
(2016) 10 RAJ CK 0032

In the Rajasthan High Court

Case No : Criminal Appeal (CRLA) No. 326 of 1991

LRs of Mehanga Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1988 — Section 5(1)(d)

Citation : (2016) 4 CriLR 2129 : (2017) 2 RCRCriminal 594

Hon'ble Judges : Ms. Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Mr. Vineet Jain, Advocate, for the Appellant; Mr. K.K. Rawal, Public Prosecutor, for the State

Final Decision : Allowed

Judgement

Ms. Nirmaljit Kaur, J. - This is criminal appeal under Section 374 Cr.P.C. against the judgment dated 10.10.1991 passed by the Special Judge, Anti Corruption Cases, Bikaner vide which the accused appellant was convicted and sentenced as under:

Offence

Sentence

161 IPC

One year R.I. and fine of Rs. 100, in default of payment of fine, to further undergo one month's R.I.

5(1)(d)(2) P.C. Act.

One year R.I. and fine of Rs. 100, in default, to further undergo one month's R.I.

2. A report P-1 was submitted by one Natha Singh on 23.5.1985. It was alleged that he had 50 bighas of land in Chak 19 PS and the appellant Mehanga Singh

who was Patwari at that point of time was threatening to cut his water turn for the purpose of irrigation in the land situated at Murabba No.2. He demanded Rs. 500/- as illegal gratification but finally agreed to receive Rs. 300/- for which he had called Natha Singh in the morning of 24.5.1985 at Raisinghnagar. Accordingly, a trap was laid for the said day i.e. in the morning of 24.5.1985. In pursuance to the said trap, the appellant is stated to have been caught red handed while receiving the said amount. Accordingly, FIR Exhibit P- 13 was registered on 24.5.1985 for the offence under Section 161 IPC and Section 5(1)(d) and (5)(2) of the Prevention of Corruption Act.

3. As per the prosecution story, the trap party proceeded with Natha Singh to Raisinghnagar on 24.5.1985 at 6.15 am. Natha Singh spotted the Patwari on the way at the Bus Stand around 7.50 am. which is midway of Raisinghnagar. The appellant stopped only after he saw Natha Singh waiving at him. Rs. 300/- were given to the appellant who took the same. The appellant was apprehended and a sum of Rs. 300/- was recovered from his person. At the time of recovery, the Patwari explained there and then that the said amount was accepted by him towards the outstanding amount against the complainant as revenue charges for the year 1984-85. This fact is evident from Exhibit P/4 which is the detailed recovery memo.

4. Prior to the filing of the above complaint, an application Exhibit D/1 was also filed by the complainant Natha Singh before the Executive Engineer on 23.5.1985 itself and in the said application, he had mentioned that out of total land, only 04 bighas and 18 biswas of land was being cultivated by Natha Singh but the appellant told him that he will discontinue the water turn towards 02 bighas and 18 biswas of the said land as the same was not entered in his name in the revenue record. It was his contention in Exhibit D/1 that the water was being supplied towards 04 bighas and 18 biswas of the land for the last 30 years and therefore, the water facility should be continued for the whole land of 04 bighas and 18 biswas and that the Patwari has no jurisdiction to reduce the water turn. Charges were framed against the appellant under two counts namely, Section 161 IPC and Section 5(1)(d)(2) of the Prevention of Corruption Act, 1947. The appellant pleaded not guilty and at the trial, the prosecution examined 08 witnesses and Exhibited 16 documents in support of its case. In defence, the appellant examined two witnesses and exhibited 4 documents. The learned trial Judge accepted the prosecution version and elected to convict and sentence the appellant.

