
(1998) 09 MP CK 0037

In the Madhya Pradesh High Court

Case No : Criminal A. No. 602 of 1988

Shyamlal since deceased through his L.R. Arun Kumar Pandey APPELLANT
Vs
State of M.P. RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2000) ILR (MP) 870 : (1999) 1 MPLJ 527

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : K.P. Mishra, for the Appellant; P.C. Jain, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

The accused/appellant stands convicted u/s 161 of the Indian Penal Code and u/s 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act for short) for committing criminal misconduct by having demanded and accepted illegal gratification of Rs. 500/- from complainant Umesh Kumar Pandey and sentenced to R.I. for 1 year on each of the above counts and also to pay fine of Rs. 100/- u/s 5(2) of the Act, by judgment dated 17th June, 1988 in Spl. Cr. Case No. 14/1986 by Special Judge and 1 Additional Sessions Judge, Rewa.

The accused/appellant was a Patwari at the relevant time and posted at Boda-bagh, Rewa and thus a public servant. Undisputably, the complainant Umesh Kumar Pandey (P.W.1) had purchased agricultural land by registered deed, copy of which is Ex.P/1, from one Sukhwati and had submitted an application before the appellant Shyamlal for mutation of his name on the said land.

The prosecution case is that the accused/appellant Shyamlal, for initiating action for the mutation of the name of complainant Umesh Kumar Pandey (P.W.I), had

demanded Rs. 2,000/- and since the complainant Umesh Kumar Pandey did not want to pay him the amount, he approached the S.D.O., Tahsil : Huzur, District Rewa and submitted an application (Ex.P/2) for issuing necessary directions to the accused/appellant for taking action for mutation. The S.D.O. endorsed the application, directing the accused/appellant to immediately issue Rin Pustika in favour of the complainant Umesh Kumar Pandey. The complainant Umesh Kumar Pandey again approached the accused/appellant for doing the needful, upon which the latter told him that he should pay Rs. 500/- immediately and to pay the balance amount later. Since the complainant did not want to pay the above amount, he approached the Superintendent of Police, Lokayukt, Rewa and submitted an application (Ex.P/3).

On the complainant submitting the above application, the Superintendent of Police, Lokayukt, Shri R. N. Singh called B. D. Singh (P.W.2) and arranged trap of the accused/appellant. In the trap proceedings, numbers of 5 currency notes of Rs. 100/- each, given by complainant Umesh Kumar Pandey to Superintendent of Police, R. N. Singh, were noted by B. D. Singh (P.W.2) and they were smeared with phenolphthalein powder and necessary instruction to the complainant for signalling, after he had paid the amount to the accused/appellant were given. The trap party then proceeded to the house of the accused/appellant, along with the complainant and his brother Dinesh Kumar Pandey (P.W.3)

A preliminary Panchnama of the above proceedings (Ex.P/4) was prepared. The complainant Umesh Kumar Pandey (P.W. 1) along with his brother Dinesh Kumar Pandey (P.W.3) went to the house of the accused appellant and the remaining members of the trap party hid themselves. The complainant Umesh Kumar Pandey paid Rs. 500/- along with the application (Ex.P/2), which was endorsed by the S.D.O.. The accused/appellant kept the amount under his register. Dinesh Kumar Pandey (P.W.3) thereafter gave the arranged signal to the trap party, upon which the Investigating Officer, Lakhanlal Pandey (P.W.7) along with Gazetted Officer G. D. Singh (P.W.2) and other members of the trap party entered the house of the accused/appellant. They thereafter seized the amount kept under the register by the accused/appellant. The entry in the register of the Patwari (Ex.P/16) showing the receipt of the application for mutation was also seized. The hands of the Patwari were also washed and the water turned pink. The same was kept in a container and after compliance of other formalities during trap; the details of the trap, proceedings were recorded in panchnama (P.Ex.P/8). Dehati Nalsi (Ex.P/18) was also recorded. After obtaining sanction for prosecution, charge-sheet was filed against the accused/appellant.

