Indu Bhusan Chatterjee vs The State Of West Bengal on 26 November, 1957

Equivalent citations: 1958 AIR 148, 1958 SCR 1001, AIR 1958 SUPREME COURT 148, 1958 SCR 999, 1958 ALLCRIR 356, 1958 SCJ 581, 1958 MADLJ(CRI) 448

Author: Syed Jaffer Imam

Bench: Syed Jaffer Imam, Bhuvneshwar P. Sinha, J.L. Kapur

PETITIONER:
INDU BHUSAN CHATTERJEE

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT:
26/11/1957

BENCH:
IMAM, SYED JAFFER
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IMAM, SYED JAFFER
SINHA, BHUVNESHWAR P.
KAPUR, J.L.

CITATION:
1958 AIR 148 1958 SCR 1001

ACT:
Public servant-Prosecution-Sanction-Essentials of a valid sanction-Prevention of Corruption Act, 1947 (2 Of 1947), SS.5(2), 6 -Indian Penal Code (Act 45 of 1860), S. 161.

HEADNOTE:
The appellant, a public servant, was convicted under S. 5(2) of the Prevention of Corruption Act, 1947, and under s. 161 of the Indian Penal Code on a charge of accepting a sum of Rs. 100 as illegal gratification. It was contended for the appellant that the conviction was bad on the ground that the sanction for his prosecution was not valid because the officer competent to sanction the prosecution (1) had not applied his mind to the facts and circumstances of the case

but merely perused the draft prepared by the Police and (2) did not investigate the truth of the offence' The evidence, however, showed that he went through all the papers placed before him which gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction :
Held, that the essentials of a valid sanction were present in the case and that the conviction was valid.
Gokulchand Dwarkadas Morarka v. The King, (1948) L.R. 75 I.A. 30, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 18 of 1955.

Appeal from the judgment and order dated December 1, 1954, of the Calcutta High Court in Criminal Appeal No. 322 of 1953, arising out of the judgment and order dated November 20, 1953, of the West Bengal First Special Court at Alipore in Case No. 3 of 1953.

N. C. Chatterjee and D. N. Mukherjee, for the appellant. B. Sen and P. K. Ghosh (for P. K. Bose), for the respondent.

1957. November 26. The following Judgment of the Court was delivered by IMAM J.-The High Court of Calcutta certified under Art. 134(1)(c) of the Constitution that the case before us was a fit one for appeal to this Court. The ground for the granting of the certificate, as stated by the High Court, will be considered in due course. The appellant was convicted under s. 5(2) of the Prevention of Corruption Act, 1947 (II of 1947), hereinafter referred to as the Act, and under s. 161 of the Indian Penal Code by a Special Judge who sentenced him under s. 161, to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500 in default to suffer further rigorous imprisonment for one month. No separate sentence was passed under s. 5(2) of the Act. He unsuccessfully appealed to the High Court against his conviction and sentence. The charge framed against the appellant under s. 161 of the Indian Penal Code, in substance, stated that on or about May 12, 1952,he had accepted Rs. 100 as illegal gratification from V. S. Doraiswamy as a motive or reward for doing an official act and showing in the exercise of his official functions favour to Doraiswamy in seeing that a speedy and favourable settlement of the claim cases preferred by him against the Bengal Nagpur Railway, subsequently the Eastern Railway. The charge under s. 5(2) of the Act which related to the same transaction stated that the appellant had accepted the aforesaid sum of Rs. 100 by corrupt or illegal means or by otherwise abusing his position as a public servant.

