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August 13

STATE OF MAHARASHTRA

v.

JAGATSING CHARANSINGH AND ANR.

(P. B. GAJENDRAGADKAR AND K. N. WANCHOO, JJ.)

Penal Code—Public Servant receiving illegal gratification—Ingredients of the offence—Failure to specify public servant in charge sheet—Whether vitiates the trial—Servant of a corporation—When is a person acting or purporting to act in official capacity—Indian Penal Code, 1860 (45 *of* 1860) *ss.* 21, 161, 197—*Road Transport Corporation Act,* 1950 (64 *of* 1950), *s.* 43.

One Dongarsing obtained an application form for applying to the Transport Corporation at Dhulia for his employment as a truck driver under the Corporation. He subsequently met respondent no. 2 who was employed in the transport department of the corporation. Respondent No. 2 promised to get Dongarsing the employment provided he paid money to respondent no. 1 who was an officer in the transport department at Dhulia. Respondent no. 2 took him to Respondent No. 1 and Rs. 50.00 was agreed to be paid to Respondent no. 1 as bribe and Rs. 25.00 was immediately paid and the balance was paid later. Dongarsing not having obtained the job as promised got suspicious and therefore got into touch with the anticorruption department. A trap was laid for catching respondent no. 1 and Rs. 30.00 was paid to respondent 1 in currency notes to which anthracene powder was applied. Police thereafter caught respondent 1 with the anthracene powder on his fingers and in his pocket though he threw away the currency note. Both the respondents were prosecuted for the commission of an offence under s. 161 of Indian Penal Code.

The trial court acquitted respondent no. 2 on the ground that he was not present when Rs. 30.00 were given to respondent 1 and that there was no evidence to convict him for abetment. Regarding respondent no. 1 the court found that he had accepted the bribe of Rs. 30.00 but on the finding that he was not a public servant either under s. 21 Indian Penal Code or s. 43 of the Indian Transport Corporation Act, 1950, acquitted him also.

The State appealed to the High Court of Bombay. The High Court posed two questions namely (1) whether respondent no. 1 was a public servant within s. 21 of Indian Penal Code read with s. 43 of the Transport Act and (2) whether the ingredients of s. 161 Penal Code had been proved. The High Court did not decide the first question. Regarding the second question relying on the decision of the Court in the *State of Ajmer* v. *Shivjilal,* [1959] Supp. 2 S.C.R. 739, the High Court held that as there was no averment in the complaint or evidence as to the public servant who was to be approached, respondent no. 1 had to be

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acquitted. It confirmed the acquittal of respondent no. 2 also. The present appeal is by way of special leave granted by this court.

In the present appeal the same contentions raised before the High Court were raised.

Held; (1) Where a person is a public servant in the very office where the appointment is to be made and takes money in order to get the appointment made there is no further question of the charge or evidence indicating who was the other public servant with whom the service would be rendered. It was enough if it was shown that money was paid to a public servant in a particular department by which an order would be made and if it was taken for doing an official act in that department. That part of s. 161 which was considered in *Shivajilal's case* is a distinct part where it would be necessary to show who was the other public servant who would be approached. The other part of s. 161 applies not only to receiving gratification by the man for himself but also for any other person so long as he is in a position by virtue of his being a public servant to do or to forbear from doing an official act. The High Court was not therefore right in applying the ratio in *Shivajilal's case* to the facts of this case.

(2) Respondent no. 1 would not be a public servant under s. 21 of Penal Code as it stood at the time of the commission of the offence and before it was amended by Act 2 of 1958.

Only when an officer or servant of a corporation is acting or purporting to act in persuance of any of the provisions of the Transport Corporation Act or of any other law that he can be said to be a public servant within s. 43 of that Act. So far as receiving of a bribe is concerned it cannot be brought within the scope of acting or purporting to act in persuance of any of the provisions of Transport Corporation Act or of any other law. Therefore a person taking a bribe cannot be said to be a public servant within the meaning of s. 21 of the Indian Penal Code in view of the clear words in s. 43 of the Transport Corporation Act.

