
(1978) 05 KAR CK 0001
In the Karnataka High Court

Nateshan

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 04-05-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248 (2)

Penal Code, 1860 (IPC) — Section 420, 471

Prevention of Corruption Act, 1988 — Section 5 (1) (d), 5 (2)

Citation : (1978) CriLJ 1642

Hon'ble Judges : N.R. Kudoor, J

Bench : Single Bench

Judgement

N.R. Kudoor, J.—The appellant in this appeal was the accused in C. C. N. 10 of 1975 on the file of the Special Judge, Bangalore, He was convicted for offences punishable under Sections 420 and 471 I.P.C. and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act as per his judgment dated 28th June 1976 and sentenced to undergo rigorous imprisonment for one month and to pay a fine of Rs. 100/- and in default to undergo further rigorous imprisonment for 15 days for each of the offences and directed the substantive sentences to run concurrently. The appellant challenged the said conviction and sentence in Cr. A. No. 563 of 1976 on the file of this Court. This Court set aside the sentence on the ground that the appellant was not heard as required by Section 248 (2) of the Cr. P. C. and remanded the matter to the trial court to hear the appellant regarding the sentence and then dispose of the matter. Thereupon, the learned Special Judge, heard the appellant on the question of sentence and awarded a sentence of 5 days" rigorous imprisonment and to pay a fine of Rs. 100/-, in default to undergo further rigorous imprisonment for five days for each of the three offences and directed the substantive sentences to run concurrently as per his judgment dated 28-3-1977. The appellant has filed this appeal questioning its correctness.

2. The appellant was working as Lascar in 26, Equipment Depot, Air Force, H. A. L., Bangalore. As a public servant he was entitled to claim medical advance and

medical reimbursement for the treatment of himself or any member of his family or his dependents. On 14-11-1971, the appellant presented an application for medical advance of Rs. 500/- for the treatment of his wife Smt. Chinna Kolandai. The advance was sanctioned and ordered to be paid in two instalments of Rs. 250/- each. A sum of Rs. 250/- was paid to the appellant on 16-11-1971. The appellant filed the medical reimbursement application for Rs. 293-40 on 9-2-1972 enclosing the prescription chits, cash bills and essentiality certificate purported to have been signed by P. W. 17 Dr. Mir Asaf Ali, Medical Officer, who was working in the Bowring and Lady Curzon Hospital, Bangalore. A sum of Rs. 293-40 was ordered to be paid to the appellant towards medical reimbursement as claimed by him. After adjusting the advance of Rs. 250/- taken by the appellant, a sum of Rs. 43-40 was paid to him on 28-3-1972.

3. On receipt of information, P. W. 18 M. L. Narasiraha Murthy, Inspector of Police, S. P. E., Central Bureau of Investigation, conducted a preliminary enquiry which revealed that the appellant had filed false application enclosing forged prescription chits, cash bills and the essentiality certificate. He registered a case in R.C. No. 19/74 against the appellant and submitted the F.I.R. Part of the investigation was conducted by P. W. 19 Aswatharamaiah. Later P. W. 18 M. L. Narasimha Murthy, took up the investigation and after completing the investigation, placed a charge-sheet against the appellant.

4. The defence of the appellant was one of total denial. He denied filing of application for medical advance and also medical reimbursement. He denied having received any amount.

5. The learned Special Judge, rejecting the defence and accepting the prosecution case, found the appellant guilty of the offences charged, convicted and sentenced him as aforesaid.

6. Shri B. E. Kottiyar, learned Counsel appearing for the appellant raised two preliminary points, which he has not traversed in the grounds of appeal, at the time of arguments. As the questions raised being questions of law of some importance, he was permitted to do so.

7. The first point canvassed was that In view of the amendment made u/s 195 (1) (b) (ii) of the Cr. P.C. 1973 (shortly called the "Code") by deletion of the words "by a party to any proceedings in any court", a prosecution for the offence of forgery u/s 471 I.P.C. in respect of a document produced or given in evidence in court being the subject matter of the prosecution, cannot be taken cognizance by the court unless a complaint in writing is filed by that court. This legal question was elaborately argued in Criminal Appeal No. 617 of 1976 : Azeezuddin Vs. The State of Karnataka, and a decision was rendered by me today holding that no complaint in writing by the court for taking cognizance of an offence u/s 471 I.P.C. was necessary in a prosecution for the offence of forgery u/s 471 I.P.C. committed in respect of a document produced or given in evidence in court which was the very subject matter of that prosecution. The

same reasons would hold good in answer to the first point canvassed in this appeal also. Hence, I hold that the bar contained in Section 195 of the Code would not be applicable to the case on hand.

