A

DALPAT SINGH & ANR.

v.

STATE OF RAJASTHAN

February 13, 1968

B [G. K. MITTER AND K. S. HEGDE, JJ.]

Indian Penal Code, 1860 (45 *of* 1860), *ss.* 120*B and* 161—*Public servants threaten ill-treatment and harassment unless money paid to them—Whether can be convicted under s.* 161.

Prevention of Corruption Act, 1947 (*Act* 2 *of* 1947), *ss.* 5(1)(*a*), 5(1)(*d*) *and* 5(2)—*Offence not under s.* 161 *I.P.C.—If conviction under s.* C 5(1)(*a*) *possible—Scope of s.* 5(1)(*d*).

On the allegation that the first appellant-Havaldar and the second appellant-a Subedar in the Rajasthan Armed Constabulary, were demanding certain amount from a person accusing him of indulging in black-marketing and constantly visiting Pakistan and unless he paid the amount demanded he would be beaten and prosecuted, a police trap was successfully laid, and the appellants convicted under ss. 161 and 120B I.P.C. D and under s. 5(2) read with s. 5(1)(a) and s. 5(1)(d) of the Prevention of Corruption Act. In appeal, this Court.

HELD : The conviction of the appellants under s. 120B and 161 as well as under s. 5(2) read with s. 5(1)(a) of the Prevention of Corruption Act must be set aside. The second appellant's conviction under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act must be sustained. The first appellant's conviction be altered to one under s. 5(2) of E the Prevention of Corruption Act read with s. 114 I.P.C.

The first appellant was a subordinate of second appellant. From the evidence it is clear that both the appellants were acting together. It is obvious that the second appellant was mainly responsible for the extortions complained of and the first appellant was aiding him in his activities. Hence there was no need to charge the appellants under s. 120 B. I.P.C.

F The evidence clearly showed that neither the appellants intended to show any official favour to the persons from whom they extorted money nor those persons expected any official favour from them. The amounts in question were paid solely with a view to avoid being ill-treated or harassed. Therefore, it is difficult to hold that the acts complained can be held to constitute offences under s. 161 I.P.C.

State of Ajmer v. *Shivji Lal*, [1959] Supp. 2 S.C.R. 739 and *State of* G *Uttar Pradesh* v. *Kuljas Rai*. Cr. A. No. 177 of 1960 dated 22-8-62, referred to.

Before an offence can be held to come within s. 5(1)(a) of the Prevention of Corruption Act, the requirements of s. 161 I.P.C., have to be satisfied. If an offence does not fall under s. 161 I.P.C. it cannot come within s. 5(1)(a) of the Prevention of Corruption Act. [196 C]

H But so far as s. 5(1)(d) of the Prevention of Corruption Act is concerned, that stands on a different footing. To bring home an offence under s. 5(1)(d), it is not necessary to prove that the acts complained of were done by the appellants in the discharge of their official duties. Clause 5(1)(d) is much wider in scope than cl. 5(1)(a). [196 D—197 B]

State of Uttar Pradesh v. *Kuljas Rai*, Cr. A. No. 177 of 1960 dated 22-8-62 and *Dhaneshwar Narain Saxena* v. *The Delhi Administration*, A.I.R. 1962 S.C. 195, referred to. A

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 28 of 1965.

Appeal by special leave from the judgment and order dated December 14, 1964 of the Rajasthan High Court in S. B. Criminal Appeal No. 656 of 1963. B

K. R. Chaudhuri, for the appellants.

K. Baldev Mehta, for the respondent.

The Judgment of the Court was delivered by C

Hegde, J. The two appellants were convicted by the High Court of Rajasthan under ss. 120 B and 161, IPC, and under ss. 5(1)(a) and 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act. They have come up in appeal to this Court by special leave.

D

The first appellant was a Havaldar and the second appellant a Subedar in the Rajasthan Armed Constabulary. At the relevant point of time they were serving in the outpost at Sajan-Ka-Par in Barmer district of Rajasthan State, which was a border outpost. That post was within two miles from the Pakistan border. The prosecution case is that the two appellants conspired to extort money as well as other valuable things from the E villagers by using force or threat of force or by harassment. Though they were indulging in these activities for quite some time, the matter came to a head when they tried to compel PW 1 Mohammad to give them Rs 100. It was said that about the middle of September 1962, the first appellant came to the field of Mohammad and took him to the outpost saying that the F second appellant wanted him to go over there. At the outpost the second appellant told him that he was constantly visiting Pakistan; he was also blackmarketing; hence unless he gave him (2nd appellant) Rs. 200 he would send him to prison. PW 1 pleaded that he was innocent. He also pleaded that he was a poor man and hence he was unable to pay the amount demand- G ed. As the second appellant insisted on the payment he agreed to pay him Rs. 100 but as he had no money at that time PW 3 Kalla stood surety for him. After a few days when PW 1 was sitting in the shop of PW 5 Bhoja, he happened to talk about the illegal activities of the appellants. It so happened that a CID officer was there who evidently passed on that information to H PW 17 Kaneihalal the Deputy Superintendent of Police in the Special Police Establishment. On getting that information PW 17 came to the village on September 30, 1962 and checked up the