The trial court was right in acquiting respondent no. 1 on the ground that he was not a public servant. It follows that respondent no. 2 must also be acquitted.

Case law reviewed.

Gill v. *King* (1948) L.R. 75 I.A. 41, *Hori Ham Singh* v. *The Crown,* [1939] F.C.R. 159, *Shrikantiah Ramayya Munepalli* v. *State of Bombay,* [1955] 1 S.C.R. 1177 and *Amrik Singh* v. *State of Pepsu* [1955] 1 S.C.R. 1302.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal 183 of 1961.

Appeal by special leave from the judgment and order dated May 17, 1960, of the Bombay High Court in Criminal Appeal No. 2 of 1959.

H. R. Khanna and *R. H. Dhebar,* for the appellant.
T. V. R. Tatachari, for respondent no. 1.

August 13, 1963. The Judgment of the Court was delivered by WANCHOO J.—This is an appeal by special leave against the judgment of the Bombay High Court by which the two respondents were acquitted. The prosecution case briefly was that one Dongarsing, a discharged truck driver from the army, was in need of employment. Towards the end of October 1955 he made an application to the District Soldiers' Board, Dhulia praying for help in securing employment. This application was forwarded to the Divisional Controller of the State Transport Corporation at Dhulia and Dongarsing was asked by the Corporation to make a formal application on a printed form to be obtained on payment of As. 0-2-0. Accordingly Dongarsing applied for a printed form sometime in November 1955 which he received on November 19, 1955. Thereafter Dongarsingh met Sheikh Ahmed (respondent No. 2) who was in service in the said department at Jamner and asked him for help. Sheikh Ahmed told Dongarsing that Jagatsing (respondent No. 1) who was an officer in the State Transport Corporation at Dhulia would be able to secure a job for Dongarsing provided he was paid money. Consequently, Dongarsing went to Dhulia along with Sheikh Ahmed and met Jagatsing and it was settled that Dongarsing would pay Rs. 50.00 as bribe to Jagatsingh for securing the job of a driver. Rs. 25.00 were immediately paid on that very day namely November 25, 1955 and the remaining amount of Rs. 25.00 was paid a fortnight later about December 9, 1955. Dongarsing was informed sometime at the end of January or beginning of February 1956 that his application for the post of driver had been rejected. He then went to Jagatsingh again and asked him to return the sum of Rs. 50-00 already paid or secure the job for him. Jagatsingh replied that he could not return the money as it had already been paid to other persons but said that if he paid another Rs. 50.00 Jagatsingh might be able to procure the job for him. So another printed form of application was procured by Jagatsingh and Dongarsing filled it up and gave it to Jagatsingh. By this time how-

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ever Dongarsing had become suspicious of the *bona fides* of Jagatsingh and he therefore approached the anti-corruption department. So a trap was laid for catching Jagatsingh and Rs. 30.00 in currency notes were given to Dongarsing for passing on to Jagatsing after applying anthracene powder to them. Eventually on February 20, 1956, this amount of Rs. 30.00 was passed on by Dongarsingh to Jagatsing at about 3 p.m. After the money was paid the police caught Jagatsingh who had the money in his hands but threw it down on being challenged. It was however found that particles of anthracene powder were on the thumb and two fingers of Jagatsing and also on the seam of the right pocket of the pant of his trousers. The currency notes were then picked up and the necessary panchnama was prepared and after further investigation Jagatsingh and Sheikh Ahmed were prosecuted.

Jagatsingh denied his guilt and said that he had nothing to do with the appointment of drivers and conductors and was never in a position to do anything for Dongarsing. Sheikh Ahmed also denied his guilt and said that all that he did was to help Dongarsing in filling up the printed form but that he never told Dongarsing that he had to pay a bribe to Jagatsingh in order to get the job.

