

(1998) 04 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : Criminal Acquittal Appeal No. 13/86

State of J & K

APPELLANT

Vs

Prem Nath Patwari Halqa Chogal

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 5(2)
Ranbir Penal Code, 1989 — Section 161

Citation : (2000) KashLJ 59

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : G.Ali, Advocates appearing for the Parties

Judgement

1. Ghulam Mohd Muchi (PW 1) in company with Sonallah Mochi (PW2) lodged FIR EXPW 1/2 on 1611978 with Police Station Anti

Corruption at Srinagar with incriminating allegations that in order to lift a fallen mulberry tree from his land, he approached accused Prem Nath,

Patwari of his Halqa (Chogal) Handwara for being favoured with a copy of Fardi Intikhab and site plan. He met Patwari number of times and

requested for the documents. The accused at long last demanded Rs. 60/ as illegal gratification from him for supplying the copy of Fardi Intikhab.

He paid accused Rs. 20/ on 14178 in presence of Sonallah (PW2) and Sultan Mochi (PW.7). The remaining amount of Rs. 40/ was premised to

be paid on 1611978. He approached the AntiCorruption Department at Srinagar. The AntiCorruption Police Station Registered FIR 1/78 under

Section 5(2) P. C. Act read with Section 161 R. P. C. and took action while remaining Rs. 40/ were to be paid to the Patwari at Handwara. The

number of currency notes were recorded in Fardi Waqa EXPW 1/3 and returned

to the complainant. A trap was arranged by ACCK at Handwara. It was planned that on passing of money the complainant will raise his cap to signal the payment. At Handwara, Shri M. L. Kaul Magistrate was also associated with the trap. The complainant and the raiding party was searched and certificate was prepared. Four currency notes of rupees ten denomination each (Rs. 40/) of which were recorded were handed over to complainant. The complainant met the accused in Handwara Market and after payment of money signaled the trap party of the Vigilance Department who came and after disclosing their identity, searched the person of accused and recovered four currency notes from right side inner pocket of the coat worn by the accused. Seizure EXPW 1/5 was prepared alongwith seizure memo of Coat EXPW 1/1. The statements of witnesses were recorded and other investigative steps were taken. On completion of the investigation challen was produced before the Court of Anti Corruption Special Judge, AntiCorruption at Srinagar on 991981.

2. The accused was tried after being charged with offence under section 5(2) P. C. Act read with 161 R. P. C to which he pleaded not guilty.

Prosecution has examined 13 witnesses and has also placed on record F. I. R. memos, site plan, etc. The accused has tendered three witnesses in

his defence. At the conclusion of the trial the Special Judge Anticorruption, Srinagar vide judgement dated 2831986, has acquitted the accused of

the charges under section 5(2) P. C. Act read with Section 161 RFC, primarily for want of sanction/defective sanction to prosecute the accused as

required under the provisions of law.

The appeal has been filed against this acquittal by the State on 1171986. The judgement has been assailed on the ground that the judgement is

against the facts and law and the sanction for prosecution is valid. Even if, there have been more than one sanction, the State was within its rights to

rely on any one of the sanction for authorising prosecution of the accused. The accused's acquittal has not been on technical grounds. The trial

court has not applied its mind to the facts of the case and the accused ahs been given acquittal wrongly and not inaccordance with law.

Mr. G. Ali, GA, represents the State/Appellant, has been heard. Respondent accused (Prem Nath Patwari) despite the effort has not been traced

and has not appeared before the Court after March 28, 1988. Mr. G. Ali, submits that respondent is a migrant, who is neither traceable nor his

whereabouts can be found. It was in these circumstances that despite affording number of opportunities to the respondent accused as he did not

appear. Mr. G. Ali, GA, was heard.

No court is empowered to take cognizance of offence punishable in this case, under section 5(2) P. C. Act 2006 read with section 161 Rarbir

Penal Code except with the previous sanction of the State Government. It is not in dispute that the sanction is a condition precedent for taking

cognisance of offence. If there is no sanction for prosecution of the accused, as provided by law, the court has no jurisdiction to take cognizance of

the offence. It is for this reason that the question of valid sanction assumes significance. From record it is seen that the sanction to prosecute the

accused was despatched to Vigilance Commissioner in this case on 31.8.78, then again another sanction came to be despatched to S. P.

Anticorruption office on 31.8.79 and yet another sanction followed and was despatched on 12.8.1981. The record including despatch registers

support these facts found established by the trial court.