A facts with PW 1. On the morning of October 1, 1962 PW 1 was again called to the outpost by the 2nd appellant and told that the amount should be paid immediately. He promised to pay the same that afternoon and asked the appellants to come to his house that afternoon to which they agreed. Thereafter he passed on that information to PW 17 and gave him the complaint B Exh. P1. Then a trap was arranged. PW 1 produced before PW 17, Rs. 100 in ten rupee currency notes. PW 17 noted down their numbers in the presence of panch witnesses PW 2 Bhakha and PW 4 Ballu and returned the amount to PW 1 with instructions to give the same to the appellants if they again demanded money. At the same time he instructed PWs 2 and 4 to be with C PW 1 so that they may witness the payment of the money. Then PW 17 posted himself in a house near the house of PW 1. On the evening of that day the first appellant came to the house of PW 1 and demanded the money. He told PW 1 that the second appellant could not come as he was not well. Then PW 1 took out the currency notes whose numbers had been noted down earlier and paid the same to the first appellant. The first appel- D lant put them in his pocket. On receipt of that information, PW 17 came to the place and asked the first appellant to produce those currency notes. On seeing PW 17, the first appellant became pale and nervous. After some hesitation he took out the notes in question from his pocket and gave them to PW 17. On examining their numbers it was found that they were the E very notes which had been returned to PW 1 after noting their numbers. As soon as the villagers came to know of the trap, several of them came forward with complaints against the appellants. After investigating all those complaints this case was launched. It was tried by the special judge, Balotra, who accepted the prosecution case in full and convicted the appellants under F ss. 161 and 120B, IPC and under s. 5(2) read with s. 5(1)(a) and 5(1)(d) of the Prevention of Corruption Act. In appeal the High Court of Rajasthan affirmed the convictions of the appellants in respect of all the charges levelled against them. It did not award any separate sentence in respect of the offence under s. 161 or s. 120 B, IPC. As regards the other offences it G reduced the sentence awarded by the trial court.

We shall now proceed to consider the evidence relating to the various charges levelled against the appellants. It is not disputed that both the appellants were public servants. So far as the evidence relating to the trap is concerned, we H have the evidence of PWs 1, 2, 4 and 17. Their evidence has been believed by the trial court as well as the High Court. The plea of the 1st appellant was that on that evening when he was going in front of the house of PW 1, PWs 1 and

2 and others caught hold of him and struggled with him; at that time his note book fell down; thereafter he saw them producing the currency notes in question before PW 17. This is a very artificial story. The same has been disbelieved by the trial court as well as the appellate court. No case is made out to interfere with their findings.

The evidence relating to the trap does not by itself connect the second appellant with that incident, but then the evidence of PWs 1 and 3, which has been accepted by the trial court as well as the High Court, shows that it was the 2nd appellant who compelled PW 1 to give that amount. The contention of the second appellant that he had incurred the displeasure of the villagers because he was a strict officer and because he came in their way of smuggling goods from Pakistan to India and from India to Pakistan and therefore he was victimised, was not accepted either by the trial court or the High Court. Those courts also did not accept his version that several days before the trap was laid he had reported against most of the prosecution witnesses in this case. The defence evidence led by him was disbelieved by those courts and even the documents produced by him were rejected either on the ground that they were got up for the purpose of this case or as having been tampered with. This court being a court of special jurisdiction, does not interfere with findings of facts reached by the High Court except under exceptional circumstances. No such circumstance is available in this case.

We are unable to accept the contention of the learned counsel for the appellants that PWs 1, 2, 3, 4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though PWs 1, 2, 4 and 17 can be considered as interested witnesses as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without corroboration, see the *State of Bihar* v. *Baswan Singh*(1).

The next incident is that spoken to by Bhoja PW 5 and Hussain, PW 6. Their evidence was that on June 22, 1962 the second appellant along with the first appellant visited the shop of PW 5 and told him that he was blackmarketing and that people

(1) [1959] S.C.R. 195.

