(1994) 05 GAU CK 0007

In the Gauhati High Court

Case No : Govt. Criminal Appeal No. 3 of 1985

State of Manipur APPELLANT

Vs

Haokholal Thangjom, M.S. Chani (Md. Abdul Ghani) RESPONDENT

Date of Decision : 31-05-1994

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1994) 2 GLR 351

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A. Jagatchandra Singh, P.P. HC, for the Appellant; T. Nandakumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—This is an appeal against the judgment dated 3.11.1984 of the Special Judge. Manipur in Special Trial No. 9 of 1980 acquitting the two accused persons who were charged for offences under Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and u/s 120-B of the Indian Penal Code.

2. The prosecution case in short was that during the relevant time Shri Haokholal Thangjom, accused No. 1 was the Development Minister, Government of Manipur. By a notice dated 6.8.1974 tenders were invited for supply of materials by the Director of Veterinary and Animal Husbandry, Government of Manipur. In response to the said lender notice scaled quotations were received from 12 concerns including the accused No. 2 Shri M.A. Ghani. When the tenders were opened, the rate quoted by M/S Ch. Ibochouba Singh was the lowest i.e. Rs. 100/- per quintal in respect of the whole and crushed yellow maize. Accordingly, the Tender Committee recommended the case of M/S Th. Ibochouba Singh but the accused No. 1 by his note dated 5.2.1975 observed that the rates quoted by the some of the tenderers were much below the prevailing market rates and

further recommended that the order for yellow maize, crushed and whole, should be placed with the accused No. 2. The rate quoted by the accused No. 2 was as high of Rs. 224/- for yellow maize (whole) and Rs. 229/- for yellow maize (crushed). By false representation, the accused No. 1 obtained approval of the then Finance Minister and Chief Minister for placement of the said order on the accused No. 2. Thereafter an agreement for supply of 443.70 quintals of yellow (whole) maize at the rate of Rs. 224/- per quintal and 320.64 quintals of yellow (crushed) at the rate of Rs. 229/-per quintal was executed by the accused No. 2 and the Director of Veterinary and Animal Husbandry. The further case of the prosecution is that the then Secretary (Veterinary), Government of Manipur Shri B.R. Basu drew the attention of the accused No. 1 to the wide gap between the lowest tender rate and the rates of the accused No. 2 accepted by the Government and the consequential additional expenditure of Rs. 1.45 lakhs to be incurred by the Government for purchase of the maize from the accused No. 2. But by order dated 3.6.1975, the accused No. 1 did not accept the recommendation of Shri Basu on the ground that stopping the supply of maize in the mid-way would be detrimental. As a result, about 709 quintals of both whole and crushed yellow maize out of total 764 quintals were supplied by the accused No. 2 and payment received by him accordingly and the Government suffered a loss of Rs. 82,000/- approximately and the accused No. 2 correspondently gained pecuniary advantage of Rs. 82,000/-.

3. The defence case on the other hand, was that the rates quoted by the accused No. 2 were (sic) market fates and the rater quoted by the other tenderers were far below the market rates. On several occasions lowest, tenderers quoting rates for materials lower than he market rates could not supply the materials causing great inconvenience to the Government. Considering the fact that the supply of the maize had to made of the interior parts of Manipur and the transportation cost was to be incurred by the supplier, the accused No. 1 accepted the rates quoted by the accused No. 2 after obtaining due approval of the Finance and the Chief Minister. Accordingly, no pecuniary advantage has been gained by the accused No. 2 in the transact ion and at any rate accused No, 1 has acted in good faith and has not official position as a Public servant while placing the order for supply of maize with the accused No. 2.

4. It appears that, a large number of witnesses have been examined on behalf of the prosecution to prove the rates for supply of maize at the relevant time. The files of the Veterinary Department including the comparative rates statements, recommendations of the different authorities and the orders passed by the accused No. 1 as well as the Minister, Finance and the Chief Minister have also been exhibited. The trial court however on a consideration of the evidence came to the conclusion that the rates quoted by the accused No. 2 for yellow maize, whole and crashed cannot be taken as exorbitant and also held that the accused No. 1 was fully justified in not entertaining the proposal of the then Secretary, Veterinary Department Shri Basu to slop the supply of maize by the accused No. 2 in the mid-way. Accordingly, by the impugned judgment, the trial court

acquitted both the accused persons of the charges u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act 1947 and Section 120-B (sic) the Indian Penal Code.

