
(2005) 02 MP CK 0127

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 388 of 1990

Baban Upadhyaya

APPELLANT

Vs

State of M. P.

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1947 — Section 5

Citation : (2005) 3 MPLJ 63

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Arun Nema, for the Respondent

Judgement

S.K. Pande, J.

Special Judge, Balaghat in Special case No. 5/88, vide impugned judgment dated 30-3-1990 recording conviction of appellant u/s 161, Indian Penal Code, section 5 Prevention of Corruption Act, 1947, sentenced him to undergo R.I. for a period of one year and to pay fine Rs. 200/- on each count, in default to suffer further imprisonment for a period of one month. Being aggrieved, appellant has preferred this appeal u/s 374(2) of the Criminal Procedure Code.

Agricultural land Khasra No. 319, area 2.20 acres, village Paraswada was allotted to Tukadiya Das Kotwar. Since the land aforesaid was surrendered, it remain vested with the State. Gopal cultivated the land aforesaid on Theka from Chamanlal. On facts, the appellant acting as a Reader of Naib Tahsildar, Kirnapur, drawing order sheet (Exhibit P-1), prepared a false case of encroachment against Gopal. Notice (Exhibit P-6.) also was issued to him to show cause why he be not proceeded for the alleged act of encroachment on government land Khasra No. 319. On 14-11-1986, complainant Gopal and two others submitted their replies (Exhibit P-5, P-4, P-3) to the effect that they have cultivated the land on behalf of Chamanlal Sahu, s/o Ramayan Sahu on the basis of Theka. The appellant

threatened the complainant to be sent to jail on account of the alleged encroachment and to subside the matter demanded Rs. 500/- by way of bribe. Complainant Gopal submitted report (Exhibit P-11) to the Superintendent of Police-Lokayukta, Jabalpur Camp Balaghat that he is not willing to pay Rs. 500/- by way of bribe to the appellant. Accordingly, on 2-12-1986 in preparation to raid the appellant, the currency notes were treated with phenolphthalein. Recording particulars of these currency notes, vide panchnama (Exhibit P-12) complainant Gopal was directed to proceed further and tender the bribe to the appellant in front of a pan shop. As soon as the appellant received the currency notes aforesaid towards the alleged bribe, immediately, he was caught by the members of raiding party. The notes of the description of Panchnama (Exhibit P-12) were seized from him vide seizure memo (Exhibit P-16). The fingers of appellant then were washed, with water containing solution of Sodium Carbonate. The liquid, turned light pink. Preparing final Panchnama (Exhibit P-15), the appellant was arrested. The pant of the appellant and the liquid contents were sent to the Forensic Science Laboratory. The pink coloured liquid said to be hand wash of appellant and full pant, belonging to him contained sodium carbonate and Phenolphthalein. Obtaining the permission of the State Government (Exhibit P-30), the appellant was charge sheeted u/s 161, Indian Penal Code, section 5 Prevention of Corruption Act. The appellant abjured the guilt and contended that the amount of bribe infact was to be received by the Naib Tahsildar, however, the superior authority saved the Naib Tahsildar instead falsely implicated the appellant.

The Court below vide impugned judgment dated 30-3-1990 held that preparing a false case vide order sheet (Exhibit P-1), appellant as a Reader to the Naib Tahsildar, Kirnapur, demanded a bribe of Rs. 500/- from the complainant to settle the dispute. The complainant was not willing to pay the amount as demanded by the appellant. Therefore, he approached to the police-Lokayukta and the appellant while accepting the bribe of Rs. 500/- was caught red handed by the raiding party. As such, recording conviction u/s 161, Indian Penal Code, section 5 Prevention of Corruption Act, sentenced him to undergo R.I. for a period of one year and to pay fine Rs. 200/- on each count in default to suffer further imprisonment for a period of one month. Being aggrieved, appellant has preferred this appeal u/s 374(2) of the Criminal Procedure Code.

It is admitted that appellant was reader to Naib Tahsildar, Kirnapur, Exhibit P-30 is the permission of the State Government to prosecute the appellant in relation to the alleged incident dated 2-12-1986, wherein the appellant had accepted a bribe of Rs. 500/- from the complainant.

