
(1951) 09 BOM CK 0021

In the Bombay High Court

Case No : Criminal Application for Revision No. 399 of 1951

Mahadeo Daunappa Gunaki and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-09-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 337

Evidence Act, 1872 — Section 133

Penal Code, 1860 (IPC) — Section 116, 161

Citation : AIR 1952 Bom 435 : (1952) 54 BOMLR 153 : (1952) ILR (Bom) 900

Hon'ble Judges : Chainani, J;Bavdekar, J

Bench : Division Bench

Advocate : K.A. Somjee, H.F.M. Reddy and Purshottam Tricumdas, for the Appellant; H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

FACTS

One Mahadeo and another (accused Nos. 1 and 2) were doing extensive business in silk, yarn and other articles at Rabkavi in the Belgaum district. The partners in this business were the two accused and accused 2's father-in-law, Pattan who is dead. Some time about January 1949 one Gudi, Deputy Superintendent of Police, Anti-Corruption Branch, received information that the accused had cheated Government and evaded the payment of Income Tax by concealing the huge profits made by them in their business. On 25-1-1949, Gudi obtained the sanction of the District Magistrate to investigate into this matter. He then went to Rabkavi accompanied by Naik, who was an Inspector in the police department. On January 24 and 25 they searched the shops and houses of the accused and seized their account-books. They returned to Belgaum on January 26 with these account-books.

During the time they were in Rabkavi accused 2 was said to have offered to each of them Rs. 15,000 to Rs. 20,000 in order that they might hush up the matter. On 21st February 1949, Gudi issued an order to Naik to examine the account-

books of the accused which had been attached and to submit his report. This report was submitted by Naik on 12th March 1949. In this report he stated that the accused were earning huge profits, that they had not shown them in their Income Tax returns, that they had made false entries in their account-books and that they had not produced many of their account-books before the Income Tax authorities. He also stated that the Income Tax authorities had deliberately overlooked the huge profits made by the accused and had not correctly assessed them.

Before Naik submitted this report, the accused had approached Naik through his friend, Keshavain, and offered to pay him Rs. 30,000 in order that the investigation of the charges against them might be dropped. Naik at first informed the accused through Keshavain that the offer made to him was not proper and that he would not accept any amount. Naik then mentioned the matter to Gudi, who advised him to accept the offer and to trap the accused. In the second week of March the accused again approached Keshavain and asked him to see Naik again. Keshavain met Naik, who told him that he would see what he could do if the accused came to Belgaum along with the moneys. This reply of Naik was conveyed by Keshavain to the accused.

On 23rd March the accused and Pattan came to Belgaum. Keshavain then arranged for their meeting with Naik in the evening that day near Mitra Samaj at Belgaum. The accused accordingly met Naik at 7 or 7-30 p.m. near Mitra Samaj. They asked Naik to take Rs. 15,000 which they had brought with-them and to see that their, account-books were returned to them without -any further enquiry. Naik told them that it was not advisable to talk about such things on a public road where many people were moving about, and that the accused should see him in his room in the Police Club at about 10-30 .p.m. The accused then left after informing Naik that they would, see him again at night. Naik then informed Gudi who asked him to give a reported writing. In that report Naik stated that he had been offered a bribe of Rs. 15,000 by the accused and that action should be taken against them according-to law. Gudi took this report of Naik to the District Magistrate, who granted him permission to investigate into the offence. The District Magistrate also arranged for the additional Magistrate, First Class, Belgaum, to remain present at the time when money was to be given to Naik.

At about 10 p.m. Naik was searched in the "presence of the panchas. He was then left alone in his room at the Police Club. Gudi, the panchas and the Magistrate waited outside. They sat at places from which they could see what was happening inside Naik's room. The accused arrived at 10-30 p.m. and went to Naik's room. Naik asked the accused as to what help they wanted from him. Accused 1 told him that he should save them from the Income Tax inquiry and arrange for the return of their account-books to them. Similar requests were made to Naik by accused 2 and accused 2's father-in-law, Pattan. On a sign being made by accused 1 to accused 2, accused 2 then handed over a bundle wrapped in a towel to Naik. Naik untied the knot of this bundle and saw that it

contained currency notes. He kept them by his side and asked the accused whether they wanted any further help from him. Accused 2 inquired when the account-books would be returned to them and also stated that after these books had been returned to them, they would be burnt and destroyed in order to ensure that nothing further would happen thereafter.

