

(1999) 12 BOM CK 0069

Bombay High Court

Case No: Criminal Appeal No. 421 of 1992

Rajnikant Jaywant
Londhe

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Dec. 17, 1999

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161, 193, 196, 201, 217
- Prevention of Corruption Act, 1988 - Section 17, 5

Citation: (2000) 102 BOMLR 560 : (2000) 2 MhLj 597

Hon'ble Judges: S.S. Parkar, J

Bench: Single Bench

Judgement

S.S. Parkar, J.

The appellant convicted for offences under Sections 161 and 217 of Indian Penal Code and sentenced to R.I. for one year and to pay a fine of Rs. 500/- in default to suffer R.I. for six months for each of the above offences by the Judgment and Order dated 31st July, 1992 delivered in Special Case No. 3 of 1989 by Special Judge, Sangli has appealed against the order of conviction and sentence recorded against him.

2. The prosecution case, briefly stated, runs as follows:

The appellant at the relevant time i.e. between April to September, 1987 was working as Police Head Constable attached to Jath Police Station. He was charged for commission of offences punishable under Sections 409, 161, 217, 218, 193, 196 and 201 of the Indian Penal Code along with offence u/s 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act. The allegations against the appellant were that while acting as Head Constable attached to the said police station he had committed criminal breach of trust in respect of 91 foreign liquor bottles and cash amount of Rs. 14/- by preparing false records. He is also alleged to have demanded and accepted illegal gratification of Rs. 790/- from six vehicle

owners for releasing the vehicles and for not prosecuting the offenders under the provisions of the Motor Vehicles Act. It was also alleged that he had caused disappearance of evidence in connection with the said prosecution under the Motor Vehicles Act with a view to save offenders from punishment. It was alleged that on 15th June, 1987 the Sarpanch of village Gudwad by application (Exh. 37) applied to the police for police bandobast at the time of Hanuman Jayanti Festival's Yatra when accused demanded a sum of Rs. 100/- as bandobast charges and issued rough receipt and later on deposited only Rs. 86/- with the cashier misappropriating Rs. 14/-. On 17.8.1988 Dy. S.P. Anti Corruption Bureau, Sangli received a complaint from one Hanmant Kamble making allegations of corruption and mal practices against the accused and about the modus operandi of the appellant as to how he used to release the offenders without filing prosecutions against them by taking money. This offence was investigated by Dy. S.P. Mokashi who is examined as P.W. 8, after obtaining permission from D.C.P., Anti-Corruption Bureau, Pune. He visited Jath Police Station and verified that six cases were entrusted to the accused detected by squad of S.T. Depot-Manager for unlawful transport of passengers but the accused had charge-sheeted only one offender. In the course of enquiry P.W. 8 also found that the appellant had received different amounts from the offenders for not prosecuting the offenders. After enquiry the report was sent to D.C.P., Pune by P.W. 8 who permitted P.W. 8, Dy. S.P. to lodge a complaint. Accordingly on 9th March, 1988 F.I.R. was lodged by him and the offence was registered under C.R. No. 30/1988 which is at Exhibit 46. P.W. 9 Police Inspector Honrao attached to the Anti Corruption Bureau, Sangli was handed over the investigation. After recording the Statements of some witnesses he was transferred and, therefore, ultimately charge-sheet was filed against the appellant by P.W. 8 Dy. S.P. Mokashi on 30.11.1988.

3. On the basis of the charge-sheet several charges were framed in the Court of Special Judge, Sangli for offences under Sections 409, 161, 217, 218, 196 and 201 of Indian Penal Code and for offence u/s 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act which is at Exhibit. 5. At the trial the accused pleaded not guilty to the said charges and claimed to be tried his defence was of total denial. He denied to have received the case papers in respect of five cases for filing prosecutions under the Motor Vehicles Act. He denied that he had received any amount as illegal gratification.

4. On behalf of the prosecution nine witnesses were examined at the trial. P.W. 1 is Jaresh Patil who was the Manager of S.T. Depot at Jath. He was required to keep vigil over the traffic of vehicles for transport of passengers. He along with Police Constable P.W. 2 used to go on patrolling duty and apprehend the vehicles carrying passengers illegally. P.W. 2 is Police Constable Shankar Kadam attached to Traffic Branch, Sangli who assisted P.W. 1 in checking the vehicles. P.W. 3 is Narayan Sale who was the driver of Jeep No. MWE-2473 whose vehicle was returned to him on payment of Rs. 40/- without lodging any prosecution against him. P.W. 4 is

