal gratification was made and accepted by the accused.

19. As already noticed, Bhawani Singh, Naib Tehsildar, joined as an independent witness, did not see or hear any demand of gratification being made by the accused nor did he see passing of Rs. 8,000/- by the complainant to the accused. Even the evidence of the complainant does not suggest that the accused demanded Rs. 8.000/- as illegal gratification. What his evidence suggests that it was some other person who raised demand and asked the accused to collect the same. In any event, evidence of the complainant and Kahan Singh Investigating Officer is highly interested and cannot be relied upon without any corroboration.

20. As far back as in 1973 the Apex Court in Ram Parkash Arora v. State of Punjab : 1972 CriLJ1293 held that evidence of interested and partisan witnesses who are concerned in the success of the trap must be tested in the same way as that of any other interested witness and the Court may look for independent corroboration before convicting the accused person.

21. There is no evidence on record which may corroborate the version given by the complainant. As none of the witnesses who joined the trap could testify about any demand of bribe or its acceptance.

22. To conclude, there is no cogent and reliable evidence to show that the accused raised or made any demand for illegal gratification of Rs. 8,000/- or currency notes of Rs. 8,000/- were accepted by the accused as illegal gratification. The version of the accused that he was given this money by the complainant for handing over to some other person which he refused and asked the complainant to hand over the currency notes in question directly to that person is probable in view of the evidence of shadow witness Manoj Kumar (P.W. 5).

23. In result, the appeal fails and is dismissed. Acquittal of the accused is maintained for the reasons other than given by the learned Special Judge.

24. Bail bonds are discharged. The currency notes taken into possession by the Investigating Agency shall be returned to the complainant.