The learned trial Court framed charge u/s 161 of the Indian Penal Code and u/s 5(1)(d) and 5(2) of the Act. The accused/appellant abjured guilt. According to him, the application addressed to the S.D.O. along with the currency notes was handed over to him, which he had immediately thrown away and had told the complainant that he was trying to bribe him.

The learned trial Court, after consideration of the prosecution evidence and

material on record, came to the conclusion, that the charges under Sections 161 of the Indian Penal Code and u/s 5(2) of the Prevention of Corruption Act, 1947 have been proved, beyond reasonable doubt against the accused/appellant. He was accordingly convicted and sentenced therefor, as mentioned earlier.

It may be mentioned that during the pendency of this appeal, the accused/appellant had died. However, his legal representative, Arun Kumar Pandey, being his son, sought permission u/s 394(2), Criminal Procedure Code to prosecute the appeal, which has been accorded to him by order dated 11-11-1994.

The learned counsel for the accused/appellant has assailed the conviction and sentence of the accused/appellant as above. It has mainly been urged that the defence of the accused/appellant is that he had not accepted the bribe and had, in fact, thrown away the currency notes, which have been attempted to be paid to him by complainant Umesh Kumar Pandey (P.W.1) indicating that he never demanded or accepted illegal gratification. It has been further urged in this connection that the currency notes were picked up by Surendra Singh (D.W.I), who was admittedly present at the time of the incident and who gave a statement to that effect. It has further been submitted that the statement of Surendra Singh (D.W.I) probabilises the defence of the accused/appellant as above and, therefore, he was entitled to be given benefit of doubt. However, the learned counsel for the respondent/State has supported the conviction and sentence of the accused/appellant and has submitted that the statement of Surendra Singh (D.W.I) was rightly disbelieved by the learned trial Court.

Undisputably, the accused/appellant Shyamlal was Patwari of Halke Boda-Bagh, Rewa at the relevant time. The complainant Umesh Kumar Pandey (P.W. 1) had purchased land from Sukhwati Bai, by registered sale-deed, copy of which is Ex.P/1. From the entry in the Patwari Register (Ex.P/16), it would also appear that he had submitted an application for mutation of his name over the said land. That application was pending with the accused/appellant Shyamlal. It is also not disputed in this appeal that the complainant Umesh Kumar Pandey (P.W.1) submitted an application (Ex.P/.2) before the S.D.O. He had made an endorsement thereon. Thereafter, the complainant Umesh Kumar Pandey (P.W.1) approached the Superintendent of Police, Lokayukt posted at Rewa and had submitted an application (Ex.P/3), in which he had alleged that the accused/appellant, for taking necessary action for mutation of the name of the complainant, was demanding Rs. 2,000/-, which he was not inclined to pay. A trap, therefore, was arranged and 5 currency notes of Rs. 100/- each smeared with phenolphthalein powder were given to the complainant Umesh Kumar Pandey (P.W.1) for being handed over to the accused/ appellant Patwari Shyamlal in the manner detailed in the preliminary panchnama (Ex.P/4). It is also not in dispute that complainant Umesh Kumar Pandey (P.W.1), his brother Dinesh Kumar Pandey (P.W.3) and the trap party including Gazetted Officer G. D. Singh (P.W.2), Investigating Officer, Lakhanlal Pandey (P.W.7) proceeded to the house of the accused/appellant, whereafter the complainant Umesh Kumar Pandey

(P.W.1) and his brother Dinesh Kumar Pandey (P.W.3) entered the house of the accused/appellant and Umesh Kumar Pandey (P.W.1) handed over 5 currency notes of denomination of Rs. 100/- each, as per prearranged plan. On signalling by Dinesh Kumar Pandey (P.W.3), the members of the trap party arrived and apprehended the accused/appellant. Currency notes were seized as per seizure memo (Ex.P/5).

