(1959) 04 SC CK 0010

Supreme Court of India

Case No: Appeal (crl.) 3 of 195

The State of Ajmer (Now Rajasthan)		APPELLANT
	Vs	
Shivji Lal		RESPONDENT

Date of Decision: April 22, 1959

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161, 21

Citation: AIR 1959 SC 847 : (1959) CriLJ 1127 : (1960) 1 LLJ 239 : (1959) 2 SCR 739 Supp

Hon'ble Judges: P. B. Gajendragadkar, J; K. N. Wanchoo, J; B. P. Sinha, foundsJ

Bench: Full Bench

Final Decision: Dismissed

Judgement

Wanchoo, J.
This appeal is on a certificate granted by the Judicial Commissioner of Ajmer. One Shivji Lal Joshi (hereinafter called the accused) was prosecuted under s. 161 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act, No. II of 1947. He was convicted by the Special Judge on both counts and sentenced to suffer rigorous imprisonment for a total period of six months. He filed an appeal before the Judicial Commissioner of Ajmer. The appeal was allowed on the ground that the accused was not a public servant, though the Judicial Commissioner agreed with the findings of the Special Judge so far as the facts were concerned. The State applied for a certificate under Art. 134(1)(c) of the Constitution to enable it to appeal to this Court. This certificate was granted; and that is how the appeal has come before us.

2. The facts which have been found by both the courts are these. The accused was a teacher in the railway school at Phulera. Prem Singh who was the complainant was known to the accused for about a year before the incident which took place on October 6, 1954. He was in search of a job and the accused had told him a number of times that he would procure a job for him in the Railway Running Shed at Abu Road, if Prem Singh

paid him Rs. 100. On October 5, 1954, the accused had met Prem Singh at Kaiserganj in Ajmer and told him that Dusehra holidays were approaching and if he paid Rs. 100 the accused would go to Abu Road to secure a job for him. Eventually it was agreed between the two that Prem Singh would pay him Rs. 50 on the next day while the remaining Rs. 50 would be paid after the job had been secured. After this agreement, Prem Singh went to the Deputy Superintendent Police (Special Police Establishment), and made a complaint to the effect that the accused had told him that he could secure employment for him at Abu Road Loco Shed as he had considerable influence there and had demanded Rs. 100 as illegal gratification for that purpose. Prem Singh also said that it had been settled that he would pay Rs. 50 in advance and Rs. 50 after his appointment. Consequently, Prem Singh wrote out an application addressed to the Divisional Mechanical Engineer, Abu Road, and also produced five ten-rupee notes before the Deputy Superintendent Police. The numbers of these notes were noted down and the Deputy Superintendent Police arranged that one Nathu Singh should accompany Prem Singh as a cousin when Prem Singh met the accused next day to pay him the money. On October 6, 1954, Prem Singh accompanied by Nathu Singh met the accused as arranged and the accused asked him for an application. Prem Singh gave him the application which he had already written out and the accused said that that would serve the purpose. The accused then asked Prem Singh for the money and he handed over the five ten-rupee notes, adding that he would pay the remaining Rs. 50 after getting service and assuring him that he would keep to his part of the bargain. Thereafter Prem Singh gave the pre-arranged signal and the police party headed by the Deputy Superintendent of Police arrived. The Deputy Superintendent Police disclosed his identity and searched the person of the accused. In that search, the application which Prem Singh had written for the Divisional Mechanical Engineer, Abu Road, and the five ten-rupee notes were recovered. Thereafter the accused was prosecuted as already mentioned above.

