
(1988) 08 OHC CK 0025
In the Orissa High Court

Bhagaban Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 376

Penal Code, 1860 (IPC) — Section 471

Prevention of Corruption Act, 1988 — Section 5, 6

Citation : (1989) 67 CLT 207 : (1988) 66 CLT 560 : (1989) CriLJ 556 : (1988) 1 OCR 433

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Judgement

K.P. Mohapatra, J.—This is an appeal against the judgment passed by the learned Special Judge (Vigilance), Sambalpur convicting the appellant under Sub-section (2) read with Sub-section (1)(d) of Section 5 of the Prevention of Corruption Act (hereinafter referred to as the "Act") and Section 471 of the Indian Penal Code ("I.P.C." for short) and sentencing him to undergo rigorous imprisonment for one month for the former offence without passing a separate sentence for the latter one.

2. Prosecution case in brief is that the appellant was serving as an Operator "A" in the Talcher Thermal Plant under the Orissa State Electricity Board during 1973 to 1975. By production of false and forged prescriptions, cash-memos and essentiality certificates on the ground of the illness of his family members and his own illness, he drew a total sum of Rs. 2923.58 as medical reimbursement on bills (Exts. 1 to 6) and obtained pecuniary advantage to himself. When this fact was discovered a written report (Ext. 53) was submitted on the basis of which F.I.R. (Ext. 53/3) was drawn up and investigation commenced. During investigation, a large number of documents were seized from Misra Medical Store and Mohapatra Medical Store of Talcher and Sarada Medical Store of Cuttack. The prescriptions and the essentiality certificates said to have been signed and issued by Dr. R. N. Das (P.W. 12) and the cash-memos of the above named medical

stores on the basis of which the medical reimbursement was drawn were also seized. Documents were referred to the Handwriting Expert to compare, examine and report as to whether the cash-memos produced by the appellant in support of his claim of medical reimbursement were genuine or not. After close of investigation, sanction for prosecution u/s 6 of the Act was obtained and charge sheet against the appellant was submitted

3. The appellant took the plea that during the relevant period he met with an accident and was under treatment for about a year. During that period his parents, wife and children also suffered and were treated. Their treatment was entrusted to D.W. 1, his uncle-in-law. D.W. 1 had consulted Dr. R. N. Das (P. W. 12) and on his prescription, medicines were purchased from Misra Medical Store and Mahapatra Medical Store of Talcher and Sarada Medical Store of Cuttack. He obtained the essentiality certificates from the treating medical officer and believed them to be true and genuine. Therefore, on the basis of the documents, he claimed medical reimbursement and received the amount under dispute,

4. It appears from the impugned judgment that the facts presented by the prosecution and stated above were essentially not disputed. The only point of dispute was whether the cash-memos were issued by Misra Medical Store and Mahapatra Medical Store of Talcher and Sarada Medical Store of Cuttack and the prescriptions and essentiality certificates were granted by the medical officer.

5. Learned Additional Standing Counsel raised a preliminary objection contending that the appeal is not maintainable in view of the provisions of Section 376(b) of the Code of Criminal Procedure ("Code for short") read with Section 8(3) of the Criminal Law Amendment Act, 1952. It is necessary to examine this contention. Section 376(b) provides that if a court of session passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine, no appeal shall lie by the convicted person. According to the provisions of Section 8(2) of the Criminal Law Amendment Act, the Special Judge shall be deemed to be a court of session. Therefore, when a Special Judge who is deemed to be a court of session passes a sentence within the meaning of Section 376(b) of the Code, no appeal shall lie. The preliminary objection of the learned Additional Standing Counsel therefore, must prevail. But it is to be noticed that according to Section 9 of the Criminal Law Amendment Act, 1952, the High Court has been empowered to exercise all powers conferred by Chapters XXXI and XXXII of the old Code of Criminal Procedure corresponding to Chapters XXIX and XXX of the new Code as if the Court of the Special Judge were a court of session. This being the provision of law and particularly when the appellant has been sentenced to substantive term of imprisonment, though for one month only, there is no bar to treat the appeal as a revision and, therefore, it is treated as such. For the purpose of convenience the appellant shall be hereinafter referred to as such.

