

(2013) 10 PAT CK 0053

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 246 of 2001

Sarvanand Rai @ Sarbanand Roy

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
General Clauses Act, 1897 — Section 5
Penal Code, 1860 (IPC) — Section 161, 164, 165
Prevention of Corruption Act, 1988 — Section 19(3)

Citation : (2013) 10 PAT CK 0053

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Amit Kr. Rakesh, for the Appellant; Bipin Kumar Sinha, SC/C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Hemant Kumar Srivastava, J.—This criminal appeal has been preferred by the sole appellant against the judgment of conviction and order of sentence dated 12.07.2001 passed by learned Special Judge, C.B.I., North Bihar, Patna in Special Case No. 47 of 1988/R.C. No. 25 A/1988 by which and where under learned Special Judge, C.B.I., North Bihar, Patna having found the appellant guilty for the offences punishable u/s 161 of the Indian Penal Code and Section 5(i)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 convicted and sentenced him to undergo one year rigorous imprisonment for the offence punishable u/s 5(i)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 and to undergo six months rigorous imprisonment u/s 161 of the Indian Penal Code and observed that both the above stated sentences shall run concurrently. Filtering the unnecessary details, the prosecution case, in brief, is that P.W. 4, Sri Niwas Pandit, Khalasi, I.O.W. N.E. Railway Sonapur filed a representation petition before the Divisional Personnel Officer N.E. Railway, Sonapur for his transfer to Barauni. The appellant was posted as head clerk in Personnel Department Office

of D.R.M. N.E. Railway, Sonapur. In course of processing the aforesaid representation petition, the appellant demanded rupees five hundred from the P.W. 4 (complainant) on 27.07.1988 for showing favour to him in the matter of his transfer from Sonapur to Barauni. P.W. 4 made complain to S.P., C.B.I., Patna on 27.07.1988 in respect of the above stated illegal demand and after that S.P., C.B.I., Patna got the authenticity of the allegation verified and having completed the formalities, trap was laid by the officials of the C.B.I., Patna on 28.07.1988. The appellant was caught red handed while demanding and accepting a sum of rupees five hundred from P.W. 4 in presence of witnesses and the aforesaid amount was recovered from possession of the petitioner and hands of appellant were washed in the solution of sodium carbonate which turned into pink from white. The appellant was taken to C.B.I., head quarter where recovery memo was prepared.

2. The first information report as R.C. 25 A of 1988, Patna was registered on 27.07.1988 on the basis of complain made by P.W. 4, Sri Niwas Pandit to S.P., Vigilance and after completing the investigation, C.B.I. submitted charge sheet against the appellant on 05.12.1988. The cognizance of the offence was taken and the appellant was put on trial.

3. In course of trial, C.B.I. examined, altogether, six prosecution witnesses and also got several documents including sanction order as Exhibit-1, representation petition of P.W. 4, as Exhibit-4, the application addressed to S.P., C.B.I., Patna by P.W. 4, as Exhibit-4/A exhibited.

4. The statement of appellant was recorded u/s 313 of the Cr.P.C. in which a bald denial of case of C.B.I. was made by the appellant and, specifically, stated that he was falsely implicated. No evidence was adduced on behalf of the appellant in support of his defence but from perusal of cross examination of prosecution witnesses as well as statement of the appellant recorded u/s 313 of the Cr.P.C., it appears that the defence of the appellant was total denial of case of the C.B.I.

5. The learned Special Judge, C.B.I., North Bihar, Patna having analyzed the materials available on the record convicted and sentenced the appellant in the manner as stated above.

6. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and order of sentence arguing that no valid sanction order was obtained by the C.B.I., for prosecuting the appellant and in absence of valid sanction order, the entire prosecution of the appellant was vitiated. Learned counsel for the appellant further submitted that Annexure-1 reveals that sanction was granted by Divisional Personnel Officer N.E. Railway, Sonapur and Railway Establishment Code volume-1 Part 215 declares that the General Manager or lower authority to whom he may delegate the power was competent to appoint the appellant and, therefore, the aforesaid Railway Establishment Code shows that competent authority to appoint the appellant was General Manager who may delegate his power to his lower authority. He further submitted that Section 6 of

