
(1976) 02 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Appeal No. 648 of 1972

Madan Lal	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 17-02-1976

Acts Referred:

Constitution of India, 1950 — Article 20
General Clauses Act, 1897 — Section 26, 28
Penal Code, 1860 (IPC) — Section 161, 71

Citation : (1976) WLN 40

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Judgement

M.L. Jain, J.—This appeal has been directed against the judgment of the learned Special Judge, Jaipur District, Jaipur dated 25.9.72 by which he convicted and sentenced the appellant Madan Lal as follows:

(1) u/s 161 I.P.C to rigorous imprisonment for one year and a fine of Rs. 50/-, in default of payment whereof, to simple imprisonment for one month, and

(2) Under Sub-section (2) read with Clause (d) of Sub-section (1) or Section 5 of the Prevention of Corruption Act, to rigorous imprisonment for two years and a fine of Rs. 100/-, in default of payment whereof, to simple imprisonment for two months.

The substantive sentences were to run concurrently. I have heard arguments and examined the record.

2. The appellant was a Survey Amin in the Settlement Department in circle Amer, District Jaipur at the relevant time. One Kushalaram PW. 1 asked him to survey his land & demarcate it into separate holdings for himself and his six brothers. The appellant demanded Rs. 100/- as bribe for doing the job. The bargain was settled at Rs. 50/- which also Kushlaram was not prepared to pay. He approached the Anti Corruption Department upon which a trap was laid on

28.12.70 in Nawlakha Bagh, Amer where the land of Kushlaram was situated. He produced five currency notes each of Rs. 10/- before the Deputy Superintendent of Police Sari Ram Singh to whom phenolphthalein powder was applied. When the accused went to the field of Kushlaram and began his survey, he demanded the amount. Kushlaram then, paid him the five currency notes which the accused placed inside the pocket of his coat. From the field Kushlaram and the witnesses Moolchand, Motilal and Ramnarain went to the home of Ganesh and took tea. When the accused (sic) from there on bicycle, a pre-arranged signal was given by Kushlaram the police party headed by the Deputy Superintendent of police came and stopped the accused,. He was asked to produce the money pocketed by him, but the accused denied to have accepted any money. Search of his person was taken and from his pocket the aforesaid currency notes were recovered. The hands of the accused were washed and the pink colour of the water showed that his hands had been soiled with the phenolphthalein powder. The pocket of the coat was also washed and the water there of also turned into pink colour.

3. The plea of the accused was that when he was surveying the field, he was accompanied by Kanhaiyalal DW. 1 & Kalicharan DW. 2, Kushlaram wanted him to show six holdings of the field and offered him money which he did not accept and returned the amount and it was how his hands were soiled with the powder, Kushlaram went away. Meanwhile the appellant gave his coat to Kalicharan. Kalicharan went to take tea with the coat. Kushlaram met him there. Kalicharan returned the coat to the accused who put on the same as usual and it was then that the police party arrived and the money was recovered from the pocket of his coat. The substance of the plea therefore, is that the money was planted in his pocket without his knowledge.

4. Kanhaiyalal Amin DW. 1 has supported the plea, of the accused and deposed that Kushlaram offered money to Madan Lal but he refused to accept. His coat was after sometime taken away by Kalicharan. Kalicharan is the chairman and corroborated that he had taken the coat of Madan Lal and had gone to take tea where Kushlaram met him. Kushlaram took the coat from him saying that the accused needed it. After a little while, the accused also came along and he took the coat from Kushlaram. What had happened subsequently had already been stated above.

5. The learned trial Judge rejected the plea of the accused, and upon an examination of the prosecution evidence, came to the conclusion that the trap had succeeded and Rs. 50/- were received by Madan Lal as, bribe from Kushlaram for showing favour to him by dividing his field into six holdings. Upon a search being taken, the money was recovered from the pocket of the accused.

6. I have also examined the evidence and I am satisfied that the findings of the learned lower court are supported by the prosecution witnesses. Indeed, the accused himself had met the prosecution case half way. He admitted that Kushlaram offered him money he touched the money and that the money was also recovered from his pocket. The plea that the money was planted by

Kushlaram in his pocket can just not be believed. It does not need much imagination to throw out the case of the accused that he handed his coat over to the chainman Kalicharan and also happened to pass the coat on to the complainant as if for the purpose of plan having the money planted therein I, therefore, find nothing in the judgment of the learned lower court which calls for interference as far as the findings are concerned.

