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Mohd. DIn Vs. State

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Court : Jammu and Kashmir

Decided On : Mar-28-2003

Reported in : 2003(2)JKJ82

Judge : S.K. Gupta, J.

Acts : Jammu & Kashmir Code of Criminal Procedure (CrPC) , 1989 - Sections 5(2) and 154; ;Jammu & Kashmir Prevention of Corruption Act, 2006

Appeal No. : Cr. 1st Appeal No. 07/1993

Appellant : Mohd. Din

Respondent : State

Advocate for Def. : J.P. Singh, GA

Advocate for Pet/Ap. : O.P. Thakur, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Gupta, J.

1. Heard Mr. O.P. Thakur, learned Counsel appearing for the appellant, as well as Mr. J.P.Singh, learned Counsel appearing for the respondent-State, in extenso. I have also perused the evidence assembled on record, on the basis of which

impugned order of conviction and sentence has been recorded, meticulously.

2. This appeal is directed against the judgment and order dated 29.3.1993 propounded by learned Special Judge, Anti-Corruption, Jammu in file No. 31/Challan, whereby the appellant, accused Mohd. Din, Head Constable, was convicted and sentenced to undergo two years' rigorous imprisonment and a fine of Rs. 3,000/- in proof of offence under Section 5(2) Prevention of Corruption Act, 2006 and further sentenced to suffer two years' rigorous imprisonment and a fine of Rs. 3,000/- for offence under Section 161 RPC.

3. The case of the prosecution portraited in narration is that accused Mohd. Din while posted as Head Constable in Police Station, Batote, demanded. Rs. 2000/- from Imam Din complainant, as illegal gratification by keeping him in police custody in connection with an investigation in F.I.R. No. 66/83 under Sections 457/380 R.P.C. on 07-12-1983. It is further alleged that the accused subjected the complainant to physical chastised without any cause in a case of theft of Government Cement by implicating him falsely and compelled to shell out Rs. 2,000/- as bribe for getting out of this case.

4. On a written complaint EXPW-I/D lodged by Imam Din to Vigilance Organization, led to the registration of case under Section 5(2) Prevention of Corruption Act, 2006 read with Section 161 R.P.C. and an investigation ensued. On the conclusion of investigation, the accused was sent up to face the trial for the alleged offences and the learned Special Judge, Anti-Corruption, found him guilty under Section 5(2) P.C. Act and Section 161 R.P.C. and he was sentenced accordingly.

5. Mr. O.P Thakur, learned counsel appearing for the appellant, vehemently urged that the trial court has not appreciated the evidence in its proper perspective. The evidence produced by the prosecution suffers from inherent contradiction, which goes to the root of the case and escaped the attention of the trial court and, thus, renders the order of conviction and consequent sentence bad in law, and requires to be set aside. It is further submitted by the learned counsel that F.I.R. has been lodged after a considerable delay, quite often results in embellishment, which is a creature of afterthought. His further submission is that on account of delay, the

report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, unsafe to base conviction on such evidence.

6. Mr. J.P. Singh, learned counsel appearing for the respondent State, on the other hand, argued that the case against the accused has been established by over-whelming evidence of the witnesses which is consistent with the hypothesis that the accused by misusing his official position, demanded and accepted Rs. 2,000/- as illegal gratification by corrupt means from the complainant-Imam Din.

7. It may be pointed out at the first flush that before a conviction order is recorded in a criminal trial, it is incumbent upon the prosecution to prove its case by convincing, reliable, positive, trustworthy and credible evidence against the accused beyond any pale of doubt. PW- Imam Din, who was working in the GREF in December, 1983 and came in the witness box to depose that when he had gone for work in the morning as usual, found seventy four bags of cement missing from the Cement Store at Nasri Bye-Pass Road. He further stated that somebody, after breaking open the door of the store, had stolen the cement. The matter was reported to the Store Incharge, who in turn passed on to the Senior Officer and then report came to be lodged with the Police Station, Batote. It is also in his evidence that when he was going for his work on 05/12/1983, he came across with, the accused accompanied by one constable and the latter took him to the Police Station and physically chastised him. He also stated that the accused demanded Rs. 3,000/- as bribe for releasing him from the custody . The complainant, however, arranged the bribe money and went to the Police Station alongwith PW-Bashir Ahmed, his cousin, whom the accused had sent for the abode purpose and the bribe money of Rs. 2,000/- was paid to the accused, who later accepted it. The accused, after receiving the bribe money from the complainant, let him off from the custody with instruction that this matter be not disclosed to anybody. The complainant further stated to have approached his counsel at Ramban and disclosed the entire episode. However, on the advice of his counsel, the complainant remained silent for twenty days, till the recovery of the cement, lest the accused may harass him. After that a written complaint

EXPW-I/D was lodged with the Anti-corruption through post alongwith the affidavit EXPW-ID/1.