A from Pakistan were visiting him. He denied those charges. Then the second appellant told him that unless he (PW 5) paid him Rs. 50 he would involve him in some case some day. But still PW 5 did not give any money to the second appellant. Then the second appellant insisted that he should give at least the wrist watch that he was wearing. Finding no alternative he B gave him the watch, article 3. According to him when all these things happened PW 6 was in his shop. PW 6 fully corroborated PW 5. It was not denied that PW 17 seized the watch in question from the second appellant. But his explanation was that that watch had been pledged by PW 5 with Shriram PW 4 for Rs. 50 but that amount had been advanced to DW 4 by him C (appellant No. 2); DW 4 left the watch with him and that is how he happened to be in possession of the watch. Neither the trial court nor the appellant court accepted this version. On the other hand they relied on the evidence of PWs 5 and 6 coupled with the circumstance that the watch was seized from the second appellant. We see no reason to disturb the findings reached by those D courts.

PW 18 Ukaram spoke to the fact of having paid a sum of Rs. 101 to the second appellant in the presence of the first appellant on August 13, 1962. Though his evidence was believed by the trial court, the same was not relied on by the High Court. Therefore we exclude that evidence from consideration.

E We next come to the evidence of PWs 8, 11 and 12. PW 8 is one Kastura. His evidence is that some days prior to October 1, 1962 the first appellant came and took him to the outpost. There the second appellant accused him of being in the habit of visiting Pakistan. When he denied that charge he was asked to kneel down. Sometimes thereafter he was asked to pay F Rs. 100. As he had no money he was kept in the outpost during the night. On the next morning Imam PW 11 and Bhakha PW 2 happened to come to the post. PWs. 8, 11 and 12 pleaded with the second appellant to accept a lesser sum. Ultimately the second appellant agreed to receive Rs. 50. Thereafter PW 11 was sent to the house of PW 8 to sell his goats and get Rs. 50. He accordingly went to the village, sold some goats of PW 8 and G got Rs. 50. During this incident, according to the evidence of the above witnesses, the first appellant was also present in the outpost.

Sadiq PW 13 speaks to the fact that about nine days prior to his arrest the first appellant went to his house and took him to the outpost saying that he was wanted by the second appellant. H There he was falsely accused of selling goats in Pakistan; then he was beaten by the second appellant and thereafter he was told by the second appellant that he should pay him Rs. 100. As

he could not make the payment in question he was kept in the outpost that night. Next day his brother Gafoor came there and paid a sum of Rs. 80 to the second appellant. It is only thereafter he was allowed to go back. At about the time when money was extorted from PW 13, Alladin PW 14 was said to have been in the outpost. PW 14 corroborated the testimony of PW 13. PW 14 has his own grievance against the appellants. His case was that about 25 days prior his arrest, the first appellant came to his field and demanded his camel for cultivation of his field. But as he himself required the camel he refused to give it. After about 8 or 9 days both the appellants came to his field and forcibly took him to the outpost and beat him. Thereafter they demanded from him a sum of Rs. 60 and he was told that if he did not pay that amount, he would be prosecuted in some false case.

Next we come to the evidence of Murad PW 7 and Subhan PW 9. The evidence of these two witnesses was that about seven or eight days before the first appellant was arrested both the appellants came to their houses in the village Talab-Ka-Par and took them to the outpost. There they were made to kneel down. Further they were falsely accused of indulging in smuggling of goods and visiting Pakistan without valid permits. Thereafter Rs. 80 were demanded from PW 7 and Rs. 200 from PW 9. Ultimately it was settled that PW 7 should pay Rs. 50 and PW 9 Rs. 150. By that time Kalla PW 3 came there. He was sent to the house of those witnesses to get money. He got Rs. 40 for PW 7 and Rs. 130 for PW 9. Those amounts were paid to the second appellant.

Next we come to the evidence of Minimal PW 10. His version was that in July or August 1962 his brother-in-law died and in that connection a feast had been arranged. When the feast was about to commence the first appellant came there and told him that unless he paid a sum of Rs. 100 he would not be allowed to have the feast. As he refused to pay that money he was taken to the outpost. There the second appellant again demanded from him Rs. 100. Ultimately PW 10 paid the second appellant Rs. 30.

Lastly we come to the evidence of Nemichand PW 15. His case was that about a month before the first appellant was trapped he had come to his shop and told him that he should go and meet the second appellant at the outpost. Accordingly he went to the outpost. There the second appellant accused him of indulging in black-marketing and demanded from him Rs. 100. and he was told that if he did not pay that amount he would be beaten and prosecuted. Ultimately it was settled that he should

A pay Rs. 50. Thereafter he was allowed to go home and get the money. On the next day he went to the outpost and paid Rs. 50 to the second appellant.

The evidence of all the witnesses mentioned above excepting PW 18 has been accepted by the trial court as well as by the B appellate court, and we see no reason to differ from them.

This takes us to the question whether on the basis of the evidence accepted by the High Court both or any of the appellants could in law have been convicted for any of the offences with which they were charged.

C The first appellant was a subordinate of the second appellant. From the evidence referred to earlier it is clear that both the appellants were acting together. It is obvious that the second appellant was mainly responsible for the extortions complained of and the first appellant was aiding him in his activities. Hence there was no need to charge the appellants under s. 120 B, IPC even in respect of the amount received from PW 1. The evidence D adduced by the prosecution shows that every single act complained of amounts to an extortion in law.