5. Learned counsel for the appellant while praying for setting aside the impugned judgment and order dated 10.10.1991 submitted that there was stark difference between the two documents filed by the same person i.e. Exhibit P/1 and Exhibit D/1. There was grave discrepancy in the statements of PW-2 - Sumer Singh, PW-3 Naurang Ram, PW-4 Bhopal Singh, PW-5 Satyapal and PW-7 Ridhakaran regarding the place where the appellant was seen approaching their jeep; the place where the decoy was asked to step down, the place where the decoy

allegedly handed over the amount to the appellant. In fact, the appellant proved that the said money was towards the land revenue and that there was no corroboration of the version of the decoy that the said amount was given as per demand and as an illegal gratification. The Investigating Officer admitted that when the trap party enquired from the appellant, the appellant told them that Rs. 592/- were outstanding towards Natha Singh as land revenue and Rs. 300/- were paid by him towards the amount as Rs. 292/- had been already given by him to Satyapal Jagga (Patwari). The Investigating Officer also admitted that he had taken the statement of Satyapal Jagga, in which he verified the stand taken by the appellant that Natha Singh gave him Rs. 292/- and told him that rest amount would be given to the appellant. Moreover, neither the demand nor the payment of the amount towards illegal gratification had been proved. Further, no work was pending with the appellant, nor was he in any position to stop the supply of water facility to the land of the complainant and also that the complainant was in fact having a grudge against the appellant as destitute.

6. Learned counsel for the State on the other hand has pointed out that the appellant has admitted that the money was recovered from him. He was caught red handed.

7. Learned counsel for the parties are heard.

8. In order to prove a case of illegal gratification, mere recovery of the money is not sufficient. The demand and the acceptance of the accused from the complainant has to be proved. There is no evidence of demand except the complaint filed by the complainant Exhibit P/1. Exhibit P/1 is dated 23.5.1985 and on the basis of which, a trap was laid and FIR was finally registered. On the same day of filing the complaint Exhibit P/1, an application Exhibit D/1 was submitted. In that application, there was no mention about any demand. Hence, there is no corroboration of the allegation that the appellant had ever demanded any money and nor is there any evidence even at the time of handing over the money that the same was towards the illegal gratification as allegedly demanded by him. No one heard what transpired between the appellant and the complainant Natha Singh. There is no confirmation that the said amount was towards illegal gratification. Thus, the only evidence is the statement of the complainant himself who is an interested witness and his statement has to be tested along with other clinching evidence.

9. The allegation of demand also appears to be doubtful on account of the fact that as per the complainant and as alleged in Exhibit P/1, the appellant had told him to meet him at his house at Raisinghnagar in the morning of 24.5.1985. As per the FIR, they had left the police station at 6.15 am. and reached at 7.50 am. on the bus stand at the place where they met the appellant Mehanga Singh by chance which is midway between Police Station and Raisinghnagar. In case, Natha Singh was required to meet the appellant in his house in the morning, it is not understood as to how they met him at bus stand instead of his house. In case, appellant Mehanga Singh was expecting them in his house, then he waited

for them at his house. The story appears to be more doubtful in view of the different time of arrival at the bus stand given by the witness. Sumer Singh PW-2 is an independent witness. He stated that they reached the bus stand at 10.30 am. whereas the Investigating Officer mentioned the time as 7.50 am.

10. The judgment rendered by the Apex Court in the case of Mukut Bihari & Anr. v. State of Rajasthan, (2012) 11 SCC 642 is relevant on the issue in hand which reads:-

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

11. Although in the absence of any proof of demand and acceptance of money as illegal gratification, there is really no necessity on behalf of the accused appellant to prove that the money received by him was not towards bribe but nevertheless in the present case, the appellant on being questioned, explained on the spot itself that the said amount was accepted by him towards the land revenue which the complainant owed to the department for the year 1984-85. It was submitted by him that the total amount of Rs. 592/- was due by the complainant. He had handed over Rs. 292/- to Patwari Satyapal Jagga DW-2 and Rs. 300 was being received by the appellant as balance payment.

12. PW-7 the Investigating Officer admitted in his statement that he had also taken into possession the receipt book (Article XX) and as per the receipt book, Receipt No.1084 is for depositing Rs. 592/- towards Aabyana. He also admitted that when the trap party enquired, the appellant told them that Rs. 592/- were outstanding towards land revenue. Out of which, he gave Rs. 300/- and told him that remaining Rs. 292/- had been given by him to Satyapal Jagga (Patwari).

