

(1979) 07 BOM CK 0017

In the Bombay High Court

Case No : Criminal Appeal No. 159 of 1975 (By State)

State of Maharashtra

APPELLANT

Vs

Jaywant Ramchandra Kamble

RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1980) 82 BOMLR 100 : (1979) CriLJ 1460 : (1980) MhLj 67

Hon'ble Judges : S.A. Masodkar, J; R.L. Aggarwal, J

Bench : Division Bench

Advocate : M.A. Solkar, P.P, for the Appellant; S.R. Chitnis, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Masodkar, J.—This is a State appeal that questions the acquittal of the charge of corruption of respondent pretrap Jaywant Kamble, who was engaged as a Police Constable and was working as such at Dafalpur Out-Post. Prosecution against him for offences u/s 161 of the Indian Penal Code and section 5 read with section 5(2) of the Prevention of Corruption Act has failed before the Special Judge, Sangli.

2. Now, the facts upon which the prosecution relied have been satisfactorily proved and can be merely stated so as to indicate the eventual point that arises for decision in the present case.

3. In the trap that was laid by Anti-Corruption P.S.I. Surve (P.W. 12) on November 1, 1973 upon a complaint lodged by Kondiba (P.W. 2) on October 31, 1973 as per Ex. 9, in the presence of Panch Vithal (P.W. 3) Rs. 40/-, which were tainted with anthracene powder, were recovered from the respondent Police Constable. As far as the earlier steps leading to the trap are concerned, there is clinching evidence coming forth from P.S.I. Surve that Kondiba approached him and lodged the complaint as per Ex. 9, thereafter he proceeded to have the

authorisation from the Judicial Magistrate; First Class, Sangli as per Ex. 33 and laid the trap after drawing up the Pre-trap panchanama in the presence of the panchas, one of whom has been examined during the trial . That panchanama is at Ex. 11. It is further seen that the actual passing of the monies was witnessed by panch Vithal and Kondiba gave the pre-arranged signal and P.S.I. Surve eventually apprehended the accused and effected the seizures of the tainted notes. He drew up the post-trap panchanama as per Ex. 12. It has been shown that P.S.I. Toro (P.W. 11) was in charge of Jath Police Station, under which fall the Dafalpur Out-post. On October 18, 1973, Rama, son of Hari, (P.W. 9), approached this Police Station and complained that his cycle had been forcibly taken away by some persons from Village Khalati. Upon this, the Dafalpur Outpost was directed to call these persons. The accused, who was holding the said Outpost, was directed by Head Constable Patil (P.W. 10) in that regard and when the accused went to Village Khalati, one Appa, who appears to be little idiotic, abused the accused, who, according to Appa, was not in the police dress and was trying to harass the villagers. Eventually, the accused took the person as well as the cycle to the Police Station. P.S.I. Toro was informed by both P.W. 9 Rama Mote, who was the original complainant, and the persons who were produced that matter was compromised. That matter thus came to an end. At that time, the present accused informed P.S.I. Toro that one Appa had abused and insulted him but had not come. P.W. 2 Kondiba, who is the complainant in the present case, told P.S.I. Toro that Appa was half mad and he must be executed. If necessary, Appa would be produced on the next day. P.S.I. Toro has started that he directed the accused to produce Appa on the next day. So also, he directed Kondiba (P.W. 2) to produce him with a view to warn Appa. Though Appa was thereafter not produced, P.S.I. Toro's evidence is that he did not take any steps in that regard. It is then the case of Kondiba, supported by the evidence of P.W. 4 Maruti and corroborated by his complainant (Ex. 9) on the eventual passing of the monies, that he met the accused and entreated him to patch up the matter, upon which the accused expressed his willingness by telling him that if Rs. 50/- were paid, he would not take any further action; otherwise he would see that Appa was dealt with and arrested. The evidence of Kondiba is clear that upon this he paid Rs. 10/- to the accused and promised to pay the remaining amount of Rs. 40/- and thereafter he contrasted P.S.I. Surve and lodged the complaint as per Ex. 9. Eventually in the company of panch Vithal, the remaining Rs. 40/- were paid on the day of the trap, that is, on November 1, 1973, and the same were attached during the investigation by P.S.I. Surve.

4. Though the defence of the accused was one of total denial, on the prosecution case itself the trial Court found and rightly that the monies received by the accused were by way of compromise so as to compound the injury and insult that he had suffered because of the abuse given to him when he went to village Khalati. That amount, in the view of the learned Special Judge, was not corrupt receipt of money, nor was an illegal receipt by a public servant for doing or forbearing to do any public duty.

5. As for as this aspect is concerned, namely, that monies were paid or were agreed to be paid by way of compromise, the evidence does not admit any doubt. Even Ex. 9, the complaint, makes a reference to some settlement which was being negotiated by Kondiba on the one hand and the accused on the other so as to recompensate the wrong which the accused was complaining to have suffered. The evidence of the complainant himself on this aspect is categorical that the amount of Rs. 50/- was paid to Kamble that is, the accused, by way of compromise with regard to the matter of the, abuses given to Kamble by Appa and regarding the insult done to Kamble by Appa. The complainant has further asserted that he had told the panchas at the house of the P.S.I. in this matter about the character of the demand.

