

SONELAL TIWARI
v.
STATE OF MADHYA PRADESH

JANUARY 15, 1998

[M.K. MUKHERJEE, S.P. KURDUKAR AND K.T. THOMAS, JJ.]

Prevention of Corruption Act, 1947: Sec. 5(2)—Revenue Inspector—Demanded bribe for doing official act—Trapped—Currency notes recovered—Phenolphthalein test showed positive result—Trial court acquitted the accused on the ground of some discrepancy in evidence—Conviction and sentence by High Court—Held, High Court rightly convicted the appellant—No interference called for.

The appellant, a Revenue Inspector, was charged for an offence under Section 5(2) of the Prevention of Corruption Act, 1947.

The case of the prosecution was that PW 1 approached the appellant for certification of sale deed of his land for which the appellant demanded a sum of Rs. 100. However, the amount of bribe was settled at Rs. 50 in the presence of PW 3 and PW 4. PW 1 lodged a complaint with PW 10, the Vigilance Officer, who prepared a trap to nab the appellant. On the date of occurrence, PW 1 handed over the marked currency notes to the appellant and the Vigilance Officer caught him red handed. Phenolphthalein test conducted on the fingers of the appellant gave positive result. The Trial court on the ground of certain discrepancies in the evidence acquitted the appellant. On appeal, the High Court reversed the acquittal and convicted the appellant. Aggrieved, the appellant filed the present appeal. On the death of the appellant his widow applied for resuscitation of the appeal and it was allowed.

Dismissing the appeal, this Court

HELD : 1.1. The appellant was rightly convicted by the High Court under Section 5(2) of the Prevention of Corruption Act, 1947. There is no good ground to interfere with the findings of the High Court regarding the guilt of the appellant. [201-C-D]

1.2. The tainted currency notes were found kept beneath the bag of the appellant. It is difficult to conceive that somebody else would have placed

A appellant's bag on the marked currency notes remaining on the office table kept in front of appellant. If somebody else had done it without appellant's consent, appellant would have resisted over the attempt to plant it. Appellant had no case, at any time, that he made any such resistance or that somebody else had snatched the bag for placing it on the currency notes. [200-C-E]

B 1.3. The phenolphthalein test conducted on the fingers of the appellant showed positive result. PW 10, the Deputy Superintendent of Police himself had made advance preparations for conducting Phenolphthalein test. If the object of PW 10 was to know for himself that appellant had really received money with his own hands it is un-presumptuous that PW 10 would have asked the appellant to lift up the amount with his hands which would have obliterated the very object for which he made preparations to conduct the Phenolphthalein test. Hence this court is inclined to prefer the version of PW 10 that he did not cause the appellant to take up currency notes with his hands. [199-E, 200-H, 210-B-C]

D *State of U.P. v. Zakauallah*, JT (1997) SC 54; referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 664 of 1989.

E From the Judgment and Order dated 17.3.89 of the Madhya Pradesh in Crl. Appeal No. 1141 of 1984.

S.K. Gambhir for the Appellant.

U.N. Bachawat, Ms. Madhur Dadlani and Uma Nath Singh for the Respondents.

F The Judgment of the Court was delivered by

G THOMAS, J. On the death of the sole appellant normally this appeal would have got abated. But appellant's widow Smt. Krishna Bai applied for resuscitation of the appeal presumably because she was not inclined to bear the stigma fastened on her late husband with the finding of the High Court that he was guilty of corruption charge. Hence, she availed herself of the remedy envisaged in the proviso to Section 394 (2) of the Code of Criminal Procedure and applied for leave to continue the appeal. Leave was granted after condoning the delay involved in making the aforesaid application.

H Appellant was accused in a case tried by a Special Judge for the offence

under Section 5 (2) of the Prevention of Corruption Act 1947. He was acquitted of the said charge by the trial court but was convicted by the High Court on an appeal filed by the State in reversal of the finding of the trial Court. He was sentenced to rigorous imprisonment for three months and a fine of Rs. 500. He preferred the present appeal by special leave.

Appellant was a Revenue Inspector. The nub of the case against him was that he wangled a bribe of Rs. 50 from one Sewa Ram (PW1) for performing an official act, but appellant was caught red-handed in a trap laid by the police.

