

M.W. Mohiuddin vs State Of Maharashtra on 21 March, 1995

Equivalent citations: AIRONLINE 1995 SC 934

Author: M.M. Punchhi

Bench: M.M. Punchhi

CASE NO. :

Appeal (crl.) 224 of 1993

PETITIONER:

M.W. MOHIUDDIN

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT: 21/03/1995

BENCH:

M.M. PUNCHHI & K. JAYACHANDRA REDDY

JUDGMENT:

JUDGMENT 1995 (1) SCR 864 The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J. The appellant was tried under Sections 13(d)(i)

(ii) read with 13(2) and 7 of the Prevention of Corruption Act ("Act" for short) and was convicted by the trial court and sentenced to undergo six months' R.I and to pay a fine of Rs. 5,000 in default of payment of which to further undergo three months' R.I. The appeal filed by him was dismissed by the High Court. Hence the present appeal.

The appellant, at the relevant time, was working as a Special Auditor under the control of the Chief Auditor, Local fund Accounts, Bombay. The audit of the accounts of the Gram Panchayat, Chanaji Takai in Wardha District was to be done from 25.11.1981 as per the memo of District Sub-Auditor received by Sarpanch Ramrao Hole, P.W. 1. The accused went to the said Village on 11.11.1981 and started auditing the accounts of the Gram Panchayat. He disclosed to P.W. 1 that there were some audit objections and P.W. 1 would be required to remit an amount of Rs. 1,600 and in case of non-deposit of the money, a criminal prosecution would be started. The appellant further told P.W.1 that if he pays Rs. 500 the audit objections would be removed. Later on, the amount of demand was reduced to Rs. 400 and P.W. 1 agreed to arrange for the same and the appellant asked him to bring the amount to Annapurna Hotel, Wardha on 13.11.1981 between 1 and 2 P.M. P.W. 1, however, approached the office of the Anti-Corruption Bureau and lodged a complaint, P.W. 7, the Inspector of Vigilance arranged a trap. P.Ws. 2 and 6, officials belonging to the Forests Department were required to act as Panchas. The necessary proceedings were drawn up and the currency notes of Rs. 400 were subjected to Phenolphthalein powder and directions were given to P.W. 1 and the panchas

that if the amount was accepted as per demand by the accused, the necessary signal should be given by P.W.I by rubbing his handkerchief on his face. As per the prior arrangement P.W.I and P.W.6 went to Annapurna Hotel at about 1.30 P.M. The appellant was not present there at that time but they came to know from owner of Taj Hotel situated just in front of Annapurna Hotel that the appellant had gone to his office and would be returning at about 3 or 4 P.M. At about 4.30 or 5 P.M. the appellant came to Taj Hotel and all of them had tea and there was discussion about the preparation of audit note. The appellant asked P.W. 1 as to whether he had brought the money and when P.W.I answered in the affirmative, the appellant asked P.W.I to accompany him to Room No. 8 in Annapurna Hotel in which the appellant was staying. P.W. 1 followed the appellant. When they reached the first floor of the Hotel, the appellant took out one handkerchief from his right pocket and asked P.W.I to wrap the amount in the handkerchief and then it should be given to him. The appellant also told P.Ws. 1 and 6 that they should stand there and meanwhile he would bring his bag from his room. The appellant went in and came out with his bag and asked P.W.I to keep the handkerchief in which the money was wrapped on that bag which was kept on the cot in the corridor in front of Room No, 10 of the Hotel. P.W. 1 accordingly took out the money from his pocket, wrapped in the handkerchief given by the accused and kept it alongwith the money on the bag and thereafter he gave the necessary signal. On receiving the signal, P.W. 7 and other members of the trap party came there and asked the appellant not to move and coming to know from P.W 1 that the money was wrapped in the hand-kerchief and was kept on the bag the same was seized by P.W. 7 and a demonstration of Phenolphthalein powder test was conducting which proved positive. The numbers of the currency notes were verified with the numbers noted in the earlier panchnama and after completion of the investigation the charge-sheet was laid.