Naik then signalled to Gudi, who was waiting outside. Gudi accompanied by the Panchas and the Magistrate went inside Naik's room. Naik handed over to them the bundle containing currency notes. The notes were counted and the amount was found to be Rs. 15,000. The accused were then arrested and subsequently put up for trial before the Additional Magistrate, F.C., Belgaum. They were charged with paying an illegal gratification of Rs. 15,000 to Naik in order that he might help them in getting the Income Tax inquiry against them dropped and in order that he should see that the account-books attached on January 24th and 25 were returned to them. Accused 2's father-in-law was also prosecuted, but he died during the pendency of these proceedings. Both the accused pleaded not guilty to the charge. They admitted that they had paid Rs. 15,000 to Naik on the evening 23rd March at the Police Club at Belgaum. They, however, denied that this amount had been paid-to Naik as a bribe. Their case was that they were told by Keshavain that the case about their evading the Income Tax could be compounded, and that this would be done if they paid Rs. 15,000. Accordingly the amount of Rs. 15,000 was paid by them to Naik in settlement of the Government claim for Income Tax due from them.

The trying Magistrate did not accept the accused's defence and convicted them u/s 116 read with Section 161, Penal Code and sentenced each of them to rigorous imprisonment for one year and a fine of Rs. 1,000.

The accused appealed to the Sessions Court at Belgaum. The lower appellate Court found that the amount paid to Naik in order that he might show favour to the accused in the exercise of his official functions and not on account of the Income Tax due from the accused. The Additional Sessions Judge confirmed the convictions and sentences passed upon the accused.

Chainani, J.—The charge, which was framed against the accused by the trying Magistrate, was that on 23rd March 1949, they and the deceased Pattan, in furtherance of their common intention, offered Rs. 15,000 as illegal gratification to Police Inspector Naik in his room at the police club, Belgaum, in order that he should help them in getting the Income Tax inquiry against them dropped and in getting back their account-books, which had been attached by the police at Rabkavi. The investigation of the case, in which the accused are said to have cheated Government of Income Tax by not disclosing the greater part of their income and in which their account-books had been seized, was being conducted by the Deputy Superintendent of Police Gudi and by Inspector Naik, under Gudi's supervision. Naik could not, therefore, himself close the investigation or return the account-books to the accused. He could do so only after obtaining the permission of Gudi and probably also of higher officers.

Naik has also stated that when the accused asked him to return the account-books, he told them that the sanction of the Magistrate was required for their return. It has, therefore, been urged that Naik was not in a position to do any official act in favour of the accused or to show them any favour in the exercise of his official functions and that consequently the accused are not liable. It is true that Naik had submitted a report against the accused on 12th March 1949. The accused were probably not aware of this report at the time when they paid Rs. 15,000 to Naik. It was, however, possible for Naik to submit a further report to his higher officers, stating for instance that he had made further inquiries into the matter, that he was satisfied with the explanations given by the accused and that their account-books should be returned to them. Although he could not himself return the account-books to the accused, he could perform an official act or show favour to them in the exercise of his official functions or render service to them with his superior officers by making a recommendation to his higher officers that the account-books should be returned to them.

Assuming, however, that he was not in a position to do so, that would not make any difference. For, Section 161, Penal Code, only requires that the gratification should be given to a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour or disfavour in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person with any public servant. It does not require that the public servant himself must have the power or must himself be in a position to perform the act, to show favour or disfavour or to render service or disservice, for doing, showing or rendering which the bribe has been paid to him. As observed by Bhide J. in *Emperor v. Phul Singh*, I. L. R. (1942) Lah. 402.

"It is difficult to see any principle on which a distinction should be made between cases in which the public servant is in a position to do the official act, or favour or service and those in which he is not in a position to do so, but is erroneously believed to be in that position."

