

Kewal Krishan Vs. State

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SooperKanoon Citation : sooperkanoon.com/899016

Court : Jammu and Kashmir

Decided On : Jun-05-1975

Reported in : 1975CriLJ1963

Judge : Mian Jalal-Ud-Din, J.

Appellant : Kewal Krishan

Respondent : State

Judgement :

Mian Jalal-Ud-Din, J.

1. This criminal appeal is directed against the order of conviction and sentence passed on the accused under Section 5(2) of the Prevention of Corruption Act of 2000, by the Sessions Judge, Jammu.

2. The accused has been found guilty for having accepted an amount of Rs. 50/- as illegal gratification from one Pritam Dass son of Malik Ram an allottee in occupation of a house of the Custodian Evacuee Property, Jammu. The accused has been sentenced to one year's rigorous imprisonment.

3. Briefly speaking the facts of the case are as below:

The appellant is a Superintendent in the office of the Custodian, Jammu Evacuee Property. House No. 740 was allotted on rent to one Malik Ram father of Pritam

Dass the complainant. Malik Ram fell in arrears for the payment of the rent. Thereupon the Custodian Jammu ordered his eviction from the premises. Pursuant to a request made by Malik Ram the Deputy Custodian kept the order of eviction in abeyance on 2-9-1969 on the condition that the tenant paid a sum of Rs. 200/- in lump and also paid the balance in easy instalments of Rs. 50/- along with the due monthly rent Pritam Dass son of Malik Ram approached the accused appellant and requested him to hand over the stay order of eviction. On 6-9-1969 the accused told Pritam Dass that he would not accede to his request unless he was paid Rs. 150/- as bribe. He further told Pritam Dass that he was the office superintendent and that he could tamper with the rent deed and convert the figure of Rs. 25/- into Rs. 30/-. P. M. Pritam Dass agreed to pay him Rs. 50/- on that day and promised to pay the balance of Rs. 100/- when the order of eviction was withdrawn. Thereafter Pritam Dass left the office of the Custodian assuring the accused that he would soon return along-with money. He went straight to the office of the Anti-Corruption, Jammu and apprised the Superintendent Anti-Corruption of the matter. He made an application Ex. P. A. giving the relevant details. The Deputy S.P. Anti-Corruption sent for the Tehsildar Magistrate and one Hari Ram of Jammu. Notes of ten rupee denomination five in number which were intended to be given to the accused as bribe were initialled by Bhagat Karam Chand. Tehsildar Magistrate. Amrik Chand Dy. S P. and Hari Ram. The complainant was asked to go to the office of the accused and passed the notes on to the accused in furtherance of his demand for bribe. Thus a trap was laid. When the complainant went inside the room of the accused to Pay the amount, the Dy. S. P. the Tehsildar Magistrate and Hari Ram remained outside. After making the payment 'the complainant came out of the room and gave a signal to the raiding party indicating that the amount had been paid. The raid followed and all the five notes Ex. P-1 to Ex. P-5 were recovered from the person of the accused. A seizure memo Ex. P-1 was prepared on spot. The Police filed a complaint under Section 5(2) of the Prevention of Corruption Act before the Sessions Judge, Jammu after obtaining the necessary sanction from the competent authority. The learned Sessions Judge found the accused guilty of the said offence and sentenced him as mentioned above.

4. The prosecution examined, Pritam Dass, Hari Ram. Mohd. Sharif. Janak Singh, Karam Chand Tehsildar and Amrik Chand Dy. S.P. as witnesses in the case.

5. The defence of the accused is that he was innocent and that the money recovered from him represented the monthly instalment of rent that had been given by the complainant to the accused for crediting it to his account.

6. Appearing for the appellant Shri R.P. Sethi has submitted that the trial Court has committed a legal error in convicting the accused under Section 5(2) of the Act inasmuch as it has not been established that the money recovered from the accused was accepted by him as illegal gratification. No presumption under Section 4 could be raised against the accused. It was only when the prosecution had established the proposition of fact relating to the acceptance of gratification by the accused that necessary presumption could under Section 4 be raised in the case. In order to raise the presumption under this section read with Section 5(2)(d) the charge against the accused should have as well been under Section 161, R. P. C. which it is manifest is not. Further, there is no presumption that the money recovered from the accused was received by him as gratification. This must be proved independently. The lower Court has not, however, recorded a clear finding on that question. The accused could not have abused his official position as he had nothing to do with the collection of rent or with the order relating to eviction of the allottee which had already been passed by the Deputy Custodian.