8. The second point canvassed was that the offence u/s 471 I P. C. for which the appellant was convicted was barred by Section 468 of the Code as the learned Special Judge took cognizance of that offence beyond the period of limitation of three years prescribed under Clause (c) of Sub-section (2) of Section 468 of the Code. The material portion of Section 468 reads thus:

468 (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

2) The period of limitation shall be.-

a) xx xxb) xx xx c) three years, if the offence is punishable with imprisonment for a term exceeding the year but not exceeding three years.

9. The other section which is relevant for the purpose of disposal of this appeal is Section 469 which reads thus:

469. Commencement of the period of limitation.-

1) The period of limitation, in relation to an offender shall commence.-

a) on the date of the offence; or

b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

XX XX XX

10. Undoubtedly, the offence u/s 471 I.P.C. for which the appellant was convicted in this case, falls within the ambit of Clause (c) of Sub-section (2) of Section 468 of the Code as the punishment prescribed for that offence is exceeding one year but not exceeding three years as provided u/s 471 read with Section 465 I.P.C. According to the prosecution, the offence in question was committed by the appellant during the period Nov. 1971 and April 1972 while he was working as a Lascar in the Equipment Depot., Air Force, H. A. L., Bangalore by submitting false medical advance application on the basis of forged medical certificate for the alleged treatment of his wife as an in-patient in the Bowring and Lady Curzon Hospital, Bangalore and dishonestly and fraudulently induced the authorities to pay him an advance of Rs. 250/- and also further submitting application for reimbursement of medical charges of Rs. 293-40 enclosing forged essentiality certificate, prescription chits and cash memos and thereby induced the authorities to sanction his reimbursement claim of Rs. 293-40 and got adjusted the same against the advance amount of Rs. 250/- already drawn by him and collected the difference of Rs. 43-40 and thereby got pecuniary advantage to the

tune of Rs. 293-40. On receipt of information regarding misuse of medical advance and reimbursement amount paid by No. 26, Equipment Depot, Air Force, H. A. L. Bangalore, M. L. Narasimha Murthy, P. W. 18, Inspector of Police, S. P. E., Central Bureau of Investigation registered a preliminary enquiry on 30-7-1973 vide No. P. 13/73 against the appellant and one Azizuddin. After conducting a preliminary enquiry, he submitted a report to the S. P. E., Bangalore for permission to register a regular case. On getting clearance, P. W. 18 registered a case against the appellant on 2-7-1974 and a charge-sheet was placed against him after completing the investigation on 21-7-1975. Thus it is clear from the above facts that though the offence in question was committed between Nov. 1971 and April 1972, P. W. 18 came to know of the commission of the offence only on 30-7-1973 when he registered a preliminary enquiry. In fact, the case was registered against the appellant on 2-7-1974 based on the preliminary enquiry and the charge-sheet was placed within a year thereafter. Undoubtedly, the trial judge took cognizance of the offences including the offence u/s 471 I.P.C. against the appellant on the charge-sheet placed before him on 21-7-1975 which was within three years from the date of the knowledge of the commission of the offence by P. W. 18 who was the police officer who initiated the proceedings against the appellant on receipt of the information about the commission of the offence in question. The Defence Department which was aggrieved by the offences committed by the appellant did not come to know of them till P. W. 18 initiated the proceedings. P. W. 18 came to know of the commission of the offence on 30-7-1973. That being so, taking cognizance of the offence by the learned Special Judge on the basis of the charge-sheet placed before him on 21-7-1975 was within the period of three years as provided in Clause (c) of Sub-section (2) of Section 468 of the Code. That it is as it ought to be in view of the provisions of Clause (b) of Sub-section (1) of Section 469 of the Code. In that view of the matter, I hold that there is no substance in the second preliminary objection raised on behalf of the appellant.

11. This will take me straight to the merits of the appeal. It was not contended that the appellant was not a public servant within the meaning of Section 21 of the I.P.C. It was also not contended that the prosecution of the appellant was bad for want of valid sanction.

12. The only point canvassed by Shri B. E. Kottiyan, learned Counsel for the appellant was that there is no evidence to show that the appellant presented the applications Ex. P. 1 for medical advance and Ex. P. 2 for the reimbursement of the medical expenses and that he received any amount on the basis of those applications either by way of advance or reimbursement.

