(1964) 05 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 8-D of 1964

Sri Kishan Jhingan APPELLANT

Vs

The State RESPONDENT

Date of Decision : 06-05-1964

Acts Referred:
Prevention of Corruption Act, 1988 — Section 5

Citation : (1964) 05 P&H CK 0051

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Frank Anthony and O.P. Soni, for the Appellant; Keshav Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—This is an appeal of Sri Krishan Jhingan who has been found guilty both u/s 5 of the Prevention of Corruption Act and section 161 of the Indian Penal Code. On both these counts, the appellant has been sentenced to undergo rigorous imprisonment for one year each; the sentences to run concurrently. The appellant in addition has been imposed a fine of Rs. 200/- u/s 5 of the Prevention of Corruption Act.

2. Laksmi Narain Sharma P.W. 1, who had passed the higher secondary examination of the Delhi Board in 1961, applied to be appointed a stamp vendor in the office of the Sales-tax. As Lakshmi Narain did not receive any intimation about this application, he went to the office of the sales-tax on 2nd of July, 1963, to make personal enquiries. Having been apprised that the appellant Sri Kishan was a clerk in charge he went to see him. Lakshmi Narain was told by the appellant that his application had been rejected but some more vacancies were likely to arise. Lakshmi Narain was asked to see the appellant at his house that evening between 6 and 7 p. m. In the evening, the appellant told Lakshmi Narain that a sum of Rs. 125/- would have to be expended for procuring a licence of stamp vendor. The appellant asked for payment of a sum of Rs. 25/- there and

then and on receiving this payment the appellant handed over a rough draft of the application which is Exhibit P.A. The appellant made out this draft in the presence of Lakshmi Narain. When he was about to leave the house of the appellant, Lakshmi Narain was asked whether he knew any stamp vendor in the office and Lakshmi Narain told him that he knew Babu Ram. The appellant asked Lakshmi Narain to pay Rs. 25/- to Babu Ram when the application was filed in the office and another sum of Rs. 75/- was to be placed as earnest money with Babu Ram for payment to the appellant after the licence had been issued to Lakshmi Narain. If no licence was issued the sum of Rs. 75/- was to be returned to Lakshmi Narain.

3. On reflection, Lakshmi Narain reached the conclusion that the appellant ought to be brought to book and accordingly he went to the Anti-Corruption Department on 4th of July, 1963. The application was drafted in duplicate according to the draft Exhibit P.A., and the entire story was narrated to Shri S.S. Palta, Deputy Superintendent of Police, Anti-Corruption. Shri Palta recorded the statement (Exhibit P.N.) dictated by Lakshmi Narain. Lakshmi Narain was asked to submit his application and make an appointment with the appellant so that a trap may be laid for him. Lakshmi Narain arranged a meeting with the appellant that afternoon at 3 p.m. The Deputy Superintendent of Police recorded the further statement made by Lakshmi Narain (Exhibit PN/1). Two persons, who were to be the witnesses of the raid, were summoned from the office of the Deputy Commissioner. The statement made by Lakshmi Narain was read over to these persons. Lakshmi Narain admitting the correctness of the statement and then produced currency notes of Rs. 100/- which were made into two separate lots of Rs. 25/- and Rs. 75/- each. Their numbers were taken note of. K.L. Sharma P.W. 3 and Pranyash Bhagat P.W. 4, who were to be the witnesses, were instructed to keep a strict watch and hear the conversation which passed between the appellant and Lakshmi Narain. At about 2.45 p.m. Lakshmi Narain accompanied by Sharma and Bhagat went to the seat of Babu Ram stamp vendor and waited for the appellant who returned up at five minutes past three. Lakshmi Narain drew the appellant close to him and told him that he had submitted the application to the dealing clerk and passed on currency notes of Rs. 25/- according to the pre arranged agreement. The appellant was also told that Babu Ram had been paid Rs. 75/- which would be handed over to the appellant, as soon as the work was done. The pre-arranged signal was given soon after the money was passed and the Deputy Superintendent of Police, who was near at hand, reached the scene of occurrence. When the identity of the Anti Corruption officer was disposed, the appellant is said to have expressed his repentance and asked for forgiveness. On the search of the person of the appellant, marked currency notes of of Rs. 25/- were recovered. They tallied with those of which a record had already been kept.

4. The case for the prosecution has been supported by the evidence of Lakshmi Narain P.W. 1, K.L. Sharma P.W. 3, Pranyash Bhagat P.W. 4 and Babu Ram P.W. 9.

5. The accused while admitting that he was the clerk dealing with the stamp vendors in the office denied the prosecution version of the story. He admitted having made the draft Exhibit P.A. but according to him this was done because Lakshmi Narain came to see him with the visiting card of one Mr B.N. Sharma, who was a practitioner in the sales tax office The defence version given by him set up a conspiracy of Shri Lamba, Assistant Sales Tax Officer, P.W. 2, and Babu Ram to foist a false case against him. According to defence story, Shri Lamba asked the appellant to call Babu Ram. This was a mere ruse. When the appellant went to call Babu Ram, the latter greeted him and immediately afterwards Lakshmi Narain also come there and thrust the money into his pocket. He was then taken under arrest by the police.