7. In the instant case there was no proof of the fact that an amount of Rs. 50/- was accepted by the accused as gratification. On the other hand the defence of the accused that this amount was given to him by the complainant for crediting the same to his account in adjustment towards the arrears of rent payable by the complainant was probalised. It is further urged that there is no veracity in the allegation made by the prosecution that the accused told the complainant that he would convert the figure of Rs. 25/- into Rs. 30/- P. M. appearing in the lease deed. This is belied by an important circumstance that is the letter No. 2328-29/C-AS dt. 10-9-1967 (68 ?) addressed by the Custodian to the father of the complainant claiming an amount of Rs. 1170/- representing arrears of rent for 39 months for the period ending August 1968. This shows that the monthly rate of

rent was Rs. 30/- and could not be Rs. 25/-. Therefore it cuts at the very root of the prosecution story that the accused had tampered with the rent deed or had threatened the complainant to do so in case he did not pay him an amount of Rs. 150/- as bribe. It is further submitted that there was a clear order of stay of the eviction passed by the Dy. Custodian and therefore the accused could not sit over that order and set it at naught by asking the complainant to pay him the illegal gratification. He was bound to implement the order of the Deputy Custodian. The amount of Rs. 200/- had already been deposited towards the arrears of rent. There was no misconduct on the part of the accused, and none could be imputed to him.

8. In view of this when the stay order had already been passed the accused could not exercise any influence and in fact had no occasion to wield any on the Deputy Custodian with a view to give undue benefit to the complainant's father. It is further urged that no reliance could be placed on the uncorroborated statement of a partisan witness like Pritam Dass. There must have been an independent corroboration of the statement of Pritam Dass. It was not safe to rely on the uncorroborative testimony of the complainant in order to base the conviction of the accused.

9. Alternatively it is submitted that in case the conviction of the accused is upheld, he deserves to be dealt with leniently inasmuch as the accused has suffered in money and mind for the last 7 years. For all these years the accused had to undergo mental worry both in and outside the Court.

10. In support of various propositions of law enunciated the learned Counsel has relied upon : 1959 CriLJ1127 ; : 1972 CriLJ1247 ; : : AIR1959 Bom30 ; and : 1974 CriLJ307 .

11. The learned Additional Advocate General has on the other hand submitted that the case against the accused appellant is fully established on evidence both direct and circumstantial. There was no cause for the complainant to make a false complaint against the accused. The fact of the matter was that the Deputy Custodian having passed the order of stay of eviction in favour of the allottee, the said order was not implemented by the accused and he threatened the complainant that in case he did not pay him Rs. 150/- he would be evicted from

the house and the order of stay would not be executed giving an impression to the complainant that the Deputy Custodian had no authority to Diss the said order. He also told the complainant that in case the amount was not paid to him the allottee would have to pay rent @ Rs. 30/- instead of Rs. 25/- as shown in the agreement.

12. Adverting to the argument of the counsel for the appellant that no presumption could be raised against the accused under Section 4 of the Act, it is submitted, that as soon as it is established that money was accepted by the accused the presumption was that the same was received by him as illegal gratification and it was for him to explain and rebut the presumption arising under the relevant section. It was also pointed out by the learned Addl. Advocate General that the view propounded in : 1959 CriLJ1127 has been departed from in a later authority of the Supreme Court reported as : (1962)ILLJ142SC which has overruled the earlier authority. Reliance is also placed on : 1969 CriLJ262 and : 1974 CriLJ789 and : 1974 CriLJ1062 .

