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Court : Jammu and Kashmir

Decided On : Mar-30-1994

Reported in : 1995CriLJ599

Judge : S.M. Rizvi, J.

Acts : J. & K. Prevention of Corruption Act, 2006 - Section 5(2); ;Ranbir Penal Code (IPC), 1989 - Section 161 and 302; ;Code of Criminal Procedure (CrPC) , 1974 - Section 174

Appeal No. : Cr. First Appeal 12 of 1992

Appellant : Puran Singh

Respondent : The State

Disposition : Appeal allowed

Judgement :

S.M. Rizvi, J.

1. This criminal appeal is directed against the judgment and order of the learned Special Judge, Anti-Corruption Jammu, dated 23-5-1992, whereby the appellant has been convicted for the offence Under Section 5(2) of the Prevention of Corruption Act, 2006, hereinafter referred to as Act, and Section 161 of the RPC, and sentenced to three years' rigorous imprisonment and a fine of Rs. 1,000/- in

the former and two years' rigorous imprisonment and a fine of Rs. 500/- in the latter.

2. The prosecution case against the appellant was that while posted as ASI Police Station, Reasi in the year, 1984, he was directed to make an inquiry under Section 174 of the Cr. P.C. with regard to a report of the Chowkidar of village, Shirjan Dhar dated: 5-12-1984 that human skeleton was found in a 'Nallah' and the dead body eaten away by vultures and crows. After visiting the spot and making an inquiry, he requested for registration of a case for the offence under Section 302, RPC. When the case was registered, he started making investigation into the matter. During the course of investigation the dead body of the deceased was recovered/seized by him which was without skull and one arm.

3. Allegedly, the father of the deceased Bir Singh requested the appellant for the recovery of the missing limbs and the appellant demanded Rs. 1,000 from him in this behalf as a bribe. The bargain was allegedly, struck at Rs. 500/- which the complainant Bir Singh borrowed from one Sain and paid it to him in presence of Kartar Singh and Hans Raj. It is alleged that despite the payment of bribe, the missing limbs of the deceased were not recovered by the appellant. Consequently, Bir Singh made a complaint to the D.I.G. Vigilance Organization somewhere in December, 1984 itself. However, after some inquiry a case (was) registered against the appellant on 4-3-1986 with FIR No. 7 of 1986 of Police Station Vigilance Organization, in pursuance of some letter of the D.I.G. (Vigilance) dated 4-3-1986. The investigation took the Vigilance Organization more than three years, and last of all, charge sheet was filed against the appellant in the Court on 30-6-1989.

4. The appellant was charged for the offence under Section 5(2) of the Act and under Section 161 of the RPC. He pleaded not guilty to the charges. However, the learned trial court found the appellant guilty, and hence the appeal.

5. I have heard the learned Counsel for the parties and have considered their written arguments also. I have gone through the record as well.

6. It may be stated at the very outset that the case is shrouded in mystries, and the prosecution has failed to unfold the same during the course of investigation or trial. Unfortunately, the learned trial Court has not bothered to go deep into the matter to unveil the untold story.

7. The first mystry is the registration of the case against the appellant. Allegedly, the occurrence has taken place in December, 1984, but the case has been registered by the Vigilance Organization in March 1986, i.e. after a lapse of 15 months. No explanation has been given for this inexcusable and uncondonable delay. The investigation too has taken the so-called Vigilance Organization only 3 1/2 years, and for that too, no explanation has been offered anywhere. This is really shocking that these strikingly simple incidents have not struck the conscience of the learned trial Court. Is it permissible under law to wait for 15 months, and that too, without any reasonable cause to register a case in a simple complaint of bribery. Even, a murder case will be thrown away by the Court for such a delay. It is an established law as held by all the Courts of the country including the apex Court that the delay in registration of a case is made by the Investigating Agency only to shape the same in its own way.

8. The second mystry is that the original complaint has been shown dated as 31-12-1984, while the contents of the complaint are typewritten, the date is hand written. Who has dated the complaint in hand and when, it is not disclosed anywhere either by the Investigating Agency or by the presenting agency, and not even by the trial court. The complaint is addressed to D.I.G. Anti Corruption Organization, and why has he kept it hidden till March, 1986, is really shocking. After registration of the case, it has taken the police 3 1/2 years to produce the challan in the Court, and this too is not explained.