PW-7 also admitted that he took the statement of Satyapal Jagga who verified the stand taken by the appellant that Natha Singh had given him Rs. 292/- and told him that rest of the amount would be given to the appellant when he meets him. Satyapal Jagga too appeared as DW-2 and admitted that he was Patwari at 22 PS Circle Chak and that Natha Singh had come a day before and handed over Rs. 292/- towards Aabyana by stating that same be given to Mehanga Singh as he could not find him. It was admitted by Satyapal Jagga that he had given the said receipt to Natha Singh.

13. From the above, it is evident that Natha Singh owed Rs. 592/- towards the land revenue. The receipt of Rs. 592/- also finds mention in the receipt book (Article XX). It is also evident from the recovery memo Exhibit P/1 that the appellant had furnished the explanation for receiving Rs. 300/- immediately on his arrest stating that the balance amount was towards the land revenue for the year 1984-85. This explanation could not have been ignored specially when it was given on the spot itself and the appellant has further proved the same.

14. As per Section 4 of the Prevention of Corruption Act, 1947 which was then applicable to the appellant, the presumption is not absolute. The accused can prove to the contrary which he has done in the present case. Section 4(1) of the Prevention of Corruption Act reads as under:-

"4. Presumption where Public Servant Accepts Gratification other than Legal Remuneration:-

(1) Where in any trial of an offence punishable under section 161 or Section 165 of the Indian Penal Code, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or as the case may be, without consideration or for a consideration which he knows to be inadequate."

2.

3.

15. From perusal of the above Section, it is evident that in case the public servant accepts the gratification, there is presumption that it is towards illegal gratification unless it is proved to the contrary. The contrary has to be proved by the accused in case of a plea or explanation offered by him for the gratification or the money received. The quality of the said evidence differs from case to case but in any case, it cannot be equated with the degree of proof under Section 101 of the Evidence Act as required by the prosecution or the complainant to prove the guilt.

16. The learned Single Bench of this Court in the case of Ram Rai v. State of

Rajasthan reported in 2009 (2) RLW 1674 (Raj.) while observing that the accused "may rebut" the presumption by showing a mere preponderance of probability in his favour and it is not necessary for him to establish his case beyond the reasonable doubt relied on the various judgments rendered by the Apex Court and held in para 15, 16 and 17 as follows:-

"15. In the case of Punjabrao v. State of Maharashtra (2002 (10) SCC 371) the Hon"ble Apex Court has held thus:

"it is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability.

16. In Chaturdas Bhagwandas Patel v. The State of Gujarat (AIR 1976 SC 1497), this Court held that:

"the burden that rests on an accused to displace the statutory presumption that is raised under Section 4(1) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as is referred to in Section 161, IPC."

17. In the case of Punjabrao, a patwari was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. The Hon"ble Apex Court accepted this explanation and held that the appellant had established the defence by preponderance of probability and thus acquitted him. In the instant appeal, also the appellant has also instantly denied to obtain the bribe money and immediately offered this explanation that the complainant had parted with this money to further hand over to firm Karim Bakhsh Alladin at Niwai."

17. From the discussed above, it is evident that there is no evidence of the demand except the statement of the complainant himself who is the interested witness.

Nobody has heard the conversation between the accused and the complainant at the time when the money was given to the accused appellant. Hence, there is no confirmation that the said amount was towards bribe. On the other hand, the appellant has offered the explanation on the spot there and then that the said amount was towards the land revenue. This is also evident from the statement of the Investigating Officer PW-7. It is admitted by the complainant PW-1 himself that the said amount was due from him. The receipt of the amount (Article XX) has been placed on record. In the circumstances, the trial court has failed to take

into consideration that the accused-appellant had satisfactorily discharged the onus of proof on him as required to prove to the contrary in terms of Section 4(1) of the Prevention of Corruption Act. The trial court did not take into consideration that there was no corroboration of the statement of the complainant with respect to the demand that the money recovered from accused was towards illegal gratification.

18. In view of the well settled proposition of law as discussed above, the mandatory provisions of Section 4 (1) of the Prevention of Corruption Act which are applicable in the present case are not satisfied and the prosecution has failed to prove the guilt beyond reasonable doubt.

19. Accordingly, the criminal appeal is allowed. The impugned judgment and order dated 10.10.1991 passed by the Special Judge, Anti Corruption Cases, Bikaner is set aside and the accused is acquitted of the charges levelled against him.