6. Under the facts and circumstances of the present case, we find that in this regard the benefit of doubt will have to be given to the accused, who was, admittedly, the public servant but was subjected to abuses and insult and was feeling aggrieved because of that, and the opposite party had come out with an offer to pay the amount by way of compensation. This is particularly so because even in the evidence of P.S.I. Toro we find that no serious view of the incident between the accused, the public servant, and Appa was being taken. Even P.S.I. Toro has stated that he had intended just to give a warning to Appa and even though Appa was not produced either by Kondiba or by the accused, he did not take any further steps. The evidence of Kondiba, on the other hand, is that even this matter, that is the so called insult to which the accused was subjected when he went to village Khalati, was settled by P.S.I. Toro. He has stated, in this regard in his evidence, that the matter regarding the abuses given to the accused was settled when he had gone to Jath Police Station. Thus, as far as Jath Police Station is concerned, the evidence indicates that P.S.I. Toro felt satisfied that the matter was not of that importance so as to call for any further action and had decided to ignore it. In fact, Kondiba's impression is that matter was dropped at that stage. Therefore, as far as the public office, that is the Police Station, is concerned, no action was contemplated, nor was likely to be taken. Under such circumstances what really remained was the sense of private injury as far as the accused was concerned and we do not see to be improbable that the accused could have assuaged his own feelings by accepting such an amount. That is a possible and probable view flowing from the facts of this case.

7. However, this cannot be the general rule in the matter of the conduct of public officials, particularly when they are found to have received the monetary gratifications. It must be observed that when public officials are exposed to insults, injuries, constructions, or are subjected to other offences while discharging their duties, an obligation in the interest of public may arise to take legal steps so as to vindicate public justice. If the case be clear on this aspect steps, it would not lie in the sweet discretion of public officials to privately compound such causes that must be brought to book by accepting gratifications. In those cases, public officials will be under public duty to take steps against the party or persons who are in the position of the accused or the defendants .If

under the facts and circumstances of a given case such an obligation coupled with duty arises and only a view to forbear from that duty gratifications is offered and taken, we have no manner of doubt that such an acceptance of gratification will be culpable within the meaning of section 161 of the Indian Penal Code as well as section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act. We may hasten to add that in the case of public officials doing public duty, no doubts, events may occur and cases may arise whom their public office and public duty are not involved and the offences caused to them could be classed as personal or private. Accepting gratification for compounding such personal injuries would clearly be out of the penal mischief contemplated by the corruption law. Similarly, the compounding may arise in the matters where the occurrence involves injury to the person acting in official capacity, leaving an option to the complainant public official either to proceed against the person offending or not to proceed but to compound the same. Excepting these two categories, and particularly when offences against public officials while discharging their duties occur and there arises an obligation as a part of duty of such public official to take steps against the offending party in the interest of the public offence, we do not think that compounding by taking gratification in any form can be permissible or can be out of the purview of the provisions of section 161 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act. An offence u/s 151 of the Indian Penal Code has nexus with the alleged official act and its doing or forbearing to do the same when gratification is offered and accepted in such belief with regard to such action. See *Emperor v. Bhimrao*, 27 BomLR 120; *State v. Mahadeo Daunappa*, 54 BomLR 153, and *The State v. Shamrao Mavji*, 58 BomLR 355. Private composition of official grievances against receipt of gratification is within the mischief of the section. It is only when there is overlapping of private and official doing or fore bearing to do or official is possessed of private option an exceptional defence is made out. Otherwise accepting money for possibly to take legal action which the official is obliged or duty bound to take as a part of his duty is, in our view, clearly culpable. When duty arise to take action and to proceed with it, its imminence is clearly an official act. With a view to forebear from it, if gratification is accepted, may be under the colour of composition or cover of compromise, it would still be corrupt. The question that the Court should ask in such matter is whether but for the gratification the official would have or would not have proceeded to take action as is enjoined upon him because of his holding the public office? It is the answer to such query that would eventually indicate the involvement of the public official accepting the gratification into the culpability. No doubt, the provisions of corrupt misconduct as defined by section 5(2) of the Prevention of Corruption Act as well as the acceptance of gratification commonly called accepting the bribes, as contemplated by section 161 of the Indian Penal Code, being the matters of penal law, considerations of mens rea of the accused would necessarily be relevant and in that the bona fide settlement by the accused under some misguided and mistaken beliefs may go to furnish a valid defence to an accused public officials charged with corruption, but like any other matter that

is all required to be determined under the background of the facts and circumstances available in a particular case and that surround the commission of the offence. Only because such a defence is available, that itself does not affect the ingredients of the offence. Compromission or composition by itself involves taking gratifications and if its nexus is with the official act, that is, its doing or for bearing it to do, the offence is clearly spelled out.

8. However as we have pointed out in the present case, as far the public duty was concerned, the accused appears to have reported to his immediate superior, who had decided only to warn the persons who had given abuses or insult to the accused while he was discharging public duty. It is further seen that the evidence of the complainant in the present case itself is that even at the Police Station this matter too was compromised and dropped. Under these circumstances, it appears that the accused had accepted Rs. 50/- so as to assuage and satisfy his personal sense of grievance. Though we cannot, for a moment, sanction such acceptance of money by a public official, we feel that the circumstances do not make the acceptance entirely culpable.

9. In the result, we do not think that this is a fit case where we can interfere. The appeal filed by the state is, accordingly, dismissed and the order of acquittal passed in favour of the respondent-accused by the Special Judge, Sangli, is confirmed. A copy of this judgment be forwarded to the Secretary to Government of Maharashtra, Home Department, Mantralaya, Bombay.