9. The third mystry is that in the complaint no person has been cited as a witness, but during the course of investigation, two eye-witnesses have been procured, one of whom is the real brother of the complainant and another also a relation.

10. The above mentioned things are lacunas of such a nature which are inherent in the prosecution case, and fatal to its existence. How can a case be held as established beyond any doubt, where the FIR has been registered after 15 months

of the alleged occurrence, and that too, without an iota of explanation about the delay. On this ground alone, the case deserves to be dismissed. The learned trial Court was duty bound to address itself to this aspect of the case in the first instance. Unfortunately this fact does not find any mention in its judgment. The lodging of FIR at the earliest and soon after the occurrence is the first test to be established by the prosecution. If this requirement is missing and no reasonable explanation is tendered by the prosecution, the case becomes doubtful at the very threshold. In some cases, even accused in murder cases have been acquitted for the simple reason that FIR was lodged a few hours late and no plausible explanation was tendered for such delay. The delay of 15 months in registering a case is unheard of, and that too, without bothering to disclose the reason for the same.

11. Similarly, the interpolation of a hand written date in the so-called complaint coupled with inaction by the police for a pretty long time, smacks of infidelity in the prosecution case. Whether the complaint was actually lodged in 1984 or in 1986 is still mysterious. Its reason is nowhere mentioned either in the challan or in the evidence of prosecution. It was the bounden duty of prosecution to clear this doubt beyond any reasonable doubt. For this reason also, the prosecution case has become doubtful.

12. As regards the non-mentioning of a witness in the complaint and subsequent production of two eye-witnesses who too are both close relations of the complainant, also makes the case doubtful. Had there been an eye-witness to the occurrence, it could not escape the notice of the scribe, and could not be left out from the complaint. Admittedly, the complaint has been scribed by some typist who was at least knowing as to how it is to be drafted and what should be its necessary requirements. In this view of the matter also, the prosecution case has been rendered doubtful.

13. As regards the other merits of the case, the complainant has sworn an affidavit before a Judicial Magistrate denying therein the factum of payment of bribe to the appellant. In his testimony, however, he has again stated that the bribe was paid by him. There are two versions projected by the complainant himself. In the

affidavit, he has stated that he has not paid by bribe, whereas in his evidence he has stated that he has paid the same. Which of the versions is correct, one cannot say. In any case, under law, the version which favours the accused is to be believed. His statement in the affidavit is in favour of the accused that no bribe was paid to him, and this is to be believed. If it is believed, the prosecution case falls to the ground.

14. Similarly, it is alleged that the illegal gratification was paid to the appellant in presence of two witnesses, namely, Kartar Singh and Hans Raj. Kartar Singh is the real brother of the complainant and Hans Raj also a relation. Both the witnesses are relation witnesses, and therefore, not independent and impartial. Without independent corroboration, it is not safe to believe such witnesses, particularly so, when somebody is to be convicted in a criminal offence.

15. Moreover, there are some discrepancies in the evidence of witnesses also on some material particulars. The PW Hans Raj has on the one hand stated that the bribe was paid to the appellant by the complainant in his presence. On the other hand, he has stated that he had never met the appellant while he was conducting the investigation. These are contradictory statements in the evidence of the witnesses. If he has never met the appellant, then how was the bribe paid in his presence. Similarly, he has further stated that the appellant was demanding Rs. 1,000/- as bribe from the complainant in his presence and the complainant was paying him only Rs. 500/- and finally the said amount was accepted. As against this, the complainant has stated that when demand of Rs. 1,000/- was made from him by the appellant, nobody was present. He has also stated that at the time of demand itself the bargain was struck at Rs. 500/- only. This also is a material contradiction between the two. The PW Kartar Singh also has not stated that the appellant was demanding Rs. 1,000/- in his presence or in the presence of Hans Raj.

16. I have given my anxious consideration to the facts and circumstances of the case, and in the ultimate analysis, I am of the opinion, that the prosecution has failed to bring home the offence to the appellant beyond any reasonable doubt. The case is rather full of doubts and its very occurrence is shrouded in mystry. In

this view of the matter, the findings of conviction and sentence recorded by the learned trial Court against the appellant are not maintainable, and he is entitled to a benefit of doubt.

17. The result is, that the appeal is accepted and the findings of conviction and sentence recorded by the learned trial Court against the appellant hereby set aside. The appellant is accordingly, acquitted of the charges. He is also discharged from his bail bonds.

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