It is unnecessary to set out in any great detail the story of the prosecution as to how Doraiswamy and the appellant came into contact and how the process of giving bribe to the appellant began. They met in 1950. Rs. 10 was paid to the appellant in October, 1951, and Rs. 15 in January, 1952, as the result of the appellant asking Doraiswamy for some gratification for speedy and favourable disposal of his claim cases. The appellant was at that time Assistant Supervisor of Claim Cases of the Bengal Nagpur Railway of the Vizianagram Section. On some secret information, the Deputy

Superintendent of Police, Special Police Establishment at Puri directed Inspector G. N. Brahma to contact Doraiswamy in connection with a report of alleged dishonesty by railway officials. Brahma met Doraiswamy and asked him to meet him again at Calcutta on May 10, 1952, after the latter had filed a complaint along with some letters said to have been written by the appellant. Permission was obtained from the Chief Presidency Magistrate, Calcutta to investigate the case. Thereafter Doraiswamy met the appellant in Calcutta and it was settled that the former would pay the latter Rs. 100 on May 12, 1952, at 6 p. m. at the India Coffee House. Doraiswamy informed the police of the arrangement. Marked tenrupee currency notes were given to Doraiswamy. The appellant and Doraiswamy met at the India Coffee House as arranged. There was a talk between them about expediting the claim cases which were being dealt with by the appellant and a list of them was given to him. This list and the bundle of marked currency notes which Doraiswamy gave him were put in the left upper pocket of his shirt by the appellant. The Inspectors H. K. Mukherjee and S. B. Mitra along with G. N. Gosh, an Assistant Director of Postal Ser- vices and Brahma came up to the appellant. He was accused by the police of having received 10 ten-rupee currency notes as bribe from Doraiswamy and was asked to produce them. After some hesitation the appellant produced the currency notes as well as the list given to him by Doraiswamy. The number of the currency notes were checked and found to tally with the previously noted numbers of the currency notes given to Doraiswamy for handing them over to the appellant. The case of the prosecution was found to have been proved by both the courts below and the appellant was convicted and sentenced as stated above.

It may be stated at the outset that the concurrent findings of fact arrived at by the courts below were not questioned before us. The only question canvassed before us was whether there had been a valid sanction given under s. 6 of the Act without which no court could take cognizance of the offences alleged to have been committed by the appellant. In order to appreciate the submission made by Mr. Chatterjee in this connection, a few facts have to be stated and some reference to the evidence of Mr. Bokil, P.W. 5, Chief Commercial Superintendent of the Eastern Railway at Calcutta will be necessary. The appellant as Assistant Supervisor of Claim Cases of the then Bengal Nagpur Railway (later the Eastern Railway) had the power to deal finally with claims up to Rs. 75 and for claims in excess of that sum to make a recommendation to his superior officer, the Assistant Commercial Superintendent. Doraiswamy was working on behalf of several persons who had made claims against the Railway. These cases were numerous. All these cases had to be dealt with by the appellant either by passing final orders himself, if the value in each case was Rs. 75 or less, or by recommending to his superior officer the cases where the value of the claim, in each case, was more than Rs. 75. The appellant, therefore, being incharge of all the claim cases played an important part in their disposal either by passing final orders himself or by making recommendations. When the appellant was paid Rs. 100 at the India Coffee House on May 12, 1952, he was found in possession of the marked currency notes and the list of cases, in which claims had been made, which had been given to him by Doraiswamy. Sanction for the prosecution of the appellant was sought from the Chief Commercial Superintendent Mr. Bokil, P.W. 5. There is no dispute that Mr. Bokil was competent to grant the sanction. He had stated in his evidence that before according the sanction he went through all the relevant papers and was satisfied that in the interests of justice the appellant should be prosecuted. He, accordingly, gave the sanction in writing and this document was marked as Ex. 6. Exhibit 6 clearly states that the appellant had demanded on May 12, 1952, as bribe the sum