5. Mr. Jagatehandra Singh/learned Public Prosecutor has taken me through the evidence of PW-2 to show that the rate quoted by him for yellow maize (whole) was P.s. 113/- per quintal and for yellow maize (crushed) was Rs. 118/- per quintal. He has also taken me through the evidence of PW-3 who quoted the rate of Rs. 110/- per quintal and Rs. 120/- per quintal and that of PW-5 who had quoted Rs. 110/- per quintal for whole maize and crushed maize respectively. On the basis of the said evidence of the three tenderers who had submitted their tenders pursuant to the tender notice dated 6.8.1974 of the Director of Veterinary and Animal Husbandry Department, he submit that the aforesaid three tenderers were ready to supply the maize at rates far below the rates of Rs. 224/- and Rs. 229/- per quintal quoted by the accused No, 2 the Government would have been saved of loss if the order for supply of yellow maize, crushed and whole, had been placed with PW-2, 3 or 5.

6. While this submission of the learned Public Prosecutor may appear to be attractive, on a deeper study of the facts of the present case the submission has no force. In the present case the accused No. 1 in his note dated 26.2.1975 Ext. P-63/6 rejected the lower rates quoted by the tenderers with some reasons. The relevant part of Ext. P-63/6 is extracted below:

It is true that all the tendered rates for the items proposed for acceptance are much lower than the prevailing market rates, According to the tender notification, the transportation of all the articles to all places including the Hill Districts are to be borne by the suppliers. The absurdity to supply the stocks to all places including hill stations at the rate lower than the prevailing market rates which is also spiralling up at quick space is beyond dispute. To be realistic, acceptance of such tender will certainly result in non-supply of stocks. In fact there are reports of non supply of articles in the past. The intention of the suppliers for quoting very low rates compared to prevailing market rates, will be nothing, but resorting to under-hand manipulation.

7. The aforesaid note of the Minister was given pursuant to the note dated 18.2.1975 Ext-63/5 of Shri B.R. Basu, the then Secretary, Veterinary wherein he stated that the tender rates were lower than the prevailing market rates. It has also been brought out in evidence and discussed in the judgment of the trial court that the prevailing market rate of maize in the month of September, 1974 was Rs. 165/-per quintal as per the bulletin of retail prices for the month of Sept. 74 placed in the file Ext. P-63. Since the market rate of maize in Sept. 74 was as high as Rs. 165/- per quintal, and the maize as per the tender notice dated 6.8.74 was to be supplied to the different institutions in District of Manipur and the transportation cost had to be borne by the supplier, it is difficult to come to the conclusion that the aforesaid note of the Minister Ext. 63/6 quoted above had been made with any dishonest intention.

8. It is however submitted by the learned Public Prosecutor that by the aforesaid note dated 26.2.1975 Ext, P/63/6 the accused No. 1 could have recommended for placement of orders for supply of maize by tenderers who had quoted higher than the market rates but whose rates were much lower than that of accused No. 2. The learned Public Prosecutor brought to my notice the comparative statement of different rates quoted by the tenderers exhibited as Ext. 38 to show that Radhakrishna Sharma had quoted Rs. 169/- and Rs. 173/- for yellow maize, whole and crushed respectively, Imphal Live-stock Food Product had quoted Rs. 177/- per quintal for yellow maize (whole) and Rs. 180/- per quintal for yellow maize (crushed), On the. basis of the said figures in the comparative statement, the learned Public Prosecutor submits that the accused No. 1 in his note dated 27.2.75 could have recommended that the supply of yellow maize, (whole) and yellow maize (crushed) be made by the said Radhakrishna Sharma or Imphal Livestock Food Product, as their rates were higher than the prevailing market rate of maize but lower than the rates of Rs. 224/- per quintal and Rs. 2297- per quintal of the accused No. 2 for yellow maize (whole) and yellow maize (crushed) respectively. But a reading of the note dated 26.2.7 5 Ext-63/6 would show that the accused No. 1 recommended specifically that the lenders of the accused No. 2 for yellow maize, whole and crushed, at the higher rate of Rs. 224/- per quintal and Rs. 229/- per quintal respectively be accepted.