Bhauasheb Shinde who was the owner of Tempo bearing No. MWE-2245 against whom no prosecution was lodged and his vehicle was returned by the appellant on payment of Rs. 300/-. P.W. 5 is Sannappa Dhangar who was Sarpanch of Village Gudwad in taluka Jath. P.W. 6 is Vasant Patil who was driver of jeep bearing No. MXW-3266 and on payment of Rs. 50/- his vehicle was returned. The said witness had turned hostile. P.W. 7 is Bhagwant More, Superintendent of Police, Pune who had granted sanction (Exhibit 44) to prosecute the appellant. P.W. 8 is Dy. S.P. Mokashi, Anti Corruption Bureau, Sangli who initially investigated the complaint received against the appellant and lodged his F.I.R. (Exh. 46) on 9.3.1988 against the appellant and lastly P.W. 9 is Pramod Honrao, Police Inspector attached to Anti-Corruption Bureau, Sangli who investigated the complaint against the appellant and recorded the statements of the witnesses.

5. After considering the entire evidence on record the learned Special Judge found material to convict the appellant for offences under Sections 161 and 217 of Indian Penal Code and accordingly recorded the order of conviction and sentenced the appellant as stated above by his judgment and order dated 31st July, 1992 in Special Case No. 3 of 1989. The learned Special Judge acquitted the appellant of the other offences with which he was charged. It is the conviction and sentence of the appellant under Sections 161 and 217 of Indian Penal Code which is impugned in this appeal.

6. Mr. Pradhan, learned Counsel appearing on behalf of the appellant took me through the evidence of witnesses as well as documentary evidence produced on behalf of the prosecution and raised several contentions. Firstly, it was contended that under the provisions of the Prevention of Corruption Act no Police Officer below the rank of Deputy Superintendent of Police in the present case was empowered to investigate offence punishable u/s 161 of Indian Penal Code as laid down in Section 5(1)(d) of the said Act. According to Mr. Pradhan since the investigation was carried on in this case by P.W. 9 P.I. Honrao it is illegal and, therefore, the trial is vitiated and, therefore, the conviction and sentence of the appellant be set aside. In support of his contention Mr. Pradhan strongly relied on the decision of the Supreme Court in the case of [H.N. Rishbud and Inder Singh Vs. The State of Delhi](#), . He also relied on the decision of the Madhya Pradesh High Court in the case of [Mubarakali Vs. The State](#), . He also relied on the decision of the Supreme Court in the case of [The State of Madhya Pradesh Vs. Mubarak Ali](#), which confirmed the decision of the Madhya Pradesh High Court in Mubarakali's case.

7. After going through the aforesaid decisions it becomes clear that when the offence is under the provisions of the Prevention of Corruption Act or u/s 161 of Indian Penal Code it should be investigated by an Officer of the rank not below the one prescribed u/s 5-A of the Prevention of Corruption Act. The invalid investigation by an officer below the prescribed rank does not, however, nullify the cognizance taken or trial based thereon. In para 9 of the judgment of the Supreme Court in

Rishbud's case it was observed that defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. At the end of the said paragraph it is observed by the Supreme Court as follows:◆

We are, therefore, clearly, also of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, "the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

8. The other two decisions relied on by Mr. Pradhan in Mubarak Ali's case only follow the ratio of the decision of the Supreme Court in Rishbud's case. It is not disputed that the question of illegality of investigation was not raised before the Trial Court and was raised for the first time at the hearing of this appeal. Secondly, no miscarriage of justice has been shown to have been caused to the appellant. The submission of Mr. Pradhan that the fact that the F.I.R. was lodged by higher officer i.e. by P.W. 8 Dy. S.P. and the investigation was made by Police Inspector P.W. 9 Honrao has caused miscarriage of justice is without substance. According to Mr. Pradhan when the F.I.R. was lodged by higher officer, the officer in lower rank like the Police Inspector would not file report against the complaint lodged by higher officer like P.W. 8. In my opinion, this fact by itself would not amount to miscarriage of justice as pointed out by the Supreme Court in para 6 of the judgment in Rishbud's case where it was observed as follows:

This is not to say that every one of the steps in the investigation has to be done by him in person or that he cannot take the assistance of deputies to the extent permitted by the Code to an officer in charge of a police station conducting an investigation or that he is bound to go through each of these steps in every case.

In this case the investigation was commenced by Dy. S.P. Mokashi P.W. 8 after obtaining permission from higher officer, D.C.P. Even the F.I.R. was lodged by him after obtaining permission from the D.C.P. After the formal FIR was lodged some witnesses were examined by Police Inspector P.W. 9 Honrao and ultimately charge-sheet came to be filed by P.W. 8 Dy. S.P. Mokashi who is empowered u/s 5-A of the Prevention of Corruption Act. Moreover in the absence of prejudice or miscarriage of justice the trial cannot be said to have been vitiated.