of Rs. 100 from Doraiswamy and had accepted the sum as a motive or reward for speedy and favourable settlement of the claim cases, that Mr. Bokil had applied his mind to the facts and the circumstances of the case and was satisfied that in the interests of justice, the appellant should be put on his trial in a Court of competent jurisdiction for offences under s. 161 of the Indian Penal Code and s. 5(2) of the Act alleged to have been committed by him. He, accordingly, under the provisions of s. 6 of the Act, accorded his sanction that the appellant be prosecuted in a competent court of law for the offence of having accepted illegal gratification as a motive or reward for showing favour to Doraiswamy in respect of the claim cases filed against the Vizianagram Section of the Railway. Exhibit 6 on the face of it and the evidence of Mr. Bokil in examination-in-chief clearly establish that a valid sanction had been accorded by Mr. Bokil. It was, however, urged before the Special Judge, as it was urged in the High Court, that certain statements made by Mr. Bokil in cross-examination clearly showed that he had not applied his mind to the facts and circumstances of the case and the sanction accorded by him was not a valid one. The Special Judge rejected this contention and was satisfied that Ex. 6 on the face of it disclosed a valid sanction for the prosecution of the appellant. The learned Judges of the High Court who heard the appeal were also satisfied that Mr. Bokil had, in fact, applied his mind to the facts and circumstances of the case. Regarding the statements made by Mr. Bokil in cross- examination they were of the opinion that they did not show that he did not apply his mind to the facts of the case. These statements merely showed that he did not investigate the truth of the case presented against the appellant. An application was filed in the High Court under Art. 134 of the Constitution for the granting of a certificate that the case was a fit one for appeal to this Court. The order granting the certificate shows that the learned Judges who heard the application were of the opinion that the sanction accorded in this case was not a valid sanction. The learned Judges were of the -opinion that the question whether or not there was a proper sanction in the case was a question serious enough to justify the granting of a certificate. It is necessary therefore to decide whether the sanction accorded in this case was a valid sanction. The substance of the sanction has already been stated but in order that there may be no misunderstanding we quote the very words of the sanction itself:

> " Whereas a complaint was made against Shri Indu Bhusan Chatterjee, Assistant Supervisor, Claims, of the B. N. Railway (now Eastern Railway) Garden Reach, Calcutta, who looked after the claims cases against the Railway of the Vizianagram Section, that the said Indu Bhusan Chatterjee had demanded and on 12th May, 1952, accepted a bribe of Rs. 100 (Rupees one hundred only) from Shri V. S. Doraiswamy of the Commercial Claims Bureau, Vizianagram as a motive or reward for speedy and favourable settlement of the claims cases of the Commercial Claims Bureau and thereby having committed an offence punishable under Section 161 1. P. C. and also the offence of criminal misconduct by the illegal and corrupt use of his official position as a public servant to obtain a pecuniary advantage for himself punishable under Section 5(2) read with Section 5(1), clause (d) of the Prevention of Corruption Act II of 1947, 1, R. K. Bokil, Chief Commercial Superintendent, Eastern Railway, Calcutta, having applied my mind to the facts and circumstances of the case, am satisfied, and am of the opinion that in the interests of justice, Shri Indu Bhusan Chatterjee, Assistant Supervisor, Claims, Eastern Railway, Garden Reach, Calcutta, be put on his trial in a Court of competent jurisdiction for the offences alleged against

> him. That as Shri Indu Bhusan Chatterjee, Assistant Supervisor, Claims, Eastern Railway, Garden Reach, Calcutta, is removable from his office by me; I therefore by virtue of the powers vested in me by Section 6(c) of the Prevention of Corruption Act II of 1947, do hereby accord sanction that Shri Indu Bhusan Chatterjee be prosecuted in a competent Court of law for the offence of having accepted an illegal gratification as a motive or reward for showing favour to Shri V.S. Doraiswamy, in his official functions viz., the settlement of the cases of the Vizianagram Section of Eastern Railway, punishable under Section 161 I.P.C. and for the offence of criminal misconduct for the corrupt and illegal use of his official position to obtain a pecuniary advantage for himself punishable under Section 5(2) of the Prevention of Corruption Act (Act II of 1947)."