7. Indeed, the learned Counsel for the appellant did not challenge the findings. He contended that in view of Section 26 of the General Clauses Act, 1897 the accused could be punished only for one single offence and the, separate sentences for the conviction both u/s 161 of the Penal Code and Section 5(2) of the Prevention of Corruption Act are illegal since there is only one act which constitutes an offence under the two enactments. The learned Counsel relied upon *Lohana Kantilal v. State* AIR 1954 Saurashtra 121 but this, view of the Saurashtra High Court has not found favour with other High Courts.

Section 26 of the General Clauses Act, 1897 is in these terms:

Where an act, or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence.

8. In *M.M. Gandhi v. State of Mysore* AIR 1960 Mys 111 it was observed that the prohibition u/s 26 of the General Clauses Act is against a person being punished twice for the same offence. Clause (2) of Article 20 of the Constitution prohibits the punishment of a person for the same offence more than once. The prohibition is not against punishment more than once for different offences. The offence punishable u/s 161 of the Penal Code is different from the offence of criminal misconduct punishable u/s 5 of the Prevention of Corruption Act though it may be that some of the ingredients of these two offences are common. Similar view was taken in *Gulabsingh v. State* 1962 Cri. L.J. 598, In this case it was held that what is prohibited u/s 26 of the General Clauses Act is punishment for the same set of facts under two enactments but not the trial. The trial of the accused person for offences u/s 161 IPC. and Section 5(2) of the Prevention of Corruption Act cannot be challenged as being prohibited by Section 26 of the General Clauses Act.

9. Now, if trial of these two offences together is not prohibited, then it is the requirement of Sub-section (2) of Section 367 Cr.P.C. (old) that the judgment shall specify the offence of which and the section of the Indian Penal Code or other law under which the is sentenced. It clearly therefore, appears that if a person is convicted of several offences, then separate punishment for each one of them has to be awarded.

10. Section 35(1) of the Cr.P.C. (old) contemplates that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code sentence him, for such

offences, to the several punishments prescribed there for which such Court is competent to inflict; such punishment, when consisting of imprisonment, to commence the one after the expiration of the other in such order, as the Court may direct, unless the Court directs that such imprisonment shall run concurrently. There is little doubt that Sub-section (1)(d) of Section 5 of the Prevention of Corruption Act, 1947, has created a new offence of criminal misconduct by a public servant quite distinct from and not a repetition of the offence of a public servant taking gratification other than legal, remuneration in respect of unofficial act u/s 161 of the Indian Penal Code A public servant can be tried together of both these offences and be convicted and punished separately for each of them I am the before, unable to uphold. the argument that the sentences as separately awarded by the learned trial Judge u/s 161 I.P.C. and u/s 5(2) of the Prevention of Corruption Act, 1947 are not in accordance with law. The contention is rejected.

11. Lastly, the learned Counsel for the appellant submitted that the sentences of two years rigorous imprisonment is rather on the harsh side and he prayed that on both the counts, the sentence may be reduced to that of six months rigorous imprisonment. Under Sub-section (2) of Section 5 of the Anti-Corruption Act, 1947 any public servant who commits criminal misconduct is punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine, provided that the Court may for any special reasons recorded in writing impose a sentence of imprisonment of less than one year. The request that the punishment be reduced below one year is against, the provisions of Sub-section (2) of Section 5 of the said Act unless there are special reasons for doing so. I do not find any special reasons for doing so, but at the same time there appears no reason either to award sentence more than the prescribed minimum.

12. I, therefore, maintain the conviction and sentence of the appellant u/s 161 I.P.C. but while maintaining the conviction reduce the sentence of rigorous imprisonment, under Sub-section (2) of Section 5 of the Prevention of Corruption Act from two years to one year. The punishment of fine is retained. Both the substantive sentences shall run concurrently.

13. Decision of the appeal accordingly.