We also agree with the learned Judge's observations (p. 406) that "the heinousness of the act obviously lies in the intention of the bribe-giver to corrupt the public servant" and that there is "no good reason, why the act should be considered to be less heinous merely because the public servant does not happen to possess the necessary power to do the required favour or service." In *Phul Singh's* case the Lahore High Court held that it is sufficient to constitute an offence u/s 161 read with Section 116, Penal Code, if there is an offer of bribe to a public servant in the belief that he had the power in the exercise of his official functions to show the desired favour, although the public servant had in reality no such power. The same view has been taken by the Allahabad High Court in *Kishan Lal v. Emperor*, 1 ALL. L. J. 207. and *Emperor v. Ajudhia Prasad*, 51 ALL. 467 and by the Nagpur High Court in *Gopeshwar Mandal v. Emperor* ILR (1947) Nag. 611. These cases were followed by us in *Indur Advani v. State of Bombay*, 53 Bom. L. B. 699.

It is true that the case before us was that of a bribe taker, but the cases of the Allahabad and Lahore High Courts, on which we relied were those of bribe givers. We see no sufficient reason to differ from the view which we took in *Indur Advani v. State of Bombay*. In the case of a person, who offers a bribe, the essence of the offence, punishable u/s 161 read with Section 116, Penal Code, consists in his corrupting or attempting to corrupt a public servant by offering him a bribe with the object that he might do or forbear to do any official act or show in the exercise of his official functions favour or disfavour to any person or render or attempt to render any service or disservice to any person with any public servant. The mens rea consists in his intention to give a bribe in order that it may induce the public servant to do or not to do something which he would otherwise not do or do. This state of mind of the person, who offers a gratification, has obviously nothing to do with the question whether the public servant, to whom the gratification is offered, is or is not in a position to do or not to do the act, for doing or for not doing which the amount is offered to him. If, therefore, the intention or object with which money is offered to a public servant is to induce him to perform an official act or show favour in the exercise of his official functions or render any service with any public servant, the offence punishable u/s 161 read with Section 116, Penal Code, would be complete, and it is immaterial whether the public servant is or is not actually in a position to do the act or show favour or render service, for doing, showing or rendering which the bribe is offered to him.

In this case, the Additional Sessions Judge has found that the amount of Rs. 15,000 was paid to Naik in order that he might show favour to the accused in the exercise of his official functions and not in payment of the amount of Income Tax due from the accused. The accused would, therefore, be liable u/s 161, read with Section 116, Penal Code, even if Naik was not actually in a position to help them in any way.

2. The second point which has been raised on behalf of the accused is that Naik was an accomplice and that his evidence cannot therefore form the basis of a conviction, unless it is corroborated by other independent evidence. This point arose for consideration before another Bench of this Court consisting of the Chief Justice and Gajendra Prasad J. in the case of *Emperor v. Gokuldas Morarka*, Cr. App. No. 454 of 1949 D/- 11-1-50 (Bom.). It was held in that case that a police-officer, who lays a trap and who receives a gratification, not with the intention of taking it as a bribe but in order to bring to book the person who had offered him the gratification, cannot be said to be an accomplice. In his judgment, the learned Chief Justice cited with approval the following observations made by Maule J. in *Reg. v. Mullins*, (1848) 3 COX. C. C. 526:

"... An accomplice confesses himself a criminal, and may have a motive for giving information as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man, he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society;

and if he does so, if he believes that there is no other method of counteracting the dangerous designs of wicked men, I can see no impropriety in his taking upon himself the character of an informer. The Government are, no doubt, justified in employing spies; and I do not see that a person so employed deserves to be blamed if he instigates offences no further than by pretending to concur with the perpetrators. Under such circumstances they are entirely distinguished in fact and in principle from accomplices, and although their evidence is entirely for the jury to judge of, I am bound to say that they are not such persons as it is the practice to say require corroboration."

That is exactly the position of Naik in the present case. He had no intention to, and he did not, accept the amount as a bribe or in order to enrich himself. His only object in telling the accused that he would accept their offer of money and help them was to bring them to punishment for attempting to corrupt a public servant. He was, therefore, not a participator in the crime and cannot be regarded an accomplice. Consequently his evidence does not require corroboration.

[The rest of the judgment is not material to the report.]

3. The application is, therefore, dismissed and the rule is discharged. The accused should surrender to their bail.

4. Rule discharged.