Rameshwar Prasad Upadhyaya vs The State Of Bihar on 20 September, 1971

Equivalent citations: AIR1971SC2474, 1971CRILJ1708, (1972)4SCC150, 1972(4)UJ57(SC), AIR 1971 SUPREME COURT 2474, 1972 4 SCC 150, 1972 (1) SCJ 198, 1972 MADLJ(CRI) 145

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Bench: I.D. Dua, J.M. Shelat, S.C. Roy

JUDGMENT

J.M. Shelat, J.

1. The appellant was, since 1945, serving as an assistant goods clerk at various railway stations on the Eastern Railway. He did so till January 1963 when he was suspended from service. The last two railway stations where he served were Buxar and Patna Junction between 1957 to 1963.

2. He was tried by the Special Judge, Patna under Section 5(i) read with Section 5(2) of the Prevention of Corruption Act, 2 of 1947, the charge being that while working as an assistant goods clerk at Buxar and Patna between April 1956 and March 1959 he was habitually accepting and obtained or agreeing to accept or demanding illegal gratification and also for misconduct in the discharge of his official duties as contemplated by Sub-section 3 of the section. His defence was that he was falsely involved in the charge by the traders who presented his strictness against transgression of the railway rule and by trade union rivals in league with the investigating officer. He a denied that he acquired or was in possession of properties or pecuniary resources disproportionate to his known sources of income.

3. The learned Trial Judge held that except for one instance when he demanded Rs. 15/-as illegal gratification the rest of the instances alleged against him had not been established. The appellant therefore, could not said to be habitually accepting or obtaining or demanding illegal gratification within the meaning of Clause (a) of Section 5(1). But he accepted the prosecution case of the appellant being in possession of properties and pecuniary resources d proportionate to the known sources of his income and on that finding held his guilty under Section 5(2) and sentenced him to two years' rigorous imprisonment On appeal against the said conviction, the High Court confirmed the sentence and dismissing the appeal held that although the case against the appellant then he was habitually demanding or accepting illegal gratification had not be proved, and only one instance of demanding bribe had been proved, it was enough for the purpose of Sub-section (2) of Section 5 that it had also been established that he was in possession of properties disproportionate to his known

sources income, and was therefore, guilty of misconduct in the discharge of his official duties as envisaged by Sub-section (3) of Section 5. Hence this appeal by special leave.

4. As regards the appellant's demand of Rs. 15/-as bribe from Chiran Lal Ladiya (P.W. 18), there was concurrent finding both of the Trial Judge ana of d the High Court. In the absence of any reason shown to us for interfering with that finding, we decline to reappraise the evidence in respect of that instance in accordance with the well-settled practice of this Court.

5. As regards the prosecution case of the appellant being in possession of properties and pecuniary resources disproportionate to his known sources of income, the evidence was that when he was appointed in 1945 in the service of the railways, he started with a monthly salary of Rs, 45/-By 1958 his salary had gradually reached Rs. 147/-exclusive of the usual deductions. As calculated by the Special Judge, the total amount of salary drawn by him from 194 to 1958 was not more than Rs. 16,172/-. This figures, as noted by the High Court, was not controverted by the appellant, and therefore, could safely b accepted.

6. As against such a modest salary, there were four savings bank accounts in the post offices at Arrah and Balia. One account was in the name of the appellant's minor son showing total deposits therein amounting to Rs. 8 176/: made between 1950 and 1953. The second account was in his own name wherein between 1950 and 1953 various amounts were deposited aggregating Rs. 3,056/-In the third account, which was in the name of his minor daughter, deposits made between 1953 and 1954 totalled Rs. 6,300/-. The fourth account was in the name of the appellant's wife That account was opened with an initial deposit of Rs. 13,005/-on May 5, 1955. On July 20, 1959, another sum of Rs. 2,237/ was deposited therein. There were, no doubt, several withdraws from these accounts during this period. But the fact was that between 1950 and 1955 the total amount of deposits made in these tour accounts came to Rs. 30,537/-.

7. The appellant's wife and children admittedly had no independent source of income. Throughout this period they were living with him. Their intenance and upkeep must have exhausted a major part, if not the entire, salary earned by the appellant. Despite that fact, the evidence showed that he had chased two trucks, one in April, 1956 for Rs. 27,810/-, and the other in January 1957 for Rs. 27,505/-. There is no gainsaying that the savings accounts and the acquisition of the two trucks meant that the appellant was in possession property which was dispropotionate in comparison with the salary he was earning during the period. Under Sub-section (3) of Section 5 the presumption of miss conduct has to be raised which the appellant had to rebut by satisfactorily counting how and wherefrom he had acquired those cash deposits and the o trucks, the total value of which came to a little more than Rs. 80,000/-aiust the total amount of salary of Rs. 16,000/-and odd drawn by him but out which very little could have been saved by him.