8. In cross-examination, the complainant stated that the bribe money was paid to the accused in presence of PWs Subla & Bashir Ahmed, who happened to be there at that time. The complainant further stated that the amount of bribe was paid to the accused by Bashir Ahmed in presence of Subla.

9. The statement of the complainant stood further corroborated by PW-Bashir Ahmed. According to this witness, he saw the accused torturing, his brother, Imam Din complainant, when reached the Police Station on coming to know about his arrest in a case of theft of cement in the GREF Store. He further stated that it was on account of his interference that the accused demanded Rs. 3,000/- as bribe and sent the complainant alongwith witness for arranging the bribe money. Both the complainant and the witness proceeded to the Police Station next morning after arranging the amount demanded by the accused by way of illegal gratification. The complainant was set free and allowed to go home by the accused after receiving the money. This witness further confirmed that PW-Subla was also there and watching the payment of bribe money to the accused from a distance of 10 to 15 feet. On the asking of PW-Subla about the money paid to the accused, the complainant and the witness replied that the money was paid for the release of the complainant-Imam Din from the police custody.

Therefore, the demand and acceptance of bribe money has been established by cogent, trustworthy and reliable witness of the complainant supported by PW-Bashir Ahmed.

10. PW-Subla is another witness examined by the prosecution to support its case with regard to the receipt of amount of illegal gratification by the accused from the complainant through PW-Bashir Ahmed. This witness was firm in his statement that he had carried meals for Chowkidar of GREF Store in Police Station, Batote, where he was arrested in Government cement theft case. He was definite in deposing that Imam Din, in his presence paid Rs. 2,000/- to Bashir Ahmed and the Bashir Ahmed passed on the same to the accused. It is also in his evidence that amount of Rs. 2,000/- was in the currency notes of Rs. 100/- denomination. He

also stated to have been told by Imam Din and Bashir Ahmed that the amount was paid for the release of complainant-Imam Din, when asked.

11. Demand by the accused for the bribe is an essential ingredient of the offence. The very acceptance bears upon itself the stamp of illegal gratification, no one accepts illegal gratification as a motive or reward, without there being a nexus between the acceptance and the purpose. The 'demand' is implicit in the entire affair. The prosecution in this case has proved demand and acceptance of the illegal gratification by the accused for the release of Imam Din-complainant taken in custody, by clinching and unequivocal testimony of complainant and supported by PWs Bashir Ahmed and Subla. Nothing inherently improbable or un-natural has been trotted out in their pungent cross examination to cast a speck of doubt on their veracity. Their evidence is natural, convincing, straight forward and inspires confidence in the Court.

12. Where the prosecution evidence with attendant circumstances indisputably established that in furtherance of the demand made by the accused, the payment was made and it was consciously accepted by the accused, the evidence attributed to the accused was complete. Whereas, the evidence of PW-Mool Raj is to the effect that complainant borrowed Rs. 1,000/- from him in order to satisfy the illegal demand made by the accused.

13. PW Sarangat Singh of Vigilance Organization recorded the statement of the complainant-Imam Din, Bashir Ahmed and Subla during the investigation at Police Station, Batote, in April, 1984. According to this witness, accusations of corruption against the accused for receiving Rs. 2,000/- as illegal gratification from the complainant, were established. He had prepared the investigation report, which bears his signatures. He further stated that the name of PW-Bashir Ahmed was indicated in the complaint.

14. A fact that demand for bribe was made and the amount accepted for releasing the accused from custody by a public servant may be proved either by direct testimony or by circumstantial evidence. If the accused made no overtures demanding the bribe, on what rational hypothesis can one explain that complainant taken in custody was made by the accused to accompany the

witness-PW Bashir Ahmed to borrow money from the witness-PW Mool Raj, who returned back to the Police Station after some time, and passed on the currency notes to the accused-Mohd Din, Head Constable, who was present as Moharer Head Constable in the absence of SHO of the Police Station, Batote and PW-Subla was watching the acceptance of the bribe by the accused-Mohd Din, as Subla had gone to the Police Station for providing meals to Chowkidar arrested in a theft case of Govt. cement.