the Prevention of Corruption Act, 1947 says that previous sanction was necessary for prosecution under the aforesaid Act and that sanction be given by the Appointing Authority who should be competent to remove a public servant. He further submitted that so far as the present case is concerned, it was only General Manager Railway who was competent to give sanction for prosecution of the appellant because it was General Manager Railway who was competent to remove the appellant from service. Learned counsel for the appellant further submits that none of the members of trap party was examined in course of trial and the witnesses examined in course of trial made contradictory statements making the case of C.B.I. doubtful but learned trial court convicted and sentenced the appellant on the basis of aforesaid unreliable materials. He further submitted that the alleged raid was made on 28.07.1988 but prior to the aforesaid raid appellant had already cleared the representation petition of P.W. 4 and there was no occasion for the appellant to make any demand but learned trial court failed to take notice of the aforesaid fact and, therefore, the impugned judgment of conviction and order of sentence is liable to be set aside.

7. Learned counsel appearing for the C.B.I. supported the impugned judgment of conviction and order of sentence arguing that Divisional Personnel Officer N.E. Railway Sonapur was competent to grant sanction order in respect of the prosecution of the appellant and there was no illegality, irregularity or impropriety in granting sanction order. Learned counsel for the C.B.I. further submits that according to Rule 215 of Indian Railway Establishment Code volume-1, the General Manager or lower authority to whom he may delegate the power was competent authority to make appointments to Group-C and Group-D post and, therefore, Divisional Personnel Officer, Sonapur was competent to grant sanction order for prosecution of the appellant. He further submitted that schedule of powers in establishment matter was modified and corrected from time to time and in that respect a letter was issued by Chief Personnel Officer on 10.08.1987 and according to the aforesaid modification, the Additional General Manager was competent to appoint a non gazetted employee. Learned counsel for the C.B.I. filed a letter written to C.B.I. by Deputy Chief Vigilance Officer addressed to C.B.I. dated 30.01.2013 and submitted that according to annexure-A as well as schedule 2 attached with the aforesaid petition, the Additional General Manager or Chief Administration Officer or General Manager was competent to appoint the non gazetted staff as well as also to remove non gazetted staff from his service and, therefore, in view of the aforesaid modification, it cannot be said that sanction granted in this case was illegal. Learned counsel appearing for the C.B.I. submitted that C.B.I. proved its case beyond all shadow of reasonable doubts and furthermore, C.B.I. not only proved the factum of demand as well as acceptance but also proved recovery of tented notes from possession of the appellant and, therefore, learned trial court rightly convicted and sentenced the appellant in the manner as stated above.

8. Learned counsel for the C.B.I. referred several decisions on the above stated points such as AIR 2011 SC (Criminal) 1953, AIR 2012 SC (Criminal) 1006, The

State rep. by CBI, Hyderabad Vs. G. Prem Raj, Learned counsel for the C.B.I. contended that appellant did not challenge the sanction order before the trial court and, therefore, he has no right to raise the aforesaid point before this appellate court and moreover, Section 19(3) of Prevention of Corruption Act, 1988 says that no finding, sentence or order passed by a Special Judge can be reversed or altered by a court in appeal unless in the opinion of that court, a failure of justice has in fact been occasioned thereof and, therefore, in view of the aforesaid provision, this appellate court has got no right to alter the finding given by learned trial court.

9. As I have already stated that altogether six prosecution witnesses were examined by the C.B.I. in course of trial. Out of them, P.W. 1, Anil Kant Choudhary was steno of the then Divisional Personnel Officer, Sonapur Division Railway and he typed sanction order (Exhibit-1) at the dictation of then Divisional Personnel Officer, Sonapur Division. This witness proved sanction order as Exhibit-1.

10. P.W. 2, P.P.N. Singh was working in divisional office as senior clerk. This witness stated that P.W. 4 had given a petition for his transfer and the petition for transfer of P.W. 4 was received in his office on 10.06.1988 and the aforesaid petition was put up before the concerned officer on 13.07.1988 and the concerned officer forwarded the aforesaid petition to DRM (P) and the aforesaid petition was forwarded to DRM on 13.07.1988.