The prosecution mainly relied on the evidence of P.W. 1, the two Panchas P.Ws, 2 and 6 and P.W. 7, the investigating officer. P.W. 8 is the officer who accorded the sanction. When examined under Section 313 Cr.P.C. the appellant denied the offence and pleaded not guilty. His defence was of total denial and he stated that he was falsely implicated. The trial court accepted the prosecution case and convicted him and the same has been confirmed by the High Court.

Learned senior counsel appearing for the appellant firstly contended that the evidence of the prosecution is not trustworthy and reliable since there are a number of discrepancies, omission and contradictions. Even otherwise it cannot be said that the appellant in view of the facts stated had "obtained" any pecuniary advantage since there is no proof that he actually accepted the illegal gratification. Lastly the learned counsel also contended that there is no valid sanction, Learned counsel has taken us to the evidence of the material witnesses and pointed out certain discrepancies or omissions which have been considered by both the courts below and it has been rightly held that they are very minor and do not affect the veracity of the witnesses in any manner. Therefore we need not again traverse the same.

Learned counsel, however, strongly contended that the requirements of Sections 13(d)(i) and 13(d)(ii) are to the effect that the accused must by corrupt or illegal means or by abusing his position as a public servant should obtain for himself or for any other person any valuable thing or any pecuniary advantage and that in the instant case since there is no actual acceptance of the bribe money the said requirements have not been satisfied and therefore the conviction can not lie. In

support of his submission the learned counsel laid considerable emphasis on the fact that the currency notes were found wrapped in the handkerchief lying on the bag and the said amount has not been actually received by the accused and there was every possibility of his changing the mind and therefore there is a missing link and consequently it cannot be said that he "obtained" the pecuniary advantage. To appreciate this submission we shall refer to the relevant portions of the evidence of P.Ws. 1 and 6 on this aspect, It is their evidence that both of them met the accused, had tea and then that accused asked P.W. 1 as to whether he had brought the money and when he answered in the affirmative the accused asked them to accompany to his room in Annapurna Hotel. When they reached the first floor the accused took out the handkerchief from his right pocket and asked P.W. 1 to wrap the money in that handkerchief and went in and brought his bag from his room and thereafter again asked P.W. 1 to keep the handkerchief in which the money was wrapped on that bag which was kept on the cot in front of Room No. 10. P.W. 1 accordingly wrapped the money on the handkerchief and kept it on that bag and gave the signal. This is the consistent version given by both P.Ws. 1 and 6. From this it is clear that P.W. 1 had parted with the tainted money and the same came under the hold and control and hence into the possession of the accused and immediately a signal was given and the trap party entered the scene and completed the trap proceedings. We are unable to see as to how it can be said that the accused had not come into possession of the money. When once this requirement namely that he came into possession of the money is satisfied then the only inference is that he accepted the same and thus obtained the pecuniary advantage.

In Stroud's Judicial Dictionary 5th Edn. Vol. 3, page 1729, the meaning of the word "obtain" is as under:

"Obtains (Larceny Act, 1916 (C.50) Section 32(1). meant obtains the property and not merely the possession (R.V, Lurie (1951))."

In Webster's third new international dictionary page 1559, the meaning of the word "obtain" reads thus:

"Obtain:-to gain or attain possession or disposal of USU, by some planned action or method, Hold, Keep, possess, occupy."

In Shorter Oxford English Dictionary, 3rd Edn. Vol. II, Page 1431, the meaning of the word "obtain" is given as under:

'Obtain:- To procure or gain as the result of purpose and effort; hence, generally, to acquire gel,"

Relying on the meanings of the word "obtain" given in these dictionaries, the learned counsel further contended that the word "obtain" has a definite connotation and unless it is proved that the accused gained or attained the possession of the money and held the same, the requirement is not satisfied. According to the learned counsel even if the prosecution is to be believed it may amount to a preparation or at the most to an attempt on the part of the accused and here is no completed offence.

We see no force in this submission whatsoever. In *Ram Krishan and another v. State of Delhi*, AIR (1956) SC 476, a Bench of three Judges of this Court while examining the requirements of Section 5(l)(d) of the Prevention of Corruption Act, 1947 observe thus:

"We have primarily to look at the language employed and give effect to it. One class of cases might arise where corrupt or illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word "obtains" on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver."

