
(1930) 05 AHC CK 0019
In the Allahabad High Court

Bhairo Prasad

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 26-05-1930

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 168

Citation : AIR 1930 All 739

Hon'ble Judges : Boys, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Boys, J.—The applicant has been convicted u/s 168, I.P.C., read with Section 82, Municipalities Act, in that while he was a public servant, i.e. a Municipal Commissioner, he had an interest in a contract made with the Board. This application is only before me on the revisional side of the Court, but the facts are of such importance to the public that it is desirable that they should have full publicity. The facts found are that the Board had some difficulty in arranging for the supply of gram to the conservancy bullocks. Whether these difficulties were genuine difficulties or manufactured in order to prepare the way for entering into an irregular arrangement with the applicant, there is no evidence. The applicant in 1926 was a member of the firm of Gobindram Chunni Dal, grain-dealers. He apparently began to supply gram for the conservancy bullocks to the Board through his firm, Gobindram Chunnilal, on 5th May 1926. He apparently had either some doubts himself as to the risk that he might be incurring by this course of action, or thought that someone who was hostile to him might make capital of it. He has been given the credit by the lower appellate Court of the most favourable view of his application to the Board (Ex. 121) of 3rd June 1926, to the effect that he and the man who was associated with him in the supply of gram felt that their position might be invidious.

2. Upon the application a resolution of the Board (Ex. 114), dated 30th June 1926, was passed to the effect that the applicant and the man associated with

him should supervise the buying of gram at market rates. This gram then continued to be supplied by the applicant's firm, Gobindram Chunnial, up to 21st September 1926, when the firm's name was changed to Bansidhar Rekhabdas, and apparently the object of this change was to conceal the fact that the same firm was really continuing to supply the gram. There is no reason to suppose that this suspicion is not well founded, and the applicant in any case has only himself to blame, for he has refused to produce his account books. The supply of gram continued in this way up to 3rd March 1928, when the matter was brought to the notice of the authorities and this prosecution was instituted. The learned Magistrate sentenced Bhairo Prasad to nine months' simple imprisonment and a fine of Rs. 500. The lower appellate Court substituted for "the sentence of imprisonment a further fine of Rs. 300. Mr. K.D. Malaviya has urged every point that could be urged on behalf of the applicant, but I am quite satisfied that there is no force in any of them. He has urged that Clause (f) of the proviso to Section 82, Municipalities Act, excepts from the prohibition in Section 82 "occasional" dealings. Apart altogether from the question whether Clause (f) can be held to be in force at all seeing that, as I am told, the Government has not fixed any maximum, I have no hesitation in holding that though the supply of gram may have been irregular so far as dates and possibly even quantities were concerned, the term "occasional" is wholly inapplicable to a continuing arrangement for supply as needed. Nor is there any room for a suggestion that the applicant was under a mistake of fact which might enable him to plead Section 79, I.P.C.

3. It was suggested to me in the course of argument that the case was due to somebody having sent an anonymous letter and to hostility entertained towards the applicant by certain persons. This is, of course, wholly immaterial. All that we are concerned with is whether the applicant did or did not commit an offence within Section 168, I.P.C., and in view of the great interest of the public in the probity of its representatives on the Board it is a matter for sincere congratulation when such a case is disclosed whether by an anonymous petition or otherwise. On the question of sentence I am asked to hold that the fine is too severe. I think that there is grave reason for suspecting the bona fides of Bhairo Prasad, the applicant, throughout this matter, and I find reasons for that opinion in two facts. According to the account that he himself gave, there was a discussion between him and others as to the propriety of his entering upon this transaction at all. That being so it is impossible to conceive that he did not consider the terms of Section 82, Municipalities Act, and from that section it is immediately apparent that where there is doubt the Commissioner should be applied to for his permission. Notwithstanding the discussion and doubt that arose in regard to the propriety of his action he refrained, and it is fair to say he deliberately refrained, from applying to the Commissioner. Further, he has refused to produce his accounts and has only himself to blame if conclusions unfavourable to him are drawn from that fact also. I think, therefore, that he was fortunate to have the sentence of imprisonment reduced to one of fine. The

application is dismissed.