More details of the case are these : PW1 - Sewa Ram got a sale-deed in respect of 50 acres of land. He approached the appellant for certification of the said sale-deed for facilitating mutation proceedings. Appellant demanded a sum of Rs. 100 as remuneration for doing the said official act. After some haggling the amount was settled at Rs. 50-PW3 (Ishwari Prasad Shukla) and PW4 - Jagdish Prasad (who was the local Patwari) were also present when the amount was settled at Rs. 50-PW1 was to pay the amount on the next day. But he, instead of going to the appellant with the money, first went to the Vigilance Office and lodged a written complaint (Ex. P1) with PW10 - Jagdev Ram Bharkuria (Deputy Superintendent of Police - Vigilance Wing). He prepared a trap for catching the appellant when bribery would be collected in hand. On 1.12.1979, PW1 handed over the marked currency notes to the appellant and the latter kept them on the table beneath his bag. Abruptly, the Vigilance Officer dashed in and caught him red-handed. Phenolphthalein test was conducted on the fingers of the appellant which showed positive result.

Appellant, in his defence during trial, denied having made the demand or received the amount and he alleged that PW-4 Jagdish Prasad Shukla was entertaining grouse towards him as he was superseded by the appellant in the Revenue Service in which both were serving, and he was behind foisting this false case against him .

Learned Special Judge, in his judgment, pointed out certain discrepancies as between the evidence of PW-1, PW-3 and PW-4 and declined to believe the case that appellant received the bribe money. The High Court, however, did not give much weight to those discrepancies as, they according to it, had no material bearing on the hub of the case and observed that the only possible conclusion which could be reached from the evidence is that appellant had received the bribed amount from PW-1. Accordingly the High Court reversed the acquittal and convicted the appellant.

A Appellant did not despite the following facts:

(1) That PW-1 was in need of getting his sale deed certified for effecting mutation proceedings. (2) That appellant as Revenue Inspector during the relevant time was to officiate the said certification proceedings. (3) That PW - 1 Sewa Ram lodged a complaint against him with the vigilance wing and the currency notes were marked by PW-10 Dy. S.P. in advance and the same notes were collected from the table of the appellant on 1-12-1979. (4) When the fingers of the appellant were examined by PW-12 by conducting phenolphthalein test the result was positive.

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In view of the above broad features in evidence the disputed area has narrowed down to a very limited radius as to whether appellant did receive the amount with his own hands. Two circumstances are strongly suggestive of the truth of the prosecution version. First is that the tainted currency notes were found kept beneath the bag of the appellant. Second is that appellant's fingers contained phenolphthalein powder.

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On the first aspect, it is difficult to conceive that somebody else would have placed appellant's bag on the marked currency notes remaining on the office table kept in front of appellant. If somebody else had done it without appellant's consent we have no doubt that, appellant would have resisted even the attempt to plant it. In this context we bear in mind that appellant had no case, at any time, that he made any such resistance or that somebody else had snatched his bag for placing it on the currency notes.

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On the second aspect, learned counsel for the appellant invited our attention to the evidence of PW-4 Jagdish Prasad Shukla that appellant was asked to the Dy. S.P. to take up the currency notes from the table to be delivered over to the police. On the strength of that piece of evidence learned counsel contended that presence of phenolphthalein powder on the fingers of the appellant is of no crucial impact on the capability of the appellant. But that part of the evidence of PW-4 Jagdish Prasad Shukla is not in consonance with the testimony of PW-10 Dy. S.P. In Cross-examination PW-10 Dy. S.P. was asked whether he wanted the appellant to take up currency notes from the table. The answer to that question was in the negative. We have good reasons to prefer the version of PW-10 Dy.S.P. to the evidence of PW-4 on the aforesaid aspect.

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We remember that it was PW-10 Dy. S.P. himself who made advance preparations for conducting phenolphthalein test. For what purpose he would

have conducted the test on the fingers of the appellants? We have pointed out in a similar case (*State of U.P. v. Zakauallah JT* (1997) SC 54) that “such a test was conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily.” The situation in the case, so far as the Dy. S.P. (PW-10) is concerned is no different. If the object of PW-10 Dy. S.P. was to know for himself that appellant had really received money with his own hands it is unresumptuous that PW-10 Dy.S.P. would have asked the appellant to lift up the amount with his hands which would have obliterated the very object for which he made preparations to conduct the phenolphthalein test. Hence we are more inclined to prefer the version of PW -10 Dy. S.P. that he did not cause the appellant to take up currency notes with his hands.

According to us the High Court has come to the correct conclusion on the evidence in the case and that interference with the trial court finding was justifiably made. Appellant was rightly convicted by the High Court of the offence under Section 5(2) of the Prevention of Corruption Act.

Hence, we have no good ground to interfere with the findings of the High Court regarding the guilt of the appellant. Accordingly we dismiss this appeal.

S.V.K.

Appeal dismissed.