9. In this connection Mr. Galeria, learned A.P.P. has rightly relied on the decision of the Single Judge of this Court in the case of [Manikrao Abaji Thonge Vs. The State of Maharashtra](#), in which, relying on the decision of the Supreme Court in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), it was held that the challenge to the trial or prosecution on the ground that the officer was below the prescribed rank cannot be raised for the first time in appeal. The Supreme Court in Bhajanlal's case has reiterated the view that the illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for

trial when the cognizance is proceeded to termination nor the validity of the proceedings with the preceding investigation vitiate the result unless miscarriage of justice has been caused thereby. Mr. Galeria also relied on the Bombay Police Manual, Part III Article 292, Clause (13)(c) of which empowers Police Officers in charge of the police stations and other Police Officers not below the rank of Head Constables to seize and detain vehicles used without certificate of registration or permit. Such officer can take proper steps for the safe custody of the vehicle. This shows that the appellant as a Head Constable was not without power to deal with the cases under the provisions of the Motor Vehicles Act. Mr. Galeria also brought to my notice the Order issued by the Home Department, State of Maharashtra on 19th April, 1989 whereby all the Inspectors of Police in the Anti Corruption Bureau, Maharashtra State were authorised to investigate any offence punishable under the Prevention of Corruption Act and to make arrest therefore without a warrant. Since the investigation in this matter was carried on by P.I. Honrao P.W. 9 in the year 1988 the said Order issued by the State Government under proviso to Sections 17 of the Prevention of Corruption Act may not be applicable. In any way, for the reasons given hereinabove, the trial cannot be said to have been vitiated.

10. The next contention of Mr. Pradhan is that the charge is vague and, therefore, the trial is vitiated. He referred me to the charge framed by the Trial Court u/s 217 of Indian Penal Code and argued that what direction of law was disobeyed by the appellant is not specified in the charge. The said contention of Mr. Pradhan is without substance inasmuch as the charge does specify that the appellant did not lodge the prosecutions under the provisions of the Motor Vehicles Act against the offenders and thus saved them from legal punishment.

11. The third contention of Mr. Pradhan is that there is difference in the date with regard to the offence. He points out that in the checking reports the date given is 26.5.1987 instead of 25.6.1987. The police station in respect of which offence u/s 217 of Indian Penal Code is registered shows that the date for commission of the offence is 25th June, 1987 which is the correct date. The said date cannot be doubted because Yadis in respect of the vehicles do show the correct date of offence i.e. 25.6.1987. It is only the checking reports (Exh. 14 and Exh. 18) which, through oversight, give the date as 26.5.1987. P.W. 1 in his evidence has deposed that 25th June, 1987 was the correct date and through oversight 26.5.1987 was mentioned on checking reports. The said mistake, in my view, is possible through oversight as instead 25.6.1987 the date mentioned was 26.5.1987. The confusion in the two dates quite likely. So far as the appellant is concerned, the charge does mention the correct date of offence and the discrepancy in the date in checking reports has been explained by P.W. 1.

12. The next argument of Mr. Pradhan is that the prosecution has not shown what was the duty of the appellant. In this respect prosecution has led evidence of P.W. 8 Dy. S.P. Mokashi who enquired into the matter at earlier stage and then filed F.I.R.