Before an offence is held to fall under s. 161 IPC, the following requirements have to be satisfied: (1) the accused at the time of the offence was, or expected to be, a public servant, (2) that he accepted, or obtained, or agreed to accept, or attempted E to obtain from some person a gratification, (3) that such gratification was not a legal remuneration due to him, and (4) that he accepted the gratification in question as a motive or reward, for (a) doing or forbearing to do an official act; or (b) showing, or forbearing to show favour or disfavour to some one in the exercise of his official functions; or (c) rendering, or attempt- F ing to render, any service or disservice to some one, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant. As mentioned earlier admittedly the appellants were public servants. It is also established that they obtained from the several witnesses examined in this case illegal gratification. The word 'obtain' is a G strong word. It includes also things received by extortion. But can it be said that they obtained the gratifications in question as a motive or reward for doing or for forbearing to do an official act or for showing or for forbearing to show favour or disfavour to the persons in question in the exercise of their official functions. The evidence on record clearly shows that neither the H appellants intended to show any official favour to the persons from whom they extorted money or valuable things, nor those persons expected any official favour from them. They paid the amounts in question solely with a view to avoid being ill-treated

or harassed. The scope of s. 161, IPC had been considered by this Court in *State of Ajmer* v. *Shivji Lal*(1) as well as in *State of Uttar Pradesh* v. *Kuljas Rai*(2). Though the former decision was overruled in certain respects by a later decision of this Court to which reference will be made hereinafter, that part of the decision which considered the requirements of s. 161 I.P.C. was not differed from. Therefore it is difficult to hold that the acts complained against the appellants can be held to constitute offences under s. 161, IPC.

Before an offence can be held to come within cl. (a) of sub-s. 1 of s. 5 of the Prevention of Corruption Act, the requirements of s. 161, IPC have to be satisfied. If an offence does not fall under s. 161, IPC, it cannot come within s. 5(1)(a) of the Prevention of Corruption Act.

But so far as cl. (d) of sub-s. 1 of s. 5 of the Prevention of Corruption Act is concerned, that stands on a different footing. At the relevant time that sub-section read :

> "A public servant is said to commit the offence of criminal misconduct in the discharge of his duty—
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> . . . . . .
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> (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage."

Therefore if it is proved that the appellants had by illegal means or by otherwise abusing their position as public servants obtained for themselves money or other valuable things, then, they can be said to have committed the offence of criminal misconduct in the discharge of their official duties. To bring home an offence under s. 5(1)(d), it is not necessary to prove that the acts complained of were done by the appellants in the discharge of their official duties. The contrary view taken by this Court in *State of Ajmer* v. *Shivji Lal*(1) was over-ruled by this Court in *Dhaneshwar Narain Saxena* v. *The Delhi Administration*(3). In that case it was observed that the words occurring in s. 5 of the Prevention of Corruption Act "in the discharge of his duty" do not constitute an essential ingredient of the offence under s. 5 (1)(d), the ingredients of that offence being (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a

(1) [1959] Supp. 2 S.C.R. 739. (2) Cr. Appeal 177 of 196), decided on 22-8-62.
(3) A.I.R. 1962 S.C. 195.

A public servant; (3) that he should have obtained a valuable thing or pecuniary advantage, and (4) for himself or any other person. That decision was followed in State of *Uttar Pradesh* v. *Kuljas Rai*(1). It must be noted that clause 5(1)(d) is much wider in scope than clause 5(1)(a).

B Therefore, the conviction of the appellants under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act stands on a firm ground.

It was contended on behalf of the State that if this Court holds that the conviction of the appellants under s. 161, IPC and under s. 5(1)(a) of the Prevention of Corruption Act is not sustain-
C able, their conviction may be altered to one under s. 384, IPC. It was said that such an alteration cannot be said to prejudice the appellants though they were no charged and tried for that offence. We have not thought it necessary to examine that question as in any event the appellants are liable to be convicted under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act.

In the result we partly allow the appeal and acquit the
D appellants under ss. 120 B and 161, IPC, as well as under s. 5(2) read with s. 5(1)(a) of the Prevention of Corruption Act. The second appellant's conviction under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act is sustained and for that offence the sentence of 18 months rigorous imprisonment and a fine of Rs. 200, in default further imprisonment of two months imposed by the High Court is affirmed. The conviction of the
E first appellant is altered to one under s. 5(2) of the Prevention of Corruption Act read with s. 114, IPC and for that offence he is sentenced to suffer rigorous imprisonment for one year.

Y.P. *Appeal partly allowed.*

(1) Cr. Appeal 177 of 1960, decided on 22-8-62.