9. Mr. T. Nandakumar Singh, learned Counsel for the defence submits that onus was on the prosecution to prove the charge u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act 1947 and for establishing the said charge in the manner suggested by the Public Prosecutor the aforesaid two tenderers Radhakrishna Sharma and Imphal Livestock Food Product should have been examined as prosecution witnesses but as a matter of fact neither the tenderers nor anybody on their behalf were examined by the prosecution. In the absence of evidence of such material witnesses with regard to (he rates they have quoted, as to whether the said rates were inclusive of the transportation charges and as to whether the said two tenderers were in a position to supply the yellow maize, whole and crushed, the charge against the accused was not established.

10. I find force in the aforesaid contention of the learned Counsel for the defence. It has been held by the Apex Court in the case of Major S.K. KALE Vs. State of Maharashtra, : Major S.K. KALE Vs. State of Maharashtra,

It was for the prosecution to prove affirmatively that the Appellant by corrupt or illegal means or by abusing his position obtained any Pucuniary advantage for some other person.... We might state at the risk of repetition that it was not for the accused to prove the prosecution case but it was for the prosecution to disprove what the accused said namely, that he had mace enquiries. The prosecution could prove this fact city by producing satisfactory and convincing evidence to show that the accused in fact made no such enquiries and he knew about the margin of profit which other dealers would have been made.

Applying the aforesaid law regarding onus on the prosecution laid down by the

Apex Court in the case of S.K. Kale v. State of Maharashtra to the present case the prosecution should have shown by cogent and convincing evidence that the said two tenderers namely, (i) Radhakrishna Sharma and (ii) Imphal Livestock Food Product would have supplied the yellow maize, crashed or whole, at the rates lower than the rates of Rs. 224/- and Rs. 229/- per quintal quoted by the accused No. 2 and accepted by the accused No. 1 and that the cost of transportation of the sad maize to different institutions in the State of Manipur would have been borne by the said tenderers. Such evidence obviously could have been adduced by examination of the aforesaid two tenderers or any person on their behalf in court. But unfortunately the prosecution has not examined the said two tenderers or any person on their behalf (sic) establish beyond all reasonable doubt that the said two tenderers would have supplied the materials at the rates quoted by them inclusive, of transportation cost. The submission of the learned Public Prosecutor is based on an erroneous assumption that it was for the accused No. 1 to explain as to why he accepted the tender of the accused No. 2 and not the tenders of the aforesaid two tenderers even before the prosecution has led evidence in proof of the charge.

11. The learned Counsel for the defence further submits that assuming that the rates quoted by the accused No. 2 and accepted by the accused No. 1 were on the higher side, the prosecution would further have to show dishonest intent on the part of the accused No. 1 in accepting the rate quoted by the accused No. 2. He submits that u/s 5(1)(d) of the Prevention of Corruption Act 1947, an offence is committed only if the accused by corrupt or illegal means or by otherwise abusing his position as a public servant obtains for himself or for other person any valuable thing or pecuniary advantage. In the present case, according to the learned Counsel for the defence, the prosecution should have shown not merely that pecuniary advantage was obtained by the accused No. 2 but also that the accused No. 1 used corrupt or illegal means or abused his position as a public servant to confer the said pecuniary advantage to the accused No. 2. While evidence has been led by the prosecution to show that the rates quoted by the accused No. 2 and accepted by the accused No. 1 were on the higher side, no evidence whatsoever has been led by the prosecution to show that the accused No. 1 used corrupt or illegal means or otherwise abused his position as a public servant to accept the rates tendered by the accused No. 2. Learned Counsel for the defence in particular cited decisions of the Apex Court in AIR 1963 SCC 1116 and Major S.K. KALE Vs. State of Maharashtra, wherein the Apex Court held that the expression "otherwise abusing his position as public servant" in Section 5(1)(d) of the Prevention of the Corruption Act 1947 has to take its meaning from the expression "corrupt or illegal means" and accordingly would mean a dishonest intent on the part of the accused while causing the pecuniary advantage in favour of another person. Learned Counsel for the defence further submits that if the aforesaid interpretation of Section 5(1)(d) of the Act as explained by the Apex Court is taken, in the facts in the present case, the prosecution has not made out any case of dishonest intention on the part of the accused No. 1 in