Learned counsel for the accused/appellant has urged that the currency notes were not accepted by the accused/appellant and he was given the said currency notes along with the application (Ex.P/2) by the complainant on the misrepresentation that he was handing over the application addressed to the S.D.O. and endorsed by him to the accused. The accused/appellant immediately on seeing the currency notes wrapped in the application (Ex.P/2) threw them and the said currency notes were picked up by Surendra Singh (D.W.1), who kept it over the Takhat in the room. It has been pointed out that the presence of Surendra Singh (D.W.1) is admitted by complainant Umesh Kumar Pandey (P.W.1) in para-11. It has also been submitted that the hands of Surendra Singh (D.W.1) were also washed and the water was kept in a container, which was also sealed at the time of the trap proceedings. It has, therefore, been urged that in view of the admitted presence of Surendra Singh (D.W.1) and his statement as above, the defence of the accused/appellant is probalised and should have been accepted. It has further been submitted that since the statement of Surendra Singh (D.W.1) that his hands were washed and the water turned pink has not been challenged in cross-examination on behalf of the prosecution and, therefore, his statement as above should have been accepted. In this connection reliance has been placed on State Vs. Bhola Singh, in which it has been observed that when a party declines to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believes that the testimony given could not be disputed at all. This is the rule of essential justice. Similarly, reliance has also been placed on Chuni Lal Dwarka Nath Vs. Hartford Fire Insurance Co. Ltd. and Another, wherein it has been laid down that it is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. If no such questions are put, the Courts presume that the witness' account has been accepted. Reliance has also been placed on Radhakrishna Hazra Vs. Joykrishna Hazra, and A.E.G. Carapiet Vs. A.Y. Derderian, .

It may be noticed in the above connection that Surendra Singh (D.W.1) was admittedly present at the time when the trap proceedings as above had taken place. He states that after the accused/Patwari threw away the notes and resented that they were being given to him by the complainant, he (Surendra Singh) picked up those currency notes and he had kept the same over the Takhat in the room of the Patwari. His hands were also got washed and the water turned pink and that his signatures were obtained by the Vigilance Officer. However, Inspector Lakhn Lal Pandey (P.W.7) has not stated so. He has not been asked any question regarding the washing of hands of the witness Surendra Singh

(D.W.1). The Panchnama (Ex.P/8) of the trap proceedings also does not contain any mention regarding the washing of hands of Surendra Singh. It may also be noticed that the accused/appellant, while the charge was read over to him and his plea was recorded, though has stated that he had thrown away the currency notes after they were handed over to him by the complainant, but has not stated that Surendra Singh (D.W.1) had picked them up and kept them on the Takhat. He has also not stated so in his statement u/s 313 of the Criminal Procedure Code. He has only stated in answer to question No. 45 that the trap party had got his hands washed, but he does not know about the remaining proceedings in the trap. Had the hands of Surendra Singh (D.W.1) also washed at the time of the trap proceedings, he would have certainly stated so in his examination u/s 313 of the Criminal Procedure Code. But his omission in this regard negatives his defence as above. It may also be noticed in the above connection that had the hands of Surendra Singh (D.W.1) washed and the water had turned pink, not only the Investigating Officer Lakhanlal Pandey (P.W.7) would have been questioned about it, but the accused/appellant could have made an application before the higher authorities regarding the proceedings as above and would have insisted on the same being verified by them during the course of investigation, but he does not seem to have done so.

It may also be noted that the accused/appellant had examined Surendra Singh (D.W.1), Gayaprasad (D.W.2) and Jagdish Prasad Shukla (D.W.3), who had given varying statements regarding the picking of the notes and keeping them by Surendra Singh (D.W.1) on the takhat, which has been discussed in detail by the learned trial Court; and the defence evidence as above has been disbelieved by it.