3. The accused admitted that the application as well as the five ten-rupee notes were recovered from him by the police. His explanation was that one Jiwan Ram had given him the application which was in English and which was said to be a letter for a friend of Jiwan Ram at Abu Road. The accused did not know English and took the application to be a letter to be delivered to the friend of Jiwan Ram. Jiwan Ram also gave him five ten-rupee notes to be given to that very friend of his when the accused went to Abu Road. As already stated, both the courts below have accepted the prosecution version set out above and disbelieved the explanation given by the accused. The Special Judge convicted the accused on the basis of the prosecution story. The Judicial Commissioner, though he accepted the prosecution story to be true, held that the accused was not a public servant and therefore ordered his acquittal. The main question that has been raised on behalf of the appellant therefore in this appeal is that the Judicial Commissioner erred in holding that the accused was not a public servant within the meaning of s. 21 of the Indian Penal Code.

4. The question whether the accused is a public servant under s. 21 of the Indian Penal Code depends upon the interpretation of the last part of the Ninth clause of that section, which is in these terms :-

"..... every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

5. The Judicial Commissioner seems to have overlooked this part of the Ninth clause, for he says that it had not been shown that it was the duty of the accused to take, receive, keep or expend any property on behalf of the Government so that he may come under the Ninth clause of s. 21. This only refers to the earlier part of the Ninth clause and the last part which we have set out above does not seem to have been considered at all. This very question came up for consideration in this Court in G. A. Monterio v. The State of Ajmer [1956] S.C.R. 682 and it was laid down that the true test in order to determine whether a person is an officer of the Government, is : (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty. It is not disputed in this case that the accused was in the service of Government and was being paid by Government. It cannot also, in our opinion, be doubted that he was entrusted with the performance of a public duty inasmuch as he was a teacher in a school maintained by Government and it was part of his public duty to teach boys. In these circumstances the Judicial Commissioner was in error in holding that the accused was not a public servant within the meaning of the Ninth clause of s. 21.

6. This, however, does not dispose of the matter. Learned counsel for the accused has urged that even if the accused is held to be a public servant, he cannot be held guilty on either of the charges framed against him. We shall first take the charge under s. 5(2) of the Prevention of Corruption Act read with s. 5(1)(d). The charge was that the accused by corrupt or illegal means or by abusing his position as a public servant obtained pecuniary advantage for himself inasmuch as he took Rs. 50 from Prem Singh on October 6, 1954. Mere receiving of money by a public servant even if it be by corrupt means is not sufficient to make out an offence under s. 5(2) read with s. 5(1)(d). The relevant part of s. 5(1)(d) reads as follows :-

"A public servant is said to commit the offence of criminal misconduct in the discharge of his duty, if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage".

7. The offence under this provision consists of criminal misconduct in the discharge of his duty. In order, therefore, that this offence is committed there should be misconduct by the public servant in the discharge of his duty. In other words the public servant must do something in connection with his own duty and thereby obtain money for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. If a public servant takes money from a third person in order to corrupt some other public

servant and there is no question of his misconducting himself in the discharge of his own duty, that action may be an offence under s. 161 of the Indian Penal code but would not be an offence under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act. The essence of an offence under s. 5(2) read with s. 5(1)(d) is that the public servant should do something in the discharge of his own duty and thereby obtain any valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. The words "by otherwise abusing his position" read along with the words "in the discharge of his duty" appearing in s. 5(1)(d) make it quite clear that an offence under that section requires that the public servant should misconduct himself in the discharge of his own duty. In the prudent case, the accused was a teacher and it was no part of his duty to make appointments in the Running Shed at Abu Road. There would, therefore, be no question of his committing misconduct in the discharge of his duty when he took money for procuring a job for Prem Singh in the Running Shed. So far therefore as the charge under s. 5(1)(d) is concerned, we are of opinion that there was no question of the accused misconducting himself in the discharge of his own duty in the circumstances of this case and it must fail.