8. The appellant's defence was that he, his father Ramanand Upadhyaya and his step brother Radha Krishna Misra (D.W. 1) and produced me account books relating to the money lending business. D.W. 1 claimed his evidence that he was looking after the affairs of the family both during the life-time of the appellant's father and after his death in 1958, and was therefore, in a position to depose about the said business and the family nds. In the witness box however, he could not even

give the locations of the lands, nor could he give any exact idea of the income from those lands are from the money lending business. In fact at one stage of his evidence he admitted that during the lifetime of the appellant's father, the father himself asked to look after that business and he alone used to maintain accounts in respect thereof. In view of such vague and indefinite evidence, both the special Judge and the High Court were of the opinion that Misra was not a witness who could have managed the said lands or the said business as claimed by the defence, and therefore, was not in a position to give any idea as to the income arising from them with any degree of preciseness. The books of account relating to the money lending business showed only the accounts of persons to whom moneys were lent, but did not show the gains made from that business. Since neither the appellant nor D.W. 15 nor the books threw any light on the question as to the profits and gains from the business and the lands, the evidence came to no more than that the appellant's father used to carry on that business during his lifetime.

9. There was, however, the evidence of P.W. 19, the Lekhpal of Karanpur Chapra that Ramand Upadhyaya was possessed of about 200bighas of lands in various villages, out of which 41 bighas were kasht and the rest were lands mortgaged to him. Presumably, the mortgage amounts, for which those lands had been mortgaged to him, came either from the capital or the income of the money lending business. But as aforesaid neither the appellant's statement, nor the evidence of D.W. 1, nor the books produced in the Trial Court threw any light on the extent of that business, the capital or the income arising therefrom, of the amount involved in those mortgages The evidence also did not point to the fact that any particular amount was diverted towards making the said deposits in the said savings accounts or towards the purchase of the said two trucks. As regards the houses in Balia, as against the allegation of D.W. 1 that there were four houses which fetched an annual income of Rs. 500/-to Rs. 600/-, the municipal records showed that there were only two houses which stood not in the name of the father but that of the step brother, and that the annual assessment in respect of them were respectively Rs. 45/-and Rs 70/-only. Obviously, the income from the houses could not be as high as alleged by D.W. 1. Prima facie the fact that the two houses stood in the name of Radha Krishna would indicate that they belonged to him unless it was shown by some evidence, such as title deeds, that they belonged to the joint family, and that it was only for the sake of convenience or expediency that they were entered in the municipal registers in the name Radha Krishna. Neither such evidence nor the evidence of Radha Krisna, was adduced to show that the houses belonged to the family or what the income was or that such income or part of it was deposited in the saving accounts or was utilised towards the purchase of the said two trucks professional income, whatever it was, earned by Radha Krishna would ordinarily be the income of Radha Krishna. Unless, therefore, it was shown this, it was allowed to be treated as family income by Radha Krishna or brought by him in the hotchpotch, it was difficult to treat that as a known source of income for explaining the deposits in the post office accounts or acquisition of the trucks.

10. Mr. Chari relied on a compromise decree, dated June 5, 19 with a view to show that the appellant had filed a suit for partition of houses against the stepbrother. Strangely, the fact of the appellant have filed that suit was not relied upon in the Trial Court by him. The appellant did not also rely on the suit or the compromise decree in the High Court, would, therefore, appear that the suit and the decree were collusive, the purpose, being to show that the houses were family properties. If that was it is difficult to understand why the fact of the suit having been filed by t appellant and the

compromise decree passed therein were not relied on him either in the Trial Court or in the High Court.

11. Of the two trucks, one was purchased in the name of the appellant's wife on April 16, 1956. The price of that truck was paid in the installments, all of which were paid up between March and April 1956. The savings bank account in her name showed that Rs. 12,000/-were withdraw therefrom by her on April 2, 1956, exactly on the day on which the second installment of Rs, 18,155/-as part of the price of the truck was paid M/s. Tewary Bechar & Co. from whom that truck was purchased. No doubt the case of D.W 1 was that this truck as well as the other truck were purchased by the appellant's father. But the truck was registered in the name of the appellant's wife. Only a few days after its purchase she transferred and got registered in the name of her son. The evidence was that all the payments : respect of the purchase of the two trucks were made by D.W. 1 and not the appellant's father, though, it was he who was alleged to have purchase them. In the ledger of M/s. Tewary Bechar & Co. the appellant's wife was shown as the purchaser, and curiously, her address shown there was care" D.W. 1, and not the appellant or his father It was somewhat extraordinary that although the appellant's father was said to have purchased the trucks, there was no trace of his name either in the books of M/s. Tewari Bechar & Co. or in the registration entries or anywhere else. The books maintained by the father in respect of the money lending business also do not appear to have shown that he had made these purchases, nor did they have any account there in effecting the purchases.