accepting the rates for supply of yellow maize of the accused No. 2. Learned Counsel for the defence further submits that in the facts of the present case the market rates of yellow maize were fluctuating, heavy burden of transportation cost lot transportation of the maize to the interior parts of the State of Manipur had to be borne by the suppliers, FW-11 the Director of Veterinary and PW-16 the Finance Minister had deposed that there have been cases of lowest tenderers not supplying the materials at the tendered rates and PW-19 the then Chief Minister had stated that he had complete faith on the accused No. 1 and had therefore accepted the proposal of the accused No. 1 for placing the orders with the accused No. 1 This being the facts heavy onus lay on the prosecution to prove beyond all reasonable doubt that there was dishonest intern on the part of the accused No. 1 in placing the orders for supply of maize on the accused No, 2 at the higher rates quoted by him.

12. The aforesaid submission of the learned Counsel for the defence has full force. I n the present case it was required of the prosecution to show (i) that pecuniary advantage had been obtained by accused No. 2, (ii) that such pecuniary advantage was obtained, by the accused No. 2 on account of abuse of position by the accused No. 1 but neither of the aforesaid two facts have been established. An attempt has been made by the prosecution to a large extent, in my opinion, to show that the rates quoted by the accused No. 2 and accepted by accused No. 1 were on the higher side, but it has not been established by the prosecution beyond all reasonable doubt that had the tender of the accused No. 2 not been accepted by the accused No. 1, Government would have been saved of loss of Rs. 82,000/- or that the rates of Rs. 224/- and Rs. 229/- for yellow maize whole and crushed respectively were so high that after meeting the costs of transportation to the interior parts of Manipur, the accused No. 2 earned a profit beyond the normal margin and obtained a pecuniary advantage. It has also not been shown by the prosecution beyond all reasonable doubt that in accepting the tender of the accused No. 2, the accused No. 1 had acted with dishonest intent. In fact, in the charge framed by the learned trial court, it has been sought to be made out that the accused No. 1 had placed the order with accused No. 2 contrary to rules and regulations but no such rules or regulations have been brought to my notice which are said to have been contravened by the accused No. 1 in placing the orders with the accused No. 2. On the other hand, evidence of the Minister, Finance PW-16 and the Chief Minister PW-19 would show that the order in question was placed with the accused No. 2 with their approval. That apart the Apex Court has held in the aforesaid decision reported in Major S.K. KALE Vs. State of Maharashtra, that violation of the procedure by itself would not establish the charge unless it is further shown that there was dishonest intention on the part of the accused. In such cases the act is one of indiscretion but not one with dishonest intention.

l3. Learned Counsel for the defence further brought to my notice the settled position of law explained by the Apex Court in the aforesaid decision reported in Major S.K. KALE Vs. State of Maharashtra, and in the decision of the Apex Court

AIR 1979 1 SCC 535 to the effect that in cases where the prosecution relies on circumstantial evidence, to sustain a conviction the chain of circumstantial evidence should exclude all hypothesis other than the hypothesis leading to the guilt of the accused. In the present case there is no direct evidence of any corrupt or illegal means adopted by the accused No. 1 or of abuse of position by the accused No. 1. The case therefore was one of the circumstantial evidence and the aforesaid circumstances discussed above does not lead to the only conclusion that the accused No. 1 was guilty of the offence u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act 1947. The prosecution therefore has failed to bring home the charge against the accused persons beyond all reasonable doubt.

14. In the result, the impugned judgment of the learned Special Judge dated 3.11.1984 in Special Trial No. 9 of 1980 acquitting the accused persons is confirmed and the appeal is dismissed.