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SHIV RAJ SINGH

v.

DELHI ADMINISTRATION

May 1, 1968

B

[V. RAMASWAMI AND C. A. VAIDIALINGAM, JJ.]

Prevention of Corruption Act (2 of 1947), ss. 5(1) and 6 and Indian Penal Code (Act 45 of 1860), s. 161—Sanction to prosecute—Sufficiency—Scope of s. 161 I.P.C. and s. 5(1) of the Prevention of Corruption Act.

C

An unmarried woman gave birth to a child and on her request, her uncle and aunt made arrangements for the child being brought up by some one who wanted to adopt a child. The appellant, who was a police officer, accused the uncle and aunt of having disposed of an illegitimate child and demanded a bribe. The anti-corruption department was thereupon informed, a trap laid and currency notes which were given as bribe were recovered from the appellant. He was prosecuted and convicted for offences under s. 5(2) of the Prevention of Corruption Act and s. 161, I.P.C. The High Court confirmed the conviction and sentenced him to 2 years R.I.

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In appeal to this Court,

HELD : (1) The order of sanction showed on the face of it what were the facts constituting the offence, that a *prima facie* case was made out, and that the sanctioning authority had fully and carefully examined the material. Therefore, the order of sanction fulfilled the requirements of s. 6 of the Prevention of Corruption Act. [186 B, D]

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Gokulchand v. The King, A.I.R. 1948 P.C. 82, distinguished.

(2)(a) When a public servant is charged under s. 161 I.P.C. and it is alleged that illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the court to consider whether or not the accused public servant was capable of doing or intended to do such an act. [186 F—G]

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Mahesh Prasad v. The State of U.P. [1955] 1 S.C.R. 965, followed.

Therefore, though the concealment of the birth of an illegitimate child is not an offence and the appellant could not have prosecuted any one, it could not be said that the obtaining of money by the appellant for refraining from an imaginary prosecution was not an offence under s. 161 I.P.C. [186 E—F]

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(b) In any event, the appellant was guilty of an offence under s. 5(1)(d) of the Prevention of Corruption Act, in that he grossly abused his position within the meaning of the section and thereby obtained for himself pecuniary advantage, and so, the sentence imposed on him was not excessive. [187 D, E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 124 of 1966.

H

Appeal by special leave from the judgment and order dated February 17, 1966 of the Punjab High Court (Circuit Bench) Delhi in Criminal Appeal No. 63-D of 1964.

M. C. Chagla E. C. Agarwala, Santosh Agarwala and P. C. Agarwala, for the appellant. A

D. Narsaraju and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Punjab High Court dated February 17, 1966 in Criminal Appeal No. 63-D of 1964 affirming the conviction of the appellant under s. 5(2) of the Prevention of Corruption Act (Act II of 1947) and s. 161 of the Indian Penal Code. B

The case of the prosecution is that Miss Eylene (P.W. 2) used to live in 1962 with her father at Fazilka. She developed illicit connection with someone and became pregnant. In April 1963, she went to Ambala to her maternal aunt, who is employed as a sister in the Ambala Air Force Hospital, and give birth to a son there in July 1963. In August 1963 Miss Eylene along with her newly born son came to the house of her uncle Russel Nathaniel in Andrews Ganj, Delhi. Since Miss Eylene was unmarried and could not keep the son with her, she asked Russel Nathaniel and his wife to make arrangement for the bringing up of the child. Russel Nathaniel knew Roshan Lal who had no child of his own and wanted to adopt a child. Accordingly, on August 25, 1963 the child was handed over to Roshan Lal. After the child was handed over to Roshan Lal, Miss Eylene went to the house of her sister's husband, N. K. Lal, P.W. II and stayed there with her sister. It is alleged that on August 29, 1963 at about 9.30 or 10 P.M. the appellant went to the house of Russel Nathaniel in police uniform and accused Russel Nathaniel and his wife of disposing of the illegitimate child. The appellant further warned Mr. & Mrs. Nathaniel that if they wanted to save themselves they should make some settlement with him and demanded a bribe of Rs. 1,000/-. But Mr. Nathaniel paid him Rs. 90/- and agreed to pay later on a sum of Rs. 700/-. The appellant thereafter compelled Russel Nathaniel and his wife to execute a document in writing that they would pay him Rs. 700/- or agree to go to prison. It is said that the appellant asked Russel Nathaniel to bring to him Roshan Lal and when Roshan Lal was called, the appellant asked him to pay something to him. Roshan Lal expressed his inability to pay anything whereupon the appellant removed a golden ring from his finger. On the same night the appellant contacted the girl, Miss Eylene and wished to record her statement. Russel Nathaniel and his wife expressed their reluctance to send Miss Eylene with the appellant to the police station and therefore the appellant interrogated the girl at the residence of N. K. Lal, her brother-in-law. The appellant made her sign a paper and took the same with him. On September 4, C
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A 1963 Russel Nathaniel and N. K. Lal decided to refer the matter to the anti-corruption department. Accordingly, Russel Nathaniel went to D.S.P. Mukatdhari Singh who recorded his statement and called two witnesses to witness the proceedings. Russel Nathaniel produced seven currency notes of the denomination of Rs. 100/- each. The numbers of those currency notes were noted