13. To prove the charge against the appellant, the prosecution placed reliance on the oral as well as documentary evidence. The applications Ex. P. 1 and Ex. P. 2 were signed by the appellant and were spoken to by P. W. 1 S. Vijayender Rao and P. W. 2 Smt. A. George. Both of them were the employees of No. 26, Equipment Depot, Air Force, H. A. L., Bangalore where the appellant was also working as a

Lascar. They have claimed that they were acquainted with the signature of the appellant as he used to sign in their presence on different occasions. Their evidence has not been seriously challenged in their cross-examination as to their knowledge about the signature of the appellant. Besides it is also seen from the evidence of P. W. 14 S. K. John, Accounts Officer working in the same Equipment Depot during the relevant period that the applications Exhibits P. 1 and P. 2 must have been filed by the appellant as stated by P. W. 2 because he had the occasion to deal with those applications in the course of his official duties for payment of certain amounts to the appellant. Further P. W. 20 Thakur P. D., I. A. F. Police NCO and P. W. 21 S. Girija Bai, clerk working in the same establishment who were dealing with the personal file of the appellant Ex. P. 62 have proved the signature of the appellant in his personal file. The learned Special Judge after comparing the signatures found on Exs. P. 1 and P. 2 with the signature of the appellant in his personal file Ex. P. 62 has expressed his view that he was satisfied that the evidence of P. Ws. 1 and 2 about the signature of the appellant on Exs. P. 1 and P. 2 represents the truth. Thus, the above evidence adduced by the prosecution, in my view, establishes that Exs. P. 1 and P. 2 must have been presented by the appellant.

14. Now regarding the payment made to the appellant on the basis of Exs. P. 1 and P. 2, P. W. 14 has stated in unequivocal terms on the basis of the documents that he paid Rs. 250/- to the appellant by way of advance of medical charges as per the order on the application Ex. P. 1, after obtaining the signature of the appellant as per Ex. P. 1 (e). He has further stated in his evidence that he paid a sum of Rs. 43-40 as per the order on Ex. P. 2 after deducting the advance amount of Rs. 250/- as per the entry found at Ex. P. 10 (a) for which the acknowledgment from the appellant was obtained. There was no motive whatsoever for P. W. 14 to give false evidence against the appellant who was an employee working in the same establishment. Thus, the evidence of P. W. 14 clearly establishes that the appellant had received from the establishment a sum of Rs. 293-40 towards the medical reimbursement in respect of the alleged treatment of his wife in the Bowring and Lady Curzon Hospital, Bangalore.

15. It is next to be seen whether the wife of the appellant was really treated in the Bowring and Lady Curzon Hospital, Bangalore, as claimed in the applications, Ex. P. 1 and P. 2. It is stated in Ex. P. 1 that Chinna Kulandai, wife of the appellant was admitted as an in-patient in the Bowring and Lady Curzon Hospital, Bangalore on 11-11-1971 for treatment of jaundice-koma. It is reiterated in Ex. P. 2 that she was being treated in the said hospital. As per the evidence of P. W. 15 Thejakumar, I Division Clerk, working in the Bowring and Lady Curzon Hospital, there was no entry in the in-patient register to show that the wife of the appellant was admitted as an in-patient in the said hospital on 11-11-1971 or on any other date, The appellant also admitted during the course of the trial that his wife was not treated in the hospital as an in-patient. However, he has produced Exs. P. 3 to P. 9 in support of his application Ex. P. 2 for the treatment of his wife in the Bowring hospital. It is proved beyond any shadow of

doubt from the evidence of P. W. 5 Dr. B. Hanumaiah, P. W. 6 Dr. Erappa Reddy, P. W. 10 S. T. Arasu, P. W. 16 A. K. Gupta, hand-writing expert and P. W. 17 Dr. Mir Asif Ali, who was once working in the Bowring hospital that Exs. P. 3 to P. 9 are forged documents. Undoubtedly the appellant used Exs. P. 3 to P. 9 knowing them to be forged in support of his claim for medical reimbursement and obtained a sum of Rs. 293-40 from the defence establishment by dishonestly inducing the authorities to part with the said sum for which he had no legitimate claim. The learned Special Judge, in my view rightly, on correct appreciation of the evidence on record, reached the conclusion that the appellant has committed all the offences for which he stood charged.

16. For the reasons aforesaid, the appeal fails and the same is dismissed. The appellant shall surrender to his bail and undergo the unexpired portion of the sentence if any.