15. To constitute an offence under the Prevention of Corruption Act, it is enough if the public servant, who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to the giver 'with any other public service' and the giver gives the gratification under that belief. In all these type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that accused had accepted illegal gratification.

16. In the instant case, the evidence provided by the complainant that he was taken in custody by the accused-Mohd Din and coerced him to pay Rs. 2,000/- as bribe and the accused tacitly accepted the illegal gratification for releasing him from custody, has been corroborated by an acceptable, credible and trustworthy evidence of PWs- Bashir Ahmed and Subla.

17. The prosecution has further succeeded in proving that the SHO of the Police Station was away from the Police Station and accused was Moharer Head Constable in the Police Station in his absence and this situation was exploited by the accused, who had sufficient opportunity to compel the complainant to pay bribe for his release from the custody. His version stands fully corroborated by truthful eye witnesses, namely, Bashir Ahmed and Subla in material particulars.

18. The Trial Court on appreciation of evidence, estimation of these witnesses, found that the evidence is free from infirmities and doubts. When the offence committed by the accused is established by un-impeachable correct evidence, there remains no need to go in search of illusive independent witnesses. The defence witness examined by the accused is found to be of no avail to him rather lends additional support to the prosecution case. The entire evidence has been

thoroughly gone into in detail and properly appreciated by the Trial Court. The evidence produced by the prosecution has been weighed by the Trial Court fairly and reached the result rightly. I do not find any substance in the contention of the appellant's counsel that the evidence has not been properly appreciated and evaluated.

19. It was next contended by learned counsel for the appellant that bribe money is stated to have been demanded and accepted by the accused on 07-12-1983 for releasing the complainant from the custody, but the written complaint was lodged with the Police Station by Imam Din-complainant on 20-01-1984. The delay in lodging the F.I.R. has not been explained sufficiently and satisfactorily, it inevitably raises, a suspicion, which may put the Court on guard to look for the possible motive and consider its effect on the trustworthiness or otherwise of the prosecution version.

20. Undoubtedly, F.I.R. in a Criminal case is required to be lodged with utmost promptitude, being extremely fatal and valuable piece of evidence, but a mere delay in lodging the F.I.R. with the Police is not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of plausity of explanation forthcoming for such delay, accordingly must fall for consideration on all the facts and circumstances, of a given case.

21. In the case in hand, the complainant-Imam Din in his evidence on oath unambiguously stated that the accused-Mohd. Din while releasing him from the custody after accepting the bribe, instructed not to disclose this matter to any body. It is also in his evidence that he met his counsel at Ramban after 2 to 3 days and told him the entire story. His counsel, in turn, advised him to wait till the recovery of the cement otherwise accused can again harass him. He, however, remained silent for 15 to 20 days and thereafter moved an application to the Dy.SP at Ramban and narrated the whole incidence. The Dy.SP, however, assured him to enquire from the accused. The complainant further stated that he went again to his counsel, disclosed him the whole matter and made a written complaint with the Anti-Corruption Department.

22. It is settled proposition of law that the delay, if explained satisfactorily, will not make the F.I.R. doubtful. In this case the delay in registration of F.I.R. has been reasonably and satisfactorily explained in the evidence of complainant. According to the complainant, he remained silent and did not disclose about the case to anybody initially because of the threat of the accused at the time he was set free from the custody and secondly, when advised by his counsel in Ramban that he should remain silent till the recovery of the stolen cement. The appellant's counsel, however, could not point out by reference to the evidence on record that delay was found to be the result of a recalcitrant or refractory conduct of the complainant. In the facts and circumstances of the case, delay in lodging F.I.R. is, therefore, of no consequence, having been sufficiently explained by the complainant in his statement, which is credible, truthful, believable and acceptable. The contention of learned counsel for the appellant in this regard is, therefore, without any substance to merit consideration.

23. For the aforesaid reasons, no ground, much less sufficient ground, exists in my opinion to warrant interference with the impugned

JUDGMENT / ORDER

of conviction and sentence. The findings arrived at, conviction made and sentence awarded are confirmed and the appeal is dismissed in resultant thereof.

24. The accused-appellant, who is on bail, shall be taken in custody to undergo the sentence awarded.

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