He has deposed that in the enquiry it transpired that all case papers in respect of six cases of offences under the Motor Vehicles Act were handled by the appellant. This is corroborated by the signatures of the appellant on the counter foils of the checking reports which were produced by P.W. 1. It is not the appellant's case that it was not his duty to lodge prosecution. The said evidence is further supported by the deposition of P.W. 2 Police Constable, Traffic Branch who deposed that all the case papers and the checking reports along with the six vehicles were sent to Jath Police Station where the appellant was PSO and he was present there. He further says that when the case papers are received by PSO they are entered in Inward Register. The appellant does not appear to have made entries in this Register and hushed up the cases after receiving the payments. Appellant has not stated to whom the case papers were handed over by him. In the Duty Book Register dated 24th June, 1987 produced at Exhibit 49A the appellant, having Buckle No. 922, was shown as in charge of the police station for 25th June, 1987 and, therefore, naturally he alone could have received the case papers. P.W. 2 Police Constable Kadam deposed that the appellant was present in the police station. His simple denial for having received the papers would not make the prosecution witnesses unreliable. Merely because the duty book register does not show as to who was in charge of prosecution would not absolve the appellant from explaining as to where the case papers went pertaining to the offences committed under the Motor Vehicles Act received and acknowledged by him, in respect of five cases. P.W. 3 Narayan Sale who was the driver of jeep No. MWE 2473 has deposed that the appellant had demanded Rs. 100/- for releasing his vehicle but eventually accepted Rs. 40/- and released the vehicle and no case was filed against him or the owner of the vehicle. Similarly there is evidence of P.W. 4 Shinde, owner of Tempo No. MWE-2245 who has deposed that the appellant had demanded Rs. 300/- which was paid by him and thereafter the appellant returned the papers and vehicle along with the keys to the witness. He further deposed that the appellant told him that he would not prosecute him and accordingly he was never prosecuted. On the face of evidence of these witnesses it is difficult to accept the denial of the appellant that no cases were given to him. He has not denied that it was not his duty to receive the case papers or that he was not PSO at the police station on the date of incident i.e. 25th June, 1987. It is true that one witness i.e. P.W. 6 Vasant Patil, who was the owner of another vehicle had turned hostile whose jeep (No. MXW 3266) was also allegedly released by the appellant against payment of Rs. 50/-. No case was also filed against him but his evidence is not relied on since he had turned hostile as he resiled from his earlier statement that he had made payment of Rs. 50/- and deposed before the Court that it was Ramesh, son of the vehicle owner who had paid a sum of Rs. 50/-.

13. Mr. Pradhan also tried to rely on the discrepancy in the number of jeep No. 2473 which was wrongly mentioned as 7324 in the examination-in-chief by P.W. 3, the driver of the vehicle. The said discrepancy which was later corrected would not help the appellant in any way.

14. Mr. Pradhan also relied on an old decision of the Division Bench of this Court in the case of *Imperator v. Baban Khan* 1877 ILR 142. Where one of the convictions u/s 217 was set aside on the ground that the particulars of what the direction was and what the conduct was which contravened the direction of law was not mentioned. That is not the case here as the charge does give particulars of the offence said to have been committed by the appellant, as stated earlier.

15. Mr. Pradhan then relying on the decision of the Supreme Court in the case of [Kewal Krishan Vs. State of Punjab](#), contended that the cases of corruption u/s 161 were not filed on the complaint of the persons who paid the amount and no part of money was recovered and though the offence was alleged to have been committed in 1987 the investigation was made in the year 1988. In this case the Court has not relied merely on the deposition of the vehicle owner or driver who had not filed complaint but their deposition is supported by case papers, checking reports and Yadis on which the signatures of the appellant were obtained for having received the papers. This is further corroborated by the fact that no case was lodged against the vehicle owners or the drivers though the papers were acknowledged to have been received by the appellant. It is true that the complaint was not made by the persons who gave the bribe but as per the evidence of Dy. S.P. Mokashi the complaint was received by him from one Kamble on 17th August, 1987 and he thereafter moved in the matter, made enquiries, recorded the statements and after satisfying himself, sent the report to the higher officer and after obtaining sanction from higher officer the F.I.R. was lodged and then further investigation proceeded. If the case had proceeded on the basis of any complaint of the person who gave bribe, any unexplained delay on the part of the prosecution to file complaint might have weakened the prosecution case, which is not the case here.

16. In view of the oral and documentary evidence led by the prosecution, I cannot find fault in the order of conviction recorded by the Trial Court which deserves to be confirmed.

17. Mr. Pradhan lastly pleaded that the appellant having already retired from service and because of the passage of time from the date of offence in the year 1987, the appellant should not be made to suffer imprisonment and instead he should be awarded only sentence of fine. On the other hand, Mr. Galeria, the learned A.P.P. contended that in corruption cases the accused should not be let off lightly and he must be made to suffer substantive sentence as well.

18. Both the offences u/s 161 of Indian Penal Code Section 217 of Indian Penal Code give option of sentencing either by imprisonment or fine or both. Considering the said position in law and the fact that the offence was committed in the year 1987, i.e. about 12 and 1/2 years ago and that the appellant had taken only small amount for hushing up the cases coupled with the fact that the appellant has already retired from service, I am of the view that the sentence of fine would meet the ends of justice. The appellant is no longer in service and, therefore, there is no question of

his repeating the offence.

19. In the result the appeal is partly allowed. The convictions of the appellant for offences under Sections 161 and 217 of Indian Penal Code in Special Case No. 3 of 1989 are confirmed. However, the substantive sentence of RI for one year on each count is set aside and instead the fine amount on each count is increased from Rs. 500/- to Rs. 2000/- retaining the default sentence. On the application of Ms. Khot, the appellant is given a period of six weeks to. pay the amount of fine in default of which the appellant can be made to suffer default sentence.