The trial court found on the facts that the prosecution had proved its case beyond reasonable doubt and that Jagatsingh had accepted the currency notes which Dongarsing gave him on February 20 as illegal gratification as a motive for securing the job for Dongarsing. As to Sheikh Ahmed the trial court held that it would not be safe to accept the testimony of Dongarsing as to the payment of the two sums of money of Rs. 25.00 in November and December 1955 as he was an accomplice. As to the payment of Rs. 30.00 on February 20 the trial court held that Sheikh Ahmed was not present at that time and could not be held to be guilty of abetment of that crime, particularly as the letter Ex. 29/ on which the charge of abetment was based was never handed over by Dongarsing to Jagatsingh. The trial court further held as to Jagatsingh that he was not a public servant within the meaning of s. 43 of the Road Transport Corpora-

tion Act, No. 64 of 1950 (hereinafter referred to as the Transport Act). It therefore acquitted both the respondents.

This was followed by an appeal by the State to the High Court of Bombay. The High Court apparently accepted the finding of the trial court as to the payment of Rs. 30.00 as bribe to Jagatsingh. The High Court then addressed itself to questions of law raised before it. These questions were : (1) whether Jagatsing was a public servant within the meaning of s. 21 of the Indian Penal Code read with s. 43 of the Transport Act, and (2) whether the ingredients of s. 161 of the Indian Penal Code with which Jagatsingh had been charged had been proved. The High Court did not decide the first question in the view it took of the second question. Relying on the judgment of this Court in *State of Ajmer* v. *Shivjilal*(1), the High Court held that as there was no averment as to the public servant who was to be approached either in the complaint or in the evidence, it had no option but to confirm the acquittal ordered by the Special Judge in view of *Shivjilal's case*(1). As the High Court acquitted Jagatsing, it held that there could be no case of abetment against Sheikh Ahmed. The State of Maharashtra has come to this Court by special leave against the view taken by the High Court acquitting the two respondents.

We shall first deal with the view taken by the High Court on the second question. We must say with respect that the High Court has read more in the decision in *Shivjilal's case*(1) than what was decided therein. In that case the bribe was said to have been given to Shivjilal who was a teacher in a railway school at Phulera. The purpose for which the bribe was said to have been given was to secure a job for Premsingh, who had given the bribe, in the railway running shed at Abu Road. On these facts it is obvious that Shivjilal would have nothing to do with the securing of a job at the railway running shed at Abu Road, for he was in no way connected with that shed and could only approach some officer at Abu Road for procuring the job. In these circumstances Shivjilal could only secure the job for Prem-

(1) [1959] Supp. 2 S.C.R. 739.

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singh by rendering or attempting to render service to Premsing with some public servant at Abu Road who would be in a position to secure the job there. That case therefore clearly fell under that part of s. 161 (omitting the unnecessary words) which reads as follows :—

> "Whoever being a public servant accepts from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for rendering or attempting to render any service or disservice to any person with any public servant"

It was in that connection that this Court emphasised in *Shivjilal's case*(1) that where the charge is under this part of s. 161, the charge should specify the other public servant who was to be approached for rendering service or disservice. At the same time this Court did not lay down in *Shivjilal's case*(1) that if the other public servant is not specified in the charge, the trial would be bad. Where the public servant is not specified in the charge that would only mean that there is defect in the charge and such a defect would be curable under s. 537 of the Code of Criminal Procedure unless such error or omission or irregularity or misdirection has in fact occasioned a failure of justice. This Court then went on to point out in *Shivjilal's* case that besides the omission to indicate the other public servant in the charge there was nothing in the complaint, in the charge-sheet submitted by the police and in the evidence to show who was the other public servant with whom service or disservice would be rendered by Shivjilal. It was in these circumstances that this Court held that one of the main ingredients of that part of s. 161 which applied to that case had not been proved.