11. Similarly, P.W. 3 Raghubansh Pd. Singh was working as office superintendent and he described the procedure in which the petition for transfer of a khalasi used to be processed in his office. At para 1 of his examination in chief, this witness stated that petition for transfer of P.W. 4 was received on 10.06.1988 and on 13.07.1988 Assistant Engineer forwarded the aforesaid petition to Divisional Personnel Officer and the aforesaid petition was received by one R.K. Lal Das, office superintendent of office of Divisional Personnel Officer and sent the aforesaid petition to appellant who was working as dealing assistant in the said office at that time. This witness stated that appellant dealt with the aforesaid petition on 15.07.1988 and having made his note on the aforesaid petition, he sent the aforesaid petition to O.S., A.P.O. This witness proved the handwriting of appellant on the petition for transfer of P.W. 4 as Exhibit-3. This witness further stated that on 21.07.1988 concerned A.P.O. approved the note of appellant and the Senior Divisional Engineer made his approval on the aforesaid note on 28.07.1988. This witness admitted at para 6 of his cross examination that appellant did not make any delay in dealing with the petition for transfer of P.W. 4.

12. P.W. 5., Nityanand Srivastava stated that he had forwarded the petition for transfer of P.W. 4 on 10.04.1988 and except the aforesaid fact this witness stated nothing.

13. P.W. 6., Pankaj Kumar Singh was working as postal assistant in post office,

Sonepur at the relevant time. This witness stated that at the direction of his higher officials he went to railway retiring room, Hajipur where police officials as well as P.W. 4 were present. He further stated that his hand was washed with a solution which turned into pink colour and the aforesaid solution was kept in a pot which was sealed before him. He further stated that some notes were given to P.W. 4 and after making all the formalities he along with P.W. 4 went to D.R.M. Office, Sonepur but the appellant was not found on his seat. He further stated that it was informed to them that the appellant was at the residence of his brother in law and, thereafter, Sri Niwas Pandit (P.W. 4) went to the residence of brother in law of the appellant and went inside the house and later on, P.W. 4 gave signal upon which police party went there and caught the appellant with tainted notes. The hands of appellant were washed with solution which turned into pink and all the formalities were conducted in his presence.

14. P.W. 4. Sri Niwas Pandit is complainant who had made complain before the S.P., C.B.I. This witness stated that he had given a petition for transfer and when the aforesaid petition reached to the table of appellant who was working as dealing clerk, he met the appellant who demanded his salary of one month. He further stated that he refused to give his salary of one month to appellant and, thereafter, appellant demanded rupees five hundred for his transfer. This witness further stated that he came to Patna and gave a petition in C.B.I. Office. This witness further stated that S.P., C.B.I. sent one officer along with him to Sonepur D.R.M. Office where he met the appellant and again appellant demanded money in presence of the aforesaid officer. This witness further stated that he along with aforesaid officer returned to Patna and as per direction, on the next day he came to Hajipur station along with money. He further stated that he met the C.B.I. officials at Hajipur station and in the retiring room demonstration was done and solution was prepared which was kept in a sealed glass. He further stated that he went to D.P.O., Office, Sonepur at about 10:30 P.M. to 01:45 P.M. He was followed by the witness. The appellant was not present in his office and he came to know that appellant had gone to take tea. He came out of the office and met the appellant outside the office. The appellant asked about the money and after that directed him to come to the residence of his brother in law. This witness further stated that he along with appellant went to the residence of brother in law of the appellant. He was directed by the appellant to wait at the gate and after that appellant went inside the house and again came at the gate of the aforesaid house and took and counted the tainted notes and put the said notes on the back of his waist in between his pant and baniyan. In the meantime, on his signal, the C.B.I. officials came there and recovered the aforesaid tainted notes. Thereafter, the hands as well as clothes were put into solution which turned into pink. The solution as well as clothes and tainted notes were seized and seizure was prepared.

15. On perusal of the aforesaid evidence, it is clear that except P.W. 4, there is no any other witness on the point of demand and acceptance. Admittedly, not a single C.B.I. official including the I.O. has been examined in this case nor the

C.B.I. took pains to prove the first information report. No doubt, P.W. 4 stated about demand and acceptance but P.W. 3, stated at para-2 of his examination in chief that Sri R.K. Lal Das, the then office superintendent received the application of P.W. 4 and forwarded the same to appellant on 14.07.1988 and, thereafter, the appellant being dealing assistant gave his note on the aforesaid application and sent the same to O.S. on 15.07.1988. Therefore, it is apparent that the petition of the P.W. 4 was immediately sent by the appellant to his higher official and there was no delay on the part of appellant. P.W. 4 stated that appellant made the demand on 27.07.1988 but it is obvious that before making the aforesaid demand the appellant had already done his work and there was no occasion for him to make demand. Therefore, the aforesaid circumstance creates doubt about the prosecution story. So far as P.W. 6 is concerned, it is said that he is witness on the point of recovery but there are contradictions in the depositions of P.W. 4 and P.W. 6. P.W. 6 stated that P.W. 4 went inside the house of brother in law of the appellant and handed over the notes to him inside the said house whereas P.W. 4 stated that he handed over the notes to the appellant at the gate of house of his brother in law. Therefore, the aforesaid contradiction creates doubt about the prosecution story. Moreover, prosecution could not succeed to prove the factum of demand and acceptance beyond all shadow of reasonable doubts.

