
(2012) 10 PAT CK 0105

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 358 of 2000(Against The Judgment Of Conviction And The Order Of Sentence Dated 13th September, 2000 Passed By Shri Jitendra Mohan Sharma, Special Judge (Vigilance), North Bihar, Patna In Special Case No. 18 Of 1991 Arising Out Of

Hawaladar Nathjee Singh @ Nathjee Singh APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2013) 1 BBCJ 302

Hon'ble Judges : Smt. Sheema Ali Khan, J.

Bench : Single Bench

Advocate : Mr. Ganesh Prasad Singh, Advocate, for the Appellant; Ms. Abha Singh, A.P.P, for the Respondent; Mr. Ramakant Sharma, Senior Advocate, for the Vigilance

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.(Oral)—The appellant has been found guilty and convicted under Section 161 of the Indian Penal Code and under Sections 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act to undergo rigorous imprisonment for one year for each of the offences and to pay a fine of Rs. 10,000/-.

2. The prosecution case is based on the written complaint filed before the Commandant of B.M.P.-6, Muzaffarpur by Tejan Singh (PW 3) in which it has been stated that while the appellant was posted as Bodyguard of the D.I.G, Muzaffarpur, he had taken Rs. 8,000/- from his nephew, Vijay Singh and had promised to get him a job as a Havildar. When the appellant failed to secure a job for his nephew, his nephew demanded back the money, whereupon it is said that the appellant told him that he had already paid the money to the D.I.G., Muzaffarpur. However, he had promised to return the money in instalments. The appellant had supposedly paid a sum of Rs. 200/- to Vijay Singh. Later on, he

refused to make any other payment. It is also said that a Panchayat was held to resolve the matter between them which however, was not successful. On the basis of the aforesaid written report, the matter was sent to the police where a case was registered, numbered as Sadar (Mithanpura) Police Station Case No. 123 of 1987 dated 08.07.1987.

3. The prosecution has examined eight witnesses in support of its case. This Court will first consider the evidence of PW 3 Tejan Singh, who is the informant of this case. According to PW 3, the money was not paid in front of him. He does not remember the year when the money was paid and further states that there is no witness to the demand of money. He says that he was pressurized by his nephew to file a case. He also talks of an affidavit being filed before the District Magistrate which has been marked as Exhibit-X with objection. It is an unsigned affidavit on behalf of Tejan Singh accepting the fact that no Panchayat was held to resolve the dispute between Vijay Singh and the appellant. On the other hand, it is the case of the prosecution and PW 3 in his examination-in-chief that a Panchayat was held in presence of PW 1, however PW 1 denied being part of any Panchayat proceedings. Therefore, the evidence of PW 3 is very weak because he was neither witness to the demand of money nor was the money handed over in his presence and last but not the least, his nephew had never spoken to the appellant making a request to return the said amount in presence of the informant.

4. PW 4 Vijay Singh is the person on whose behest the said complaint was filed. While examining PW 4, a defence has been raised on behalf of the appellant that PW 4 used to visit the house of a lady which is 10-15 houses away towards west from the house of PW 4. He states that the appellant also used to visit the same lady of and on. It has been indirectly suggested that there seems to be some dispute and jealousy between the two, i.e. Vijay Singh and the appellant. According to PW 4, the said amount was demanded at Muzaffarpur and he paid the said amount at Muzaffarpur. Surprisingly, while making the payment, he did not consult his uncle who was also a Constable in the Police Force and was well known to the appellant. According to PW 4, when he met the appellant, he told him to return back Rs. 8,000/- to him as the appellant had failed to secure him a job as a Constable. According to this witness, he had taken money from his father and brother who works in the Electricity Department. These two persons have not been examined to support the fact that they had given money to Vijay Singh. PW 4 admits that he has not informed the Police or given information to anybody else regarding the demand by the appellant and non-payment of Rs. 8,000/- by him. According to this witness, no Panchayat took place and the appellant had also returned Rs. 200/- to him. Later, in his cross-examination, he has tried to make out a case that a Panchayat was held but he did not remember as to who were the persons who were present in the said Panchayat or the date and time when the Panchayat was held. In effect, the evidence of PWs 3 and 4 virtually leads this Court to conclude that there is no proof that the appellant had paid or demanded Rs. 8,000/- from PW 4 Vijay Singh. It may be emphasized that

the money was paid in the year 1985 and no action was taken by the nephew of the informant or the informant to make any complaint or to lodge First Information Report against the appellant till the year 1987. The delay is unexplained merely stating that the appellant refused to make payment is an insufficient explanation, especially as the payment was made for a particular purpose which remained unfulfilled.