The facts in the present case however are different. It is not in dispute that Jagatsingh was an employ in the very office which would make the appointment of the driver for which job Dongarsing had applied. It is also in evidence that Dongarsing had approached Jagatsingh directly, may be in the company of Sheikh Ahmed, and Jagatsingh had promised to secure a job in his own office for Dongarsing, if he was paid a certain amount. In

(1) [1959] Supp. 2 S.C.R. 739.

such a case we are of opinion that another part of s. 161 would apply which (again omitting the unnecessary words) reads as follows :—

> "Whoever, being 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"

It is this part of s. 161 which would in our opinion apply to the facts of the present case for Jagatsingh was himself in that office and took the money for doing an official act *i.e.* an appointment of a driver by his office. It is true that Jagatsingh in his statement said that he had no concern with appointment of drivers and conductors and was not in a position to do anything for Dongarsing in the matter of securing employment for him. He was however a senior assistant in the traffic section in the corporation at Dhulia ; thus even if he was not directly in a position to make the appointment himself that would not in our opinion make any difference to his guilt if he took the money in order to get an official act done *viz.,* Dongarsing's appointment in that office. The relevant part of s. 161 which applies not only refers to receiving of gratification by the man for himself but also for any other person so long as he is in a position by virtue of his being a public servant to do or forbear to do any official act or to show or forbear to show in the exercise of his official functions favour or disfavour to any person. Where therefore a person is a public servant in the very office where the appointment is to be made and takes money in order to get the appointment made there is no further question of the charge or evidence indicating who was the other public servant with whom the service would be rendered. The part of s. 161 which was considered in *Shivjilal's case*(1) was an entirely distinct part where it would be necessary to show who was the other public servant who would be approached. But on the facts of the present case it is not neces-

(1) [1959] Supp. 2 S.C.R. 739.

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sary to show whether there was any other public servant who was to be approached where the public servant taking the money is himself in the very office by which the appointment would be made. In such a case the person would be taking money for himself or for any other person in his office in order to do any official act or get it done. The High Court therefore was not right in applying the ratio in *Shivjilal's case*(1) to the facts of this case, for it was not necessary on the facts of this case to indicate who was the other public servant with whom service would be rendered. It was enough if it was shown that money was paid to a public servant in a particular department by which an order would be made and if it was taken for doing any official act in that department. The reason therefore that has been given by the High Court in acquitting Jagatsing and in consequence Sheikh Ahmed cannot be upheld.

That brings us to the first question which was posed before the High Court and which the High Court did not decide, namely, whether Jagatsingh was a public servant within the meaning of s. 21 of the Indian Penal Code read with s. 43 of the Transport Act. This question was decided by the trial court in favour of Jagatsingh and we think it fit to decide this question ourselves even though we have not had the advantage of the High Court's view in the matter, for we do not think that we should remand the case after this lapse of time for this purpose to the High Court. It is not in dispute that Jagatsingh would not be a public servant under s. 21 as it stood before the amendment by Act 2 of 1958 by which the twelfth clause was added to the section in these terms :—

> "Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956"

This clause was not there when the present offence was committed in 1956 and we have therefore to see whether s. 43 of the Transport Act makes Jagatsingh a public servant for purposes of s. 21 of the Indian Penal Code. Section 43 is in these terms :—

(1) [1959] Supp. 2 S.C.R. 739.

> "All members of a corporation, and all officers and servants of a Corporation, whether appointed by the State Government or the Corporation, shall be deemed when acting or purporting to act in pursuance of the provisions of this Act or of any other law, to be public servants within the meaning of section 21 of the Indian Penal Code."

Now if the words "when acting or purporting to act in pursuance of any of the provisions of this Act or of any other law" had not been there in s. 43, there would have been no difficulty in holding that Jagatsingh was a public servant under s. 21 of the Indian Penal Code. The difficulty is created by these words and the argument on behalf of the respondents is that the effect of these words in s. 43 is that all officers and servants of a corporation are public servants only when they are acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law, and that taking of bribe is not acting or purporting to act in pursuance of any of the provisions of the Act or of any other law.

The question whether sanction of the Government was required under s. 197 of the Code of Criminal Procedure where any public servant is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty came up for consideration by the Privy Council in cases under ss. 161 and 409 of the Indian Penal Code against public servants. In *Gill* v. *The King*(1), the Privy Council held that prosecution for taking a bribe under s. 161 of the Indian Penal Code did not require sanction under s. 197 because taking of a bribe was not acting or purporting to act in the discharge of the official duty of a public servant.