13. I have considered these arguments.

The learned Sessions Judge has observed that the following propositions of fact are admitted in the case:

1. That E. B. House No. 740 was allotted to Malak Ram the father of Pritam Dass complainant by the Custodian, Jammu.
2. That the allottee was in arrears in payment of rent and as a result thereof the Custodian had cancelled his allotment and had directed that the warrant of eviction be issued against the allottee.
3. That pursuant to the request made by the allottee the Deputy Custodian staved the operation of the execution of warrant of eviction on the condition that Malik Ram paid a sum of Rs. 200/- towards the liquidation of arrears and that the balance was paid by him in easy instalments of Rs. 50/- every month along-with the monthly rent. A sum of Rs. 200/- was deposited by the allottee before 5-9-1969.

4. That the accused was the Superintendent of the office of the Custodian on 6-9-1969 and as Superintendent it was his duty to deal with the files pertaining to allotment.

5. That the appellant received a sum of Rs. 50/- from Pritam Dass on 6-9-1969 which was paid in 5 currency notes of rupees ten denomination (vide Ex. P-1 to Ex. 5) and these notes were initialled by the Tehsildar Magistrate, Amrik Chand Dy. S. P. Anti Corruption Organisation and Hari Ram P. W. and that on this very date these 5 currency notes were recovered from the possession of the appellant when his person was searched in presence of the prosecution witnesses (vide Seizure Memo Ex. P-B).

14. These propositions of fact have not been controverted before me. The question, however, to be decided is whether the amount recovered from the person of the accused was received by him from the complainant as illegal gratification and whether a presumption under Section 4 of the Prevention of Corruption Act could legally be drawn against the accused. Also whether the conviction can be based on the statement of the complainant and also on the statements of the trap witnesses.

15. I do not subscribe to the argument of the learned Counsel for the appellant to deal with the case of the complainant and therefore it could not be said that the appellant had committed criminal misconduct by abusing his official position by accepting Rs. 50/- as a reward for doing some favour to the complainant. In my opinion when the amount has been recovered from the possession of the accused and this amount is said to be one which was given by the complainant to the appellant otherwise than as legal remuneration, a presumption under Section 4 of the Act could be drawn. The leading authority on this proposition of law is : 1969 CriLJ262 . It has been held therein that the words 'in the discharge of his duty' occurring in Section 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under Section 5(d) of the Act. The ingredients of the offence under Section 5(1)(d) are : that the accused should have been a public servant : (2) that he should have used corrupt or illegal means or otherwise abused his position as public servant; (3) that he should have obtained a valuable

thing or pecuniary advantage for himself or for any other person. Therefore to bring home an offence under Section 5(1)(d) it is not necessary to prove that the acts complained of were done by the accused in the discharge of his official duty. Therefore if it is proved that the accused had by illegal means or otherwise abusing his position as public servant obtained for himself money, he could be said to have committed the offence 'in the discharge of the official duties,' : 1969 CriLJ262 (supra) was a case where a Havaladar and Subedar in Rajasthan armed constabulary stationed in a border out post of Rajasthan had extracted moneys from the villagers threatening them that in case they did not pay the sums demanded, they would be reported to the higher authorities as visiting Pakistan for some illegal purposes. On a complaint being lodged by the villagers before the C. I. D. Officer a trap was laid and currency notes to be paid by the complainant were initialled. When an amount was paid by the complainant to the appellant in that case the same was recovered from his person.

16. In : (1962)ILLJ142SC the learned Judges while overruling the earlier decision reported as : 1959 CriLJ1127 observed that the offence under Section 5 of the Prevention of Corruption Act is wider and not narrower than the offence of bribery as described in Section 161, I. P. C. In order to bring the charge home to an accused person under Clause (d) of Section 5(1), it is not necessary that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. 'Duty' and 'misconduct' go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. It is not necessary to constitute the offence under Clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under Section 5(1)(d).

17. The observations made in these authorities is complete answer to the argument of the learned Counsel for the appellant.

18. As regards the question raised that no presumption could be raised under Section 4 of the Act against the accused the answer is that a mere payment of money by the complainant to the accused being gratification is sufficient to raise a presumption under the relevant section. Under the relevant Section of the Act the prosecution has not to establish that money that was paid to the accused was by way of illegal gratification for otherwise that would make the very section useless and ineffective. What the prosecution has to establish is that money was paid to the accused without proving that it was by way of reward, or recompense for any service or act. If this interpretation on the word 'gratification' is sought to be placed, as the learned Counsel for the appellant wants me to do, then in that case there would be no presumption left to be drawn under Section 4 of the Act. I am fortified in this view of mine by a decision rendered by Allahabad High Court reported as : AIR1960 All470 which has followed : 1958 CriLJ232 . In this judgment the view expressed in : AIR1959 Bom10 has been departed from.