5. The prosecution has also examined PW 1 Ganga Sagar Singh who is the Secretary of the Police Association, Muzaffarpur. PW 1 is not a witness either to the payment of money or to the demand made by Vijay Singh for return of his money. PW 1 came out with a case that Tejan Singh, the informant, had written a letter to him about the demand of money and non-payment by the appellant. This letter has not been produced before the Trial Court by PW 1 and as such, the statement is of no value in the eyes of law. This Court, therefore, concludes that the evidence of PW 1 does not help the prosecution in any manner.

6. PW 5 Bibhuti Narain Pandey is the Assistant Vice President of the Police Association, Muzaffarpur. According to his statement in his examination-in-chief, he claims that Tejan Singh had stated before him that the appellant had demanded Rs. 8000/- from his nephew for the purposes of securing him a job. He does not remember the day on which the Panchayat was held and cannot give any description regarding what took place in the Panchayat. His attention was drawn to the statement under Section 161 of the Code of Criminal Procedure. It would appear that he had not made any statement before the Investigating Officer of this case regarding any Panchayat held in this regard. This fact, however, could not be confirmed as the Investigating Officer has not been examined in this case. This witness has not been able to support the prosecution version that the money was given by Vijay Singh to the appellant. His evidence is merely a hearsay statement.

7. PW 6 is Brij Bihari Singh and has proved the sanction order. PW 7 is Kamta Prasad Mishra and he had received the sanction order and has proved it. PW 8 is Umesh Prasad Shrivastava and he has submitted charge sheet in this case, however, he has not conducted the investigation.

8. On the basis of the aforesaid facts, the appellant has been convicted for the offences aforesaid.

9. Section 7 of the Prevention of Corruption Act prescribes the offences which would come within the purview of Prevention of Corruption Act. It speaks of a public servant taking gratification other than legal remuneration in respect of his official act. Section 7 of the Prevention of Corruption Act reads as follows:-

"7. Public servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification, whatever, other than legal remuneration, as a motive or reward 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 or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

10. The section clearly speaks of taking gratification in order to do or not do any official act or to show or not to show favour to a person or for rendering or attempting to render any service or disservice to any person with the Central Government or any State Government or authority of the Government. In this case, the allegation is of receiving Rs. 8,000/- in order to secure a job for PW 4. It is obvious that the appellant was not in a position of power or authority to get a job for Vijay Singh, PW 4, rather the allegation is that he took the money and promised to influence the D.I.G., Muzaffarpur and thereby help the nephew of the informant to get a job in the Police Service. This allegation does not come within the purview of Section 7 of the Prevention of Corruption Act and, therefore, the conviction would fall on that ground itself.

11. Taking the allegation on the face value, it may be held that a case would make out under Section 420 of the Indian Penal Code. However, the evidence as discussed above would indicate that the prosecution has failed to show that the appellant had cheated Vijay Singh of Rs. 8,000/- by making false promise to him. Another important aspect of the matter is that the victim Vijay Singh should have been the informant in this case and thus, the complaint ought to have been lodged by Vijay Singh either before the authority who had sent it to the Police for institution of First Information Report or directly at the Police Station or in the Court in the form of complainant. This Court, under the circumstances, finds that there is insufficient evidence to convict the appellant for the offence of cheating.

12. Considering the facts aforesaid, the judgment of conviction against the appellant is set aside. The appellant is acquitted of the charges levelled against him. He is also discharged from the liabilities of the bail bonds furnished earlier in this case.

13. In the result, this appeal is allowed.