When the first sanction was granted in August, 1978, District Baramulla was not bifurcated. It was a single District and D. C. Baramulla granted

the sanction, who was competent to accord the sanction. It appears very strange and that too when no explanation is forthcoming from record,

why the prosecution suppressed this fact and did not allow it to see light of the day. Similarly, the second sanction obtained in Jan, 1979 has been

also kept away from Court by the Vigilance Organisation, Kashmir. If the prosecution was already sanctioned under the orders of the competent

authorities, what was the necessity to go for yet another fresh sanction. From record, it is seen that the sanction with the file is of August 1981, i.e

third one. This sanction did not mention or give a hint or a faint idea of any of the earlier sanction(s) having been issued in the case. Whether the

earlier sanction was varied, altered, changed or amended, "no explanation whatsoever is on record.

In State V/S Mohd Raza Beg, SLJ 1981 J and K; 418 a question arose, whether a competent authority can addl, alter or supersede an order of

sanction made under section 6 of Prevention of Corruption Act. The Hon'ble

Single Bench on consideration of law including Section 21 of the General Clauses Act and on examining the object and scheme of the prevention of corruption Act, pursuant to observations of the Apex Court in 1958 SC: 1018, held that the competent authority has no power to revise, add, alter or supersede an order of sanction once issued under section 6 of the Prevention of Corruption Act.

Even, on going through the order of sanction dated 1281981, it appears that D. C. Kupora, did not apply his mind to the full facts of the case. He has not also referred to the sanction which he had issued earlier, which are not at all on the record. Even, he has referred to acceptance of illegal gratification by Ghulam Mohd Mochi (PW1) and not the accused Prem Nath, Patwari. Not only so, he has even referred the recovery of tainted amount of Rs. 40/ from the possession of Prem Nath Patwari, which is not a fact as the same were not tainted or dipped in naphthin or other chemical. No detailed particulars and dates have been given in the sanction. All these circumstances and facts go to show, in the contex of previous sanctions, that Dy. Commissioner, Kupwara did not in fact apply his mind to the whole case and the sanction dated 1281981 cannot be said to be valid and legal sanction.

Seen thus, there appear full justification for the trial court of Special Judge, Anti corruption Srinagar's considered view and judgement that the accused merit to be acquitted. In absence of legal and valid sanction, the trial court lacks abinitio jurisdiction to take cognizance and to try the case of accused for indicated charges under Section 5 (2) P. C. Act. 2006, read with Section 161 R. P.C.

This apart on going through the prosecution evidence recorded in the trial court, it appears that PW2 and PW7 referred as eyewitnesses by the complainant have not supported him. Besides, the other witnesses have not supported the case of prosecution of having recovered the identifiable notes from the possession of the accused on search of his person. Passing of Rs. 40/ as illegal gratification as reward for doing the favour of providing Intikhab extract to the complaint is not at all made out. In fact passing of money or illegal gratification is doubtful and the evidence is not satisfactory to substantiate the charge beyond all shadows of doubt. The evidence of the Magistrate Mr. M. K. Koul, Project Officer, fully reveals

the unsatisfactory and highly doubtful character of the trap evidence and seizure of the amount as alleged by the prosecution. He even failed to

identify the currency notes. He even says that at the time of trap he did not witness any signal and he is not even certain as to how all the persons

(cited witnesses) collected on spot.

The statement of P. W8, Girdawar and NaibTehsildar, D. W., Ghulam Mohd fairly reveals that in fact the whole proceedings on the application

were going on normally in due course and that there was no occasion for illegal gratifications to pass hands. P. W. 7 has nowhere stated that Rs.

20/ and Rs. 40/ the alleged illegal gratification was paid in his presence. The statements of P. W. 6, PW.5, and PW.4 is also revealing in the sense

that they are not supporting the prosecution case qua organising material particulars of the trap.

The whole prosecution evidence is unsatisfactory and does not inspire confidence. It is full of contradictions. It is not proved that the accused

accepted or obtained for that matter agreed to accept and obtain any illegal gratification so as to serve as motive or reward as mentioned in

Section 161 R. P. C.

On the given evidence, the accused cannot be at all convicted. The prosecution has failed to prove its case beyond reasonable doubt. The court

had to take this exercise on merits on analysis evaluation and consideration of the evidence only, because, the trial court decided the case and

acquitted the accused on the sole ground that there was no valid or proper sanction to prosecute the accused.

14. For the aforesaid reasons the appeal does not merit to be accepted and is as such dismissed. Certify the decision to the court below while

forwarding the record to the court concerned.