Therefore whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances in each case. In the instant case, it is proved that the accused made a demand and also got the affirmation from P.W.1 that he had brought the demanded money before entering the Hotel and at his instance, P.W. 1 wrapped the money in the handkerchief which was given by the accused and placed the same on the bag which was brought by the accused and as asked by him. So all these steps have to be taken into consideration in arriving at the conclusion that the accused had in fact "obtained" the pecuniary advantage namely that he received the illegal gratification. We are satisfied that there is no scope whatsoever to doubt this aspect of the case. Therefore the prosecution has fully established that the accused accepted the bribe money and thus obtained the pecuniary advantage thereby committing the offence completely. The evidence of P.W.1 regarding the demand of the bribe as well as the acceptance of the same is amply corroborated by the evidence of P.W. 6 as well as other circumstances spoken to by P.W.s. 2 and 7.

It is lastly contended that there is no valid sanction inasmuch as the appellant was appointed as Special Auditor by the Commissioner of Nagpur Division and hence P.W. 8 had no authority to accord sanction. We see no force in this submission. P.W. 8 deposed that he was working as Chief Auditor, Local Fund Accounts, Bombay and at that time the appellant-accused was working as Gram Panchayat Special Auditor at Wardha and that he was the appointing as well as the authority who could remove the appellant from service. He further deposed that after going through the records he was satisfied that there was sufficient evidence *prima facie* to accord sanction and accordingly he gave the sanction. In the cross examination P.W. 8 admitted that he himself did not appoint the accused but he added that the Chief Auditor, Local Fund Accounts, Bombay which post he was holding was the competent authority to appoint Gram Panchayat Special Auditors. In any event the fact remains that at the relevant time the accused was working as Gram Panchayat Special Auditor and P.W. 8 was the competent authority to remove him from service. Learned counsel, however, contended that the appellant was appointed by the Commissioner, Nagpur and P.W. 8 was not holding the equivalent post and therefore he was not competent to remove him. But it has to be noted that the accused was absorbed in the Local Fund Accounts Department and was under the control of P.W. 8, the Chief Auditor and as per the relevant provisions of the Act the sanctioning authority is the authority who is competent to remove him from the service and there is no doubt whatsoever that P.W. 8 is such competent authority to remove the accused from service. It must also be noted that assuming that the accused was initially appointed by the Commissioner he was no

longer competent to remove the accused from service as he was not under the control of the said Commissioner nor he was in his department. P.W. 8 therefore is in no way subordinate to the said Commissioner. On the other hand he was the competent authority to remove the accused from service at the relevant time. Therefore the sanction accorded by him is a valid one.

We may incidentally refer that the learned counsel also sought to contend that the trial of the accused initially commenced under Section 161 I.P.C. read with Section 5(2) of the Prevention of Corruption Act, 1947 but the trial court ultimately convicted the accused under the provisions of the new Act of 1988, Therefore- the trial is vitiated. We see no merits in this submission. Initially no doubt on 9.12.83 the charges were framed Under Section 5(i)(d) read with 5(2) of the Prevention of Corruption Act, 1947 but when the trial actually commenced in the year 1990 the then Presiding Judge framed charges under Section 13(d) (i), (ii) read with 13(2) and Section 7 of the Prevention of Corruption Act, 1988 and the trial proceeded. We do not find any objection having been taken in the trial court nor such contention was put forward in the appellate court. Even otherwise we see no prejudice has been caused to the accused since the graveman of the charges under the relevant provisions of both the Acts in respect of these offences are the same in substance and at any rate the appellant cannot raise such a contention for the first time in this Court when in fact no prejudice has been caused to him.

Now coming to the question of sentence, the offence took place in the year 1981. All these years the appellant has undergone the agony of criminal proceedings uptil now and he has also lost his job and has a large family to support. It is also stated that he has become sick and infirm. He has been in jail for some time. For all these special reasons, while confirming the conviction of the appellant, we reduce the sentence of imprisonment to the period already undergone. However, we confirm the sentence of fine with default clause. Accordingly, subject to the modification of sentence of imprisonment, the appeal is dismissed.