Again in *Hori Ram Singh* v. *The Crown*(2), the Federal Court held that sanction was required for prosecution of a public servant for an offence under s. 477-A as his official capacity is involved in the very act complained of as amounting to a crime; but that no sanction was required for a charge under s. 409, because the official capacity is material only in connection with the entrustment and does not necessarily enter into the later act

(1) [1948] L.R. 75 I.A. 41. (2) [1939] F.C.R. 159.

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of misappropriation or conversion which is the act complained of. This view of the Federal Court was approved by the Privy Council in *Gill's case*(1).

We may also refer to two cases of this Court in this connection, namely, *Shreekantiah Ramayya Munipalli* v. *The State of Bombay*(2) and *Amrik Singh* v. *State of Pepsu*(3). In the first case it was pointed out that s. 197 should not be construed too narrowly, for if that was done it could never be applied as it is no part of an official's duty to commit an offence and never can be. But it was not the duty of an official which had to be examined so much as his act, because an official act could be performed in the discharge of official duty as well as in dereliction of it. In that case misappropriation was facilitated by a public servant allowing certain stores to pass out of the Engineering Depot at Dehu and it was held that sanction was necessary because misappropriation could never have been committed if the official act of passing out the stores had not been done. Therefore the public servant who allowed the stores to pass out and thus was guilty of abetment of misappropriation could not be prosecuted without sanction as his act in passing out the stores which facilitated the misappropriation was an official act.

The matter was examined again in the second case and the position was summed up there in these words at p. 1307 :—

> "It is not every offence committed by a public servant that requires sanction for prosecution under section 197 (1) of the Code of Criminal Procedure ; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits which would have to be investigated at the trial, and could

(1) L.R. 75 I.A. 41. (2) [1955] 1 S.C.R. 1177.
(3) [1955] 1 S.C.R. 1302.

not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

In that case, however, it was held that sanction was necessary for prosecution under s. 409 of the Indian Penal Code because the accused in that case claimed that he had paid the amount to the person to whom it was due and had taken a receipt from him.

Similar considerations would apply when one has to decide whether an officer or servant of a corporation was acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law, for it is only if he is so acting that he can be said to be a public servant within the meaning of s. 43. Now so far as the receiving of a bribe is concerned, it cannot in our opinion be brought within the scope of acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law. It cannot be the case of the prosecution that Jagatsingh while acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law would take this money. Therefore when he took this money from Dongarsing he could not be said to be acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law. Therefore he could not be a public servant within the language of s. 43 which requires that an officer or servant of a corporation should be acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law in order that he may be a public servant within the meaning of s. 21 of the Indian Penal Code.

It is urged that in this view all members, officers and servants of a corporation would be free to take bribes and would never be liable to be prosecuted under s. 161 and that this could not have been the intention behind s. 43. It is certainly unfortunate that such a result should follow from the words used in s. 43. But the words are clear and it seems that members, officers and servants of the corporation were intended by the legislature to be public servants only when they were acting or purporting to act in pursuance of the provisions of the Transport Act or of any other law and not otherwise. As taking

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of bribe cannot under any circumstances be shown to amount to acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law, the person taking a bribe cannot be said to be a public servant within the meaning of s. 21 of the Indian Penal Code in view of the clear words of s. 43. The difficulty has however now been obviated by the amendment of s. 21 by the addition of the twelfth clause therein. But as s. 21 stood at the relevant time we have to take recourse to s. 43 of the Transport Act and the words of that section make it quite clear that members, officers and servants of corporations can only be public servants when they act or purport to act in pursuance of any of the provisions of the Transport Act or of any other law; and taking of a bribe can never amount to acting or purporting to act in pursuance of any of the provisions of the Transport Act or of any other law. In these circumstances the trial court was right in acquitting Jagatsingh on the ground that he was not a public servant. It follows therefrom that Sheikh Ahmed must be acquitted.

We therefore dismiss the appeal, though for different reasons.

Appeal dismissed.