16. No doubt, the suggestion to prosecution witnesses was given on behalf of the appellant that P.W. 4 had put the notes forcibly into the pocket of appellant but mere giving the aforesaid suggestion is not amounted to acceptance of the entire prosecution story.

17. Admittedly, the petitioner was working as clerk on the alleged date of occurrence and he was appointed as clerk because the aforesaid fact has not been denied by the prosecution. The Appointing Authority of Class C and D category of railway employees is General Manager or lower authority to whom the General Manager delegates the power. The power to appoint non gazetted staff was delegated to junior administrative grade officer and it would appear from Schedule II of Annexure-A filed on behalf of the C.B.I. that A.D.R.M and Divisional Railway Managers are empowered to impose penalties upon the non gazetted staff exercising their disciplinary powers. The aforesaid provision reveals that Additional Divisional Railway Managers or Divisional Railway Managers are only competent to impose penalties specified in Clause (i) to (iv) and suspension under the Discipline and Appeal Rules and only Appointing Authority or an authority of equivalent rank or any higher authority shall be competent to impose penalties specified in Clause (vii), (viii) and (ix) of Rule 6 of Discipline and Appeal Rules. Therefore, it is apparent from the aforesaid rules that a delegated authority is not competent to remove a non gazetted employee from his service and it is only Appointing Authority who is competent to remove the non gazetted staff of Railway from service.

18. Section 6 of Prevention of corruption Act, 1947 says that previous sanction is

necessary for the prosecution of an offence punishable u/s 161 or Section 164 or Section 165 of the Indian Penal Code 1860 or under sub section 2 or sub section 3(A) of Section 5 of Act, alleged to have been committed by a public servant and the aforesaid sanction should be given by the Appointing Authority and the Appointing Authority giving sanction to prosecute should have been competent to remove a public servant. Therefore, Additional Divisional Railway Manager or Divisional Officers having delegated the power of appointment had no authority to remove the appellant from his service. Since General Manager or an authority of equivalent rank or any higher authority is competent to remove the appellant from his service, the sanction order (Exhibit-1) is not a valid sanction and in my view, the trial court had got no jurisdiction to proceed with the case in absence of valid and legal sanction.

19. It has been argued by learned counsel for the C.B.I. that according to Section 19(3) of Prevention of Corruption Act, 1988, no finding, sentence or order can be reversed or altered and, therefore, the impugned judgment of conviction and order of sentence cannot be altered on the ground of illegality, irregularity or any error in the sanction order but I am not at all, convinced with the aforesaid submission of learned counsel for the C.B.I. because the case in hand was registered under the provision of Prevention of Corruption Act, 1947 and there was no such type of provision in the aforesaid Act and according to prosecution case, the alleged occurrence took place on 28.07.1988 whereas the provision of Corruption Act, 1988 received the assent of President on 9th September, 1988 and was published in the gazette of India on 12th September, 1988. The new Act does not mention the date from which it would come into force. However, Section 5 of General Clauses Act, 1897 states that in such contingency, new Act would come into operation on the date on which it receives the assent of President and, therefore, the Prevention of Corruption Act, 1988 came into force with effect from 9th September, 1988 i.e. after the alleged occurrence and, therefore the provisions of the aforesaid Prevention of Corruption Act, 1988 are not applicable in the present case and in my view, the submission of learned counsel for the C.B.I. does not have any leg to stand. On the basis of aforesaid discussions, I am of the opinion that the impugned judgment of conviction and order of sentence cannot sustain in the eye of law and the same is liable to be set aside. Hence, this criminal appeal is allowed and the impugned judgment of conviction and order of sentence dated 12.07.2001 is, hereby, set aside. The appellant is acquitted of the charges. He is on bail. He is discharged from the liabilities of his bail bonds.