B and Russel Nathaniel was then instructed to pass on the money to the appellant. Russel Nathaniel contacted the appellant and asked him to come to the house of N. K. Lal. They arrived at the house of N. K. Lal at about 7.30 or 7.45 P.M. The appellant sent for the girl because he wanted to reprimand her and thereafter he asked for the payment of the agreed amount. Russel Nathaniel handed over the currency notes to the appellant who

C put them in the left side pocket of his trousers. Russel Nathaniel then gave a signal and immediately D.S.P. Mukatdhari Singh turned up and recovered the currency notes from the pocket of the appellant. On being questioned the appellant told the D.S.P. that he never asked for bribe and that the money was paid to him in repayment of the loan by him to Russel Nathaniel. The

D appellant produced in the witness box Dharam Vir, F. C. Ram Saran, H. C. Jai Parkash and A. S. Kapur. After conclusion of the trial the Special Judge, Delhi accepted the prosecution case as correct and convicted the appellant of the charged framed against him and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500/- or in default to

E undergo rigorous imprisonment for a further period of six months under s. 5(2) of the Prevention of Corruption Act, and to two years rigorous imprisonment under s. 161, Indian Penal Code and ordered the substantive sentences to run concurrently. The appellant took the matter in appeal to the Punjab High Court. The High Court maintained the conviction of the appellant under

F s. 5(2) of the Prevention of Corruption Act and s. 161, Indian Penal Code and also the sentence to undergo rigorous imprisonment for a period of two years awarded to the appellant on each count. The High Court, however, set aside the order with regard to the payment of fine or imprisonment in default.

G In support of this appeal Mr. Chagla submitted in the first place that the order of sanction was bad in law as all the relevant papers and materials were not placed before the D.I.G. Police, Mr. M. P. Singh who was the sanctioning authority. Reference was made in this connection to the decision of the Judicial Committee in *Gokulchand v. The King*⁽¹⁾ in which it was held that a sanction which simply names the person to be prosecuted and specifies the provision of the Order which he is alleged to have

H contravened is not a sufficient compliance with cl. 23. Mr. Chagla

(1) A.I.R. 1948 P.C. 82.

10 Sup. C.I-68-13

also referred to the evidence of P.W. 9, Sub-Inspector, Ascharaj Lal who said that "all the papers relating to the case were sent to the D.I.G." When cross-examined, he could not say which were the documents which were sent to the D.I.G. because they were in a sealed cover. In our opinion, there is no substance in the argument put forward by Mr. Chagla on behalf of the appellant. The Order of sanction dated December 10, 1963 shows on the face of it what were the facts constituting the offence charged and that a *prima facie* case was made out against the appellant. The Order also further recites that Mr. M. P. Singh, D.I.G., "after fully and carefully" examining the material before him in regard to the "aforesaid allegations" in the case, considers that a *prima facie* case is made against the appellant. It is manifest that the decision of the Judicial Committee has no application to the present case, for the order of sanction in that case was much more cryptic and materially different. We are satisfied that the order of sanction in the present case fulfils the requirements of s. 6 of the Prevention of Corruption Act. We accordingly reject the argument of Mr. Chagla on this aspect of the case.

It was then contended that the concealment of the birth of an illegitimate child was not an offence under the Indian Penal Code or any other criminal statute and if the appellant had obtained money from Russel Nathaniel, it cannot be said that the appellant had obtained a gratification 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. In other words, the argument was that the appellant could not prosecute either Miss Eylene or Russel Nathaniel or anybody else for any offence and obtaining of money by the appellant for refraining from any such imaginary prosecution cannot be said to be an offence under s. 161, Indian Penal Code or s. 5(1)(d) of the Prevention of Corruption Act. We are unable to accept this argument as correct. When a public servant is charged under s. 161, Indian Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the Court to consider whether or not the accused public servant was capable of doing or intended to do such an act: see the decision of this Court in *Mahesh Prasad v. The State of Uttar Pradesh*⁽¹⁾. In the second place, the charge against the appellant is also under s. 5(1)(d) of the Prevention of Corruption Act which states:

"5. (1) A public servant is said to commit the offence of criminal misconduct—

(1) [1955] 1 S.C.R. 965.

- A (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 or,"

Section 5(2) states :

- B "(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine :

- C Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year."

- D Upon the facts which have been found by the High Court to be proved there can be no doubt that the appellant was guilty of grossly abusing his position as public servant within the meaning of s. 5(1)(d) of the Prevention of Corruption Act and thereby obtained for himself a valuable thing or pecuniary advantage, and the charge under that section is established. We are therefore of the opinion that Mr. Chagla is unable to make good his argument on this aspect of the case also.

- E Lastly, Mr. Chagla submitted that the sentence of imprisonment was excessive. We are unable to accept this contention. Upon the finding of the High Court in this case it is manifest that the appellant grossly abused his position as a police officer and extorted money from Russel Nathaniel and his wife and also a gold ring from Roshan Lal. The appellant in his official capacity as a police officer was expected to maintain a high standard of integrity and to uphold the maintenance of law. Instead the proved facts disclose that there was a gross abuse of his official position on the part of the appellant and in the circumstances of the case we are satisfied that the sentence imposed is not excessive.

- G For the reasons expressed we affirm the judgment of the High Court of Punjab dated February 17, 1966 in Criminal Appeal No. 63-D of 1964 and dismiss this appeal.

V.P.S.