12. In the light of this evidence neither the Trial Court nor the High Court was prepared to accept the appellant's explanation or the evidence of D.W. 1 that the trucks were not purchased by him but his father from the in come of the business or the lands. No explanation was forthcoming as to why, if the father was the purchase, the trucks were purchased in the name o the appellant's wife, why they were registered in her name, how or under what family arrangement one was transferred to the appellant's son, why payments were made in the name of D.W. 1 and why the address of the appellant's wife was shown to be care of D.W. 1. The evidence would, on the contrary, show that the entire arrangement for purchasing the trucks was made by D.W. 1 and that was why payments were made through or by him and the address of the purchaser, the appellant's wife was shown as care of D.W. 1, so that if any enquiry had to be made by M/s. Tewary Bechar & Co. with regard to the payment of the price that concern could address such enquiry to or through D.W. 1.

13. As against all this evidence, upon which the Trial Court and the High Court gave thier concurrent findings, counsel for the appellant raised two contentions Relying on the observations of this Court in Jhingan v. U.P. , cited in fairness to the appellant by the High Court itself, counsel contended that though Section 5(3) raised a presumption against an accused person upon proof of disproportion between the known sources of his income and the properties held by him, it would be enough for its rebuttal if the explanation tendered by him appeared on a preponderance of probabilities to be true, and therefore, he was not required to prove his case as strictly as where a case had to be proved beyond any reasonable doubt Therefore, the argument ran, the High Court had thrown upon the appellant a burden of proof which was excessive than the one required under Sub-section (3) of Section 5. The second contention, which indeed was the corollary of the first, was that the evidence showed that though the appellant's father carried on the said business and also held as much as 200

bighas of lands, no bank or similar account stood in his name in which he could have deposited the earnings from the said business and the said lands. That would suggest, counsel arguad, that the appellant's explanation that the deposits in the savings accounts and the cost of the trucks came from those earnings was true. The High Court, therefore, ought to have regarded his explanation as being on a preponderance of probabilities acceptable and as satisfactorily accounting the disproportion between the income of the appellant and the properties and pecuniary sources acquired by him.

14. A reasonable view of the evidence on record and an examination of the findings based on that evidence given with unanimity both by the Special Judge and the High Court, hawever, fail to satisfy that either of the two contentions can prevail. There is no doubt that upon proof of the disproportion mentioned in Sub-section (3) of Section 5, the onus falls upon an accused person to account satisfactorily the acquisition of properties and pecuniary sources held or possessed by him. That onus, it is true, may not be as strict as the initial onus on the prosecution which was first to establish the disproportion between the properties held by an accused and the known sources of his income. The disproportion in the present case established by calculations made by the Special Judge, which were not controverted, came to neatly Rs. 80,000/-for which the appellant had to give a satisfactory account. It is true that he tried to suggest that the deposits and the cost of the two trucks came from the income of lands, the houses, the money lending business and the professional earnings of the stepbrother. But, barring the appellant's statement under Section 342 of the CrPC, the evidence of D.W.I and some account books produced by D.W. 1, there was no other evidence. As aforesaid, the evidence of D.W. 1 was so vague and indefinite that both the courts came to the conclusion that he could not be managing the family affairs as he claimed to have done. It was surprising for a man who claimed to have managed the family properties and the business not even to know where the lands were situate, what were the profits derived km them, the extent of the money lending business and the income derived there from. There was no explanation forthcoming as to how the two houses in Balia happened to stand in the name of the step-brother, nor was there any evidence that they or the lands or the said business belonged to take family. Equally was there no proof that the father had diverted the income from the lands and the business towards making deposits in the savings accounts, the more substantial of which were in the account in the name of the appellant's wife. The entire contention was on an assumption that all these properties and the business belonged to the family, and that the father had diverted the income there from in the savings accounts and towards the purchase of the trucks. The first assumption was based on the sole ground that there was no account in the name of the father. But there was no evidence as to the extent of the income or as to the manner in which the father had dealt with it. The houses also were assumed to be family properties although they stood in the name of the step brother. It was easy to prove them to be the family properties, if they were so, by producing the title deeds or any other similar evidence, If the money lending business was substantial enough to lay aside such a sum as Rs. 80,000/-, there would have to be a licence for a business of that extent and there would also be an income-tax laibility, through both of which it would have been possible to show that it belonged to the joint family, its extent and the diversion of its capital or gains in the savings bank accounts or towards the purchase of the trucks. None of these things was even attempted. In these circumstances if the Special Judge and the High Court refused to treat the defence as satisfactorily accounting the disproportion, it is not possible to say that they were either wrong or that they threw upon the

appellant a burden excessive than warrented.

15. On a perusal of the evidence on record and the circumstances established through it we do not find any reason to interfere with the concurrent conclusions of the two courts. In the result, the appeal must fail and is dismissed.