6. The learned Special Judge has appraised the prosecution evidence and the defence version. Mr. Anthony, the learned counsel for the appellant, has urged that the accused was not in a position to pay Rs. 100/- as he had no source of livelihood and was hardly making both ends meet by tuition work. Shri Lamba, who has appeared as P.W. 2 has deposed that the appellant had taken leave from him at 2-5 p.m. on 4th of July, 1963, on the pretext that he was not well The appellant had been working under Shri Lamba for about two or three years. This officer denied any ill will towards the appellant though it was conceded that he was deputed to present the case of the Department in an enquiry held against the appellant. Even if some written arguments were presented by Shri Lamba in that capacity before the Enquiry Officer there is no warrant for the assumption that the case is the outcome of ill will. It is true that some kind of investigation was going on against the brothers of Babu Ram, who are also stamp vendors, but it is impossible to use this as a motive for false implication. If the appellant was likely to be of any use to Babu Ram and his brothers, his involvement in this case was hardly likely to promote their interests. The evidence of the witnesses, who accompanied the raid party, cannot be brushed aside on the ground that they are temporary hands or of lowly statuts. The witnesses have given their evidence in clear and unequivocal terms and the appraisal of the Special Judge does not suffer from any blemish. I would, accordingly accept the prosecution story as given by these witnesses.

7. Mr. Anthony has very strenuously contended that the entire evidence adduced on behalf of the prosecution is inadmissible as it consists of statements recorded by the police in the course of investigation. u/s 162 of the Code of Criminal Procedure:

No statement made by any person to a police officer in the course of an investigation... shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof... be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made....

8. It was argued by the learned counsel that Lakshmi Narain having disclosed the commission of an offence by the appellant of having accepted a bribe of Rs. 25/-

from him, the entire evidence subsequent to the making of this report is hit by this provision. Shri Palta admitted in his cross-examination that technically a case could have been registered after the complainant first told him that he had already paid a sum of Rs. 25/- to the appellant. It is, however, to be observed that the appellant had charged this amount for having drafted the petition Exhibit P.A. and it is doubtful if the offence had been completed. In any event, the acceptance of Rs. 25/- by the appellant did not form the subject matter of the charge, nor did it provide any base for the investigation which followed. The prosecution, on the other hand, laid a trap for the appellant and the offence the appellant was charged with was not completed till 3 o''clock in the afternoon of 4th of July, 1963. It is only a statement made by a person to a police officer in the course of an investigation which is hit and not the statements recorded before the commission of an offence which are affected by the provisions of section 162 of the Code of Criminal Procedure. The witnesses have deposed about the statement made by the complainant Lakshmi Narain, the marking of the currency notes, the offer and the acceptance of the bribe and the actual apprehension of the accused in the act of acceptance. None of these matters which are essential for the prosecution case formed a subject-matter of an enquiry during the course of investigation in respect of the bribe which had already been accepted assuming that it was a bribe. Mr. Anthony has placed reliance on the Supreme Court authority of The The State of Madhya Pradesh Vs. Mubarak Ali, , where it was held that "an investigation starts after the police officer receives information in regard to an offence and consists generally of the following steps :

(i) Proceeding to the spot;

(ii) ascertainment of the facts and the circumstances of the case;

(iii) discovery and arrest of the suspected offender;

(iv) collection of evidence relating to the commission of the offence... and

(v) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial....

Now, the prosecuting. Deputy Superintendent of Police did not direct the investigation in any of these five directions. Instead, Shri Palta asked Lakshmi Narain to go back to the appellant and at range a meeting for the passing of the bribe and the submission of an application, as directed. The evidence of the prosecution, therefore, cannot be rejected on the ground that it consisted of statements made in the course of investigation. To repeat, the statements recorded never related to the offence of the acceptance of Rs. 25 by the appellant on 2nd of July, 1963. Reference may also be made to the Supreme Court decision of Ramkishan Mithanlal Sharma v. The State of Bombay (1935) 1 S.C.R. 90. In this case, it was found that certain evidence was inadmissible because of the bar of section 162 of the Code of Criminal Procedure. In such a situation, their Lordships of the Supreme Court ruled that "the appellate Court has to see whether the reception of inadmissible evidence influenced the mind of the Jury so seriously as to lead them to a conclusion which might have been different but for its reception." In other words, only evidence which is hit by section 162 of the Code of Criminal Procedure, can be left out of being inadmissible. Thus, at best, the evidence with regard to acceptance of bribe by the appellant on 2nd of July, 1963, would be inadmissible and nothing more. The events which led up to the arrest of the appellant are the subject-matter of the charges under which he has been tried and this evidence clearly cannot be rejected on ground of inadmissibility u/s 162 of the Code of Criminal Procedure.

9. In the result, I would hold that the conviction of the appellant is based on reliable and admissible evidence. The sentences passed on both the counts cannot be regarded as excessive. The appeal therefore, fails and is dismissed.