6. P.W. 8 is the proprietor of Sarada Medical Store, Cuttack. In his evidence he denied giving any of the cash-memos (marked "Z" series for identification)

although those cash-memos on the face of them appear to have been issued from Sarada Medical Stores, Cuttack. P.W. 9 is the proprietor of Mahapatra Medical Store, Talcher. He denied having issued the cash-memos (marked "Y" series for identification) although all of them appear to have been issued from his medical store. Similarly P.W. 10, Proprietor of Misra Medical Store, Talcher denied having issued cash memos bearing serial Nos. 3201 to 3600 from cash-memos book (Ext. 40) as well as the cash-memos marked Y-36 for identification. P.W. 12 is Dr. R. N. Das the then Assistant Professor of Biochemistry in the S. C. B. Medical College, Cuttack. He stated that he did not know the appellant and did not treat him of any ailment. He denied giving prescriptions and essentiality certificates in the appellant's favour. He also specifically denied his signatures and seals either in the prescriptions, essentiality certificates of the cash-memos. If the evidence of P. Ws. 8, 9, 10 and 12 is accepted and it is held that the appellant was fully aware that all the documents were false and forged there is no doubt that the judgment of conviction cannot be disturbed

7. Mr. J. K. Misra, learned Counsel appearing for the appellant, however, urged with reference to the large number of documents and the evidence of D.W. 1 that the appellant was laid down on account of an accident and the treatment of the members of his family and himself was entrusted to D.W. 1, his uncle-in-law. So whatever documents he gave to the appellant were accepted by him to be genuine and were utilised for the purpose of drawing the medical reimbursement. So, in the absence of mens rea on his part, the conviction should be held as improper. He drew support from 1980 C LR (Cri) 56 Niranjana Mohanty v. State of Orissa, and an unreported decision in Criminal Appeal No. 200 of 1981, Sankarsan Nanda v. State of Orissa disposed of on 26-10-1987 : since reported in (1988) 2 OLR 396. The facts of all these three cases are identical In the case of Niranjana Mohanty (supra) it was held by a learned Judge of this Court that if out of ignorance or with an honest belief the accused had one something and has derived some gains it cannot be said that there was existence of guilty mind or in other words mens rea. The principle laid down in the decision was applied to the case of Sankarsan Nanda (supra) and it was found that it was not a cast-iron case to uphold the conviction of the appellant of that case and so he was given the benefit of doubt. It is, therefore, necessary to consider if there are acceptable materials in this case to arrive at a conclusion that the appellant had entertained an honest belief that all the documents used by him for drawing the medical reimbursement were genuine. A large number of prescriptions were produced from different medical officers including P.W. 12 Dr. R. N. Das some of them contained his seal, A large number of essentiality certificates contained the signatures of the medical officers including those of P.W. 12. Innumerable cash-memos were produced which appear to have been issued from Misra Medical Store and Mahapatra Medical Store of Talcher and Sarada Medical Store of Cuttack. If a layman will look at those documents, he will never suspect that they were forged documents. On the other hand, it is possible for him to entertain the honest belief that the prescriptions, essentiality certificates and

cash-memos were genuine documents. In this connection, the evidence of D.W. 1 is also material. He stated that the appellant is the husband of his brother's daughter. As he has no daughter, he treats the wife of the appellant as his own daughter. When they were in difficulties he used to take care of them. In the year 1974 the appellant met with an accident and was under treatment for a period of about one year. During that year his parents, wife and children became ill and they were taken to Cuttack for treatment by consulting Dr. R. N. Das (P.W. 12) who gave the prescriptions. He purchased medicines from Sarada Medical Store, Cuttack and Misra Medical Store and Mahapatra Medical Store Talcher. In cross-examination he stated that in Talcher also he had consulted some doctors. The appellant was bedridden in the hospital for a period of about one year. He was also an indoor patient at Cuttack. Another witness, an employee of the Talcher Thermal Plant (D.W. 2) stated that the appellant met with an accident in the year 1974 while on duty. The evidence of these two defence witnesses will show that the appellant had actually met with an accident and was under treatment. Particularly, the evidence of D.W. 1 shows that the other members of his family were also ill and were under treatment both at Talcher and at Cuttack. These documentary and oral evidence which are on record will have the effect of producing an honest belief in the mind of a normal person that all these documents were genuine. It was, therefore, not unlikely that the appellant entertained the same honest belief and by producing them in the office secured medical reimbursement. This apart, the medical reimbursement lasting over for a period of three years, in all amounting to Rs. 2923.58 was not really a huge amount for treatment of the appellant himself and the members of his family. Looking the case from another angle the documents will put the court in doubt and it will not be possible to wholly reject the same. When the court is in realm of benefit shall go to the accused.

8. In consideration of the above materials on record, I am of the view that the appellant might have entertained an honest belief that all the documents used by him for drawing the medical reimbursement were genuine and in any event a reasonable doubt can be raised for the prosecution case the benefit of which will go to him. It would, therefore, be unsafe to uphold the conviction.

9. For the reasons stated above, the appeal is allowed and the conviction and sentence imposed on the appellant are set aside. He is acquitted of the charges and is set at liberty.