P.W.-2 Jhadulal, Patwari has stated that agricultural land was allotted to the then Kotwar Tukadiya Das. Subsequently, the land was surrendered by him, as such, Khasra No. 319 remain vested with the State. P.W.-3 Tukadiya Das has stated that the land was surrendered by him in the year 1982. However, land measuring 3.90 acres was given to Chamanlal on Theka. P.W.-2 Jhadulal, Patwari has stated

that Gopal, Bhura, Ramji cultivated the land in the year 1986-87. P.W.-4 complainant Gopal has stated that Chamanlal gave him the land on Theka. As such, he cultivated the land 2.20 acres by growing the sugarcane. P.W.-4 Gopal has stated that a notice from the Court of Naib Tahsildar to show cause against the encroachment was received. Therefore, he himself, Bhura and Ramji had been to the appellant, the reader of Naib Tahsildar. P.W.-4 Gopal has stated that the appellant threatened to send him to the jail for the alleged act of encroachment and demanded a bribe of Rs. 500/- to settle the dispute. P.W.-4 Gopal has further stated that he approached to the police-Lokayukta stating the alleged demand of bribe by the appellant and submitted report Exhibit P-11. P.W.- 4 Gopal, P.W.-5 Ajay Kumar Kotecha, Assistant Engineer, P.W.-7 P. C. Vaidya have stated that on the report Exhibit P-11, preliminary panchnama Exhibit P-12 was prepared. The currency notes of Rs. 500/- described in this panchnama after treatment of phenolphthalein were kept in the pocket of P.W.-4 Gopal. These witnesses have stated that thereafter, P.W.-4 Gopal had been to the appellant and in front of a pan shop, appellant having received the currency notes from P.W.-4 Gopal, kept money in his pocket. Immediately, he was caught by the raiding party and the fingers of his hand were washed in the liquid which turned pink. The currency notes of the description stated in Exhibit P-12 were seized from the appellant vide Exhibit P-16. The liquid contained of hand wash and pant of the appellant were sent for analysis. The report (Exhibit P-29) of the Forensic Science Laboratory was received to the effect that contained coloured liquid said to be hand wash of appellant and the full pant contained solution of Sodium Carbonate and Phenolphthalein.

There is nothing in the cross-examination of P.W.-4 Gopal, P.W.-5 Ajay Kumar Kotecha, P.W.-7 P.C. Vaidya to suggest that the appellant did not accept the currency notes said to have been given to him by P.W.-4 Gopal.

P.W.-1. Govind Ram Rathore, the then Naib Tahsildar has stated that infact no case was pending against complainant P.W.-4 Gopal. Appellant acting as the reader to his Court falsely prepared the order sheet Exhibit P-1 and issued a show cause notice (Exhibit P-6) to the complainant. On 14-11-1986, receiving replids of Ramji, Bhura and P.W.-4 Gopal (Exhibits P-3, P-4, P-5), obtained their signatures on the order sheet Exhibit P-1. P.W.-4 Gopal has stated that the order sheet aforesaid was drawn by the appellant. The appellant threatened him to be sent to jail for the alleged act of encroachment of agricultural land said to have been surrendered by Tukadiya Das, Kotwar. To settle the matter, the appellant demanded a bribe of Rs. 500/-. P.W.-4 Gopal has clearly stated that he has reported the matter to the police-Lokayukta vide Exhibit P-11 and as per preliminary panchnama (Exhibit P-12), he was directed to act further and deliver currency notes of Rs. 500/- described in panchnama Exhibit P-12 to the appellant. Appellant having received the currency notes aforesaid was caught red handed. From him vide Exhibit P-16 the currency notes of the description contained in Exhibit P-12 were seized and the hand wash - full pant turned pink showing presence of sodium carbonate - Phenolphthalein.

In fact the appellant has no explanation to the aforesaid facts emerging from statements of P.W.-4 Gopal, P.W.-5 Ajay Kumar Kotecha and P.W.-7 P. C. Vaidya. As such, the Court below rightly held him guilty of accepting bribe of Rs. 500/- from complainant P.W.-4 Gopal in relation to settle a false case of encroachment drawn vide order sheet Exhibit P-1. The conviction of appellant u/s 161, Indian Penal Code, section 5 Prevention of Corruption Act therefore is well founded. The sentence also does not call for any interference.

Consequently, maintaining the conviction and sentence passed by Court below vide impugned judgment, appeal fails and is dismissed.