In our opinion, this sanction clearly states all the facts which concern the prosecution case alleged against the the appellant with reference to his acceptance of Rs. 100 from Doraiswamy on May 12,1952, in circumstances which, if established, would constitute offences under s. 161, Indian Penal Code and s. 5(2) of the Act. The sanction also clearly states that Mr. Bokil had applied his mind and was of the opinion that in the interests of justice the appellant should be prosecuted. The charge framed against the appellant at his trial was with reference to this very incident and none other. What more facts were required to be stated in the sanction itself we are unable to understand. Mr. Bokil in his examination-in-chief stated "

> On the prayer of the police, I accorded sanction to the prosecution of one Shri I. B. Chatterjee who was the Assistant Supervisor of Claims. Before according sanction I went through all relevant papers and was satisfied that in the interest of justice, Sri I.B. Chatterjee should be prosecuted. This is the sanction marked Ex. 6 ". In cross-examination, however, he made the following statement: "

This sanction Ex. 6 was prepared by the police and it was put before me by the personnel branch of my office. I did not call for any record in connection with this matter from my office. I did not call for the connected claim cases nor did I enquire about the position of those claim cases." The learned Judges in granting the certificate, apparently, were impressed by the statement of Mr. Bokil that Ex. 6 was prepared by the police and put before him by the personnel branch of his office, because the learned Chief Justice observed, "I can hardly imagine the duty of granting the proper sanction being properly discharged by merely putting one's signature on a ready-made sanction presented by the police." It seems to us that Mr. Bokil's statement does not prove that he merely put his signature on a readymade sanction presented by the police. It is true that he did not himself dictate or draft the sanction, but Mr. Bokil has stated in the clearest terms, in his examination-in-chief, that before be accorded sanction he went through all the relevant papers. There is no reason to distrust this statement of Mr. Bokil, nor has the High Court, while granting the certificate of fitness, done so. He was an officer of high rank in the Railway and must have been fully aware that the responsibility of according the sanction against an official of the Railway subordinate to him lay upon him. It is inconceivable that an officer of the rank of Mr. Bokil would blindly sign a ready-made sanc- tion prepared by the police. Apparently, the sanction already drafted contained all the material facts upon which the prosecution was to be launched, if at all, concerning the acceptance of the bribe by

the appellant on May 12, 1952. When Ex. 6 was placed before Mr. Bokil other relevant papers were also placed before him. It is significant that Mr. Bokil was not crossexamined as to what the other relevant papers were and in the absence of any question being put to Mr. Bokil we must accept his statement that the papers placed before him were relevant to the only question before him whether he should or should not accord his sanction to the prosecution of the appellant. Mr. Bokil said, and we see no reason to distrust his statement, that before he accorded his sanction lie went through all these papers and after being satisfied that sanction should be given he accorded his sanction. It is true that he did not call for any record in connection with the matter from his office nor did he call for the connected claim cases or find out as to how they stood. It was not for Mr. Bokil to judge the truth of the allegations made against the appellant by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction. Reliance was placed on the case of Gokulchand Dwarkadas Morarka v. The King(1) and other cases, to which it is unnecessary to refer, in support of the submission on behalf of the appellant that the sanction accorded was not a valid sanction. A careful reading, (1) (1948) L.R. 75 I.A. 30.

however, of Morarka's case (1) satisfies us that the sanction accorded in this case in no way conflicts with the observations of their Lordships of the Judicial Committee. On the contrary, in our opinion, it is in keeping with them. None of the other cases cited by the learned Counsel for the appellant assist us in the matter. When the sanction itself and the evidence of Mr. Bokil are carefully scrutinized and read together there can be little doubt that the sanction accorded was a valid sanction. The only point which had been argued before us and which was the expressed reason for the granting of the certificate having failed, the appeal must be dismissed and the decision of the High Court in upholding the conviction and sentence of the appellant must be upheld.

Appeal dismissed.