19. For the same reason I respectfully do not subscribe to the view propounded in . : 1972 CriLJ1247 relied upon by the learned Counsel for the appellant is also not applicable to the facts of the case inasmuch as that was a case of a lecturer of a Government College who was appointed as an Examiner by the University and it was as an examiner that he committed an act of corruption. It was held that in order to bring the case of accused under Section 5(1)(d) it must be established that the accused was a public servant at the time of commission of the act. In that case the accused did not purport to act as public servant while functioning as an examiner. Therefore this authority has got no application to the facts of the present case.

20. Apart from the presumption that can be legally drawn under Section 4 of the Act there is positive evidence on the record to establish that the accused was paid an amount of Rs. 50/- by the complainant for doing him a favour. The accused appellant demanded this amount from the complainant for withdrawing the warrant of eviction. There is the statement of the complainant in this behalf.

21. Learned Counsel for the appellant wants me to hold that the uncorroborated statement of the complainant who is a partisan witness should not be believed so also the statements of the trap witnesses. But in my view there is nothing to detract from the veracity of the complainant. He had no motive to involve the appellant in a false case. There was no occasion for him to have made a false complaint against him. : 1974 CriLJ307 relied upon by the appellant was a case where admittedly the currency note was not recovered from the person of the accused. There was no evidence of the passing of the note from the complainant to the appellant and as no incriminating currency note was found from the person of the accused but a note was found lying on the ground, it was held that it was a case of doubtful nature and it was therefore that their Lordships in that case held that there was no independent and trustworthy corroboration of the evidence of the trap witnesses. On the other hand : 1974 CriLJ784 lays down the guideline for believing or disbelieving the trap witnesses. Their Lordships have observed:

The degree of proof traditionally required in a criminal case and the devaluation suffered by a witness who is naturally involved in the fruits of investigative efforts suggest the legitimate search for corroboration from an independent or unflattering source to make judicial certitude doubly sure. Not that this approach casts any perjorative reflection on the Police Officer's integrity. Where the oral evidence of the bribe giver coupled with that of other trap witness a gazetted officer in another department itself proved the passing of money to accused and its production by him when challenged by the police official and there is no mortal attack on the integrity or probability of the testimony of trap witnesses, the conclusions arrived at by the Courts below in respect of the guilt of the accused can successfully be made.

In the instant case it is found that the witnesses who recovered the currency notes from the person of the accused are men of high position and integrity. One is the Tehsildar; the second is the Dy. Supdt. of Police of another Department and the third is an independent citizen. .Their statements coupled with that of the complainant establish beyond reasonable doubt the guilt against the accused that he received Rs. 50/- as illegal gratification from the complainant and thus abused his official position as Superintendent and committed an act of criminal misconduct

in the discharge of his duty.

22. I, however, do not believe the story of the prosecution that the appellant had threatened the complainant that in case he did not pay him the amount demanded he would convert the figure of Rs. 25/- into Rs. 30/- in the lease deed. That is indeed belied by an important circumstance of the letter written earlier by the Custodian to the allottee. The arrear of rent shown in this letter that had accumulated against the allottee for 31 months shows that the monthly rent was Rs. 30/- and not Rs. 25/-. Therefore this part of the prosecution story is not found established against the accused.

23. Now coming to the question of sentence, I do find that there is some force in the argument of the learned Counsel for the appellant that his client had suffered a great deal for all these years both from mental and also financial point of view. The matter is of the year 1969. One part of the prosecution story has not been found established against the accused as indicated above.

24. For these reasons and also for the reasons that the money paid by way of illegal gratification does not run into substantial figures but is only Rs. 50/- coupled with the fact that the service career of the appellant is already ruined. I am inclined to take a lenient view in the matter. I, therefore, while affirming the conviction of the appellant under Section 5(2) of the Prevention of Corruption Act reduce the sentence to two months rigorous imprisonment only.

25. With this modification in sentence the appeal is otherwise dismissed.