In view of the above, the defence of the accused/appellant that after he had thrown the currency notes, the same were picked up by Surendra Singh (D.W.1) and were kept over the Takhat is not supported by his own statement u/s 313 of the Criminal Procedure Code and cannot be accepted to be true. It may also be noticed in this connection that the accused/appellant states that after the notes were thrown away by him, he had gone along with the complainant to the front room of his house. If the currency notes were being given to the accused/appellant against his wishes, there was no question of the accused/appellant going along with the complainant to the front room. Instead, he would have asked the complainant to pick-up his currency notes and to go away from his house. He did not do so, which is a circumstance which negatives his defence that the currency notes were given to him against his wishes and that he protested.

Though it is true that a specific question in the cross-examination of Surendra Singh (D.W.I) regarding his statement of washing of his hands has not been put, but his cross-examination reveals that the truthfulness of his statement as above has been challenged and, in fact, it has been suggested that his conduct did not show that he had picked up the currency notes and his hands were washed. In fact, his very presence at the time of the incident has also been challenged.

Therefore, it cannot be said that the statement of Surendra Singh (D.W.1) on the above crucial point that his hands were also washed has not been challenged in cross-examination and, therefore, it should be presumed that the prosecution had accepted the statement on its face value. Therefore, the cases cited in this regard by the learned counsel for the accused/appellant, in the circumstances, would be of no assistance to the defence.

It may also be noted that the currency notes were seized from under the register and they were kept between the register and some files of the accused Patwari. If the currency notes were not being accepted and had they been thrown away and picked up by Surendra Singh (D.W.1), the normal conduct would have been to ask the complainant to take them back and to go away. However, it has come in evidence that currency notes were found to be kept over the files of appellant and under the register and the accused/appellant along with the complainant went to the front door of his house, which does not appear natural in the context of defence raised as above.

For all the foregoing reasons, it does not appear that the accused/appellant had thrown away the currency notes in protest saying that he did not want to have money and that he would be doing the work of the accused/appellant even otherwise, as has been his defence. It may be noted that the application (Ex.P/16) of complainant was kept pending by the accused/appellant for more than 5 months, while as per provision of Section 110 of the M.P. Land Revenue Code, he should have submitted his report on the application to the Tahsildar within one month, as noted by the learned trial Court in para-14 of the judgment. In fact, the complainant was required to approach the S.D.O. and to make an application (Ex. P/2) regarding the matter whereafter, he again approached the accused/appellant and on the accused/appellant again reiterating his demand of money, he had to approach the Special Police Establishment of the Lokayukt. The conduct of the accused/appellant as above negatives his contention that he was not willing to accept his money and had stated that he would be doing the work of the complainant even without any money being paid to him.

The learned counsel for the accused/appellant has also tried to urge that in fact, the complainant wanted the whole land 0.61 hectare to be transferred in his name, while in fact only 0.20 decimal of land was ordered to be transferred and on the appellant Patwari refusing to do so, he got annoyed and got the accused trapped falsely. However, as noticed earlier, it may be reiterated that as per Ex. P/10 the Patwari, though received the application of the complainant on 5-5-1985, did not proceed in the matter and did not initiate the proceedings. He also did not send his report. If the complainant was entitled to mutation of .20 decimal of land, only even then the accused/appellant was free to make a report to that effect. But, he should not have kept pending the application of the complainant without any action. Therefore, the above contention of the learned counsel for the accused/appellant also does not deserve to be accepted.

It is, therefore, clear that the defence of the accused/appellant does not seem even probable and the close scrutiny of the statement of Surendra Singh (D.W.1) would indicate that he is not speaking the truth insofar as he states that he picked up the currency notes handed over to the accused/appellant by the complainant and had kept them on the Takhat. Therefore, since the defence as above is not proved on scrutiny, the same was rightly rejected, by the learned trial Court.

As a result of foregoing discussion, the appeal has no merit and deserves to be dismissed and is hereby dismissed. The conviction and the sentence of the accused/appellant are maintained.