8. Now we turn to the charge under s. 161 of the Indian Penal Code. The relevant part of that section (omitting the unnecessary words) for the purpose of this case is in these terms :

"Whoever, being a public servant, accepts from any person for himself any gratification whatever other than legal remuneration as a motive or reward for rendering or attempting to render any service or disservice to any person with any public servant". This requires that the person accepting the gratification should be (1) a public servant, (2) he should accept gratification for himself, and (3) the gratification should be as a motive or reward for rendering or attempting to render any service or disservice to any person with any other public servant. The charge under s. 161 of the Indian Penal Code which was framed in this case stated that the accused being a public servant accepted on October 6, 1954, a sum of Rs. 50 from Prem Singh "as illegal gratification as a motive for securing a job for him in the Railway Running Shed". Now the first two ingredients set out above are clearly established in this case; but the third ingredient, (namely, that the gratification should have been taken as a motive or reward for rendering or attempting to render any service with any public servant) is not even charged against the accused. The charge merely says that he took the money as a motive for securing a job for Prem Singh in the Railway Running Shed, Abu Road. It does not disclose who was the public servant whom the accused would have approached for rendering or attempting to render service to Prem Singh in securing a job for him. Even in the complaint made by Prem Singh to the Deputy Superintendent Police all that was said was that the accused told Prem Singh that we would secure a job for him at Abu Road because he had considerable influence there. It was not disclosed as to who was the public servant on whom the accused had influence and whom he would approach in order to render service to Prem Singh. In his statement also Prem Singh did not say that the accused had told him that he had influence on any

particular public servant at Abu Road whom he would influence in order to render this service to Prem Singh, namely procuring him a job. It is true that the application was addressed by Prem Singh to the Divisional Mechanical Engineer and was given to the accused who said that it was all right; but Prem Singh did not even say that the accused had asked him to address the application to the Divisional Mechanical Engineer. It seems that the application was addressed to the Divisional Mechanical Engineer, simply because he was obviously the officer-in-charge of the Railway Running Shed at Abu Road. Thus Prem Singh did not say either in his complaint or in his statement that the accused had told him that he would render service to him by approaching a particular public servant. In the charge-sheet submitted by the police as well as in the charge framed by the court, it was not disclosed whether any public servant would be approached to render service to Prem Singh, i.e., by securing him a job. In the circumstances one of the ingredients of the offence under s. 161 was neither alleged nor charged nor proved against the accused. The mere fact that a person takes money in order to get a job for another person somewhere would not be itself necessarily be an offence under s. 161 of the Indian Penal Code unless all the ingredients of that section are made out. As in this case one of the main ingredients of that section has not been made out, the accused would be entitled to acquittal.

9. However, it has been urged on behalf of the State that presumption under s. 4(1) of the Prevention of Corruption Act arises in this case as money passed hands from Prem Singh to the accused and s. 4(1) provides that if an accused person has accepted any gratification for himself or for any other person, it shall be presumed unless the contrary is proved that he accepted that gratification as a motive or reward as is mentioned in s. 161 of the Indian Penal Code. Assuming that this presumption can be raised even when all that is proved is mere passing of money, the question still remains whether a presumption as to the motive or reward such as is mentioned in s. 161 of the Indian Penal Code can be raised in this case at all, when we know as fact that Prem Singh never said in the complaint that the accused had told him that he would influence any public servant and did not even say so in his statement in court and there was no mention in the charge-sheet by the police or in the charge framed by the court that the accused was going to influence any public servant in order to secure a job for Prem Singh at Abu Road. We are of opinion that if the evidence had disclosed that the accused had indicated that he would influence any public servant in order to secure a job for Prem Singh a presumption as to the motive or reward might have been drawn under s. 4(1), assuming again that such a presumption can be drawn where there is simple passing of money. But when there is no indication whatever that any public servant was to be approached or influenced by the accused there can, in our opinion, be no question of making a presumption that the payment was as a motive or reward for rendering service with any public servant. In this view of the matter we are of opinion that the offence under s. 161 of the Indian Penal Code is not made out against the accused, for one of its essential ingredients is missing and no presumption can be drawn in the circumstances in that connection. We therefore dismiss the appeal though for reasons different from those

which commended themselves to the learned Judicial Commissioner.

10. Appeal dismissed.