Banwari Lal Jhunjhunwala And Ors. vs Union Of India (Uoi) And Anr. on 21 November, 1962

Equivalent citations: AIR1963SC1620, [1963]SUPP2SCR338

Author: Raghubar Dayal

Bench: K. Subba Rao, Raghubar Dayal

JUDGMENT

Raghubar dayal, J.

1. These three appeals, by special leave, arise out of a criminal case pending in the Court of the Special Judge, Poona, against the appellants in Criminal Appeals Nos. 113 and 114.

2. Banwari Lal Jhunjhunwala and Champalal Jhunjhunwala, appellants Nos. 1 and 2 in Criminal Appeal No. 113 of 1961, are partners in a Firm named Shreeram Ramniranjan. The other two appellants, I.R. Oza and Gajraj Tiwari are the employees of the firm. V.A. Thomson, appellant in Criminal Appeal 114 of 1961, was Assistant Works Manager (Timber Inspection), Central Railways, Matunga, Bombay, at the relevant time.

3. The aforesaid firm entered into a contract with the Director General of Supplies and Disposals, New Delhi, in 1955, for the supply of 1306.5 tons of bottom boards for railway wagons of certain specified varieties of hard wood, to the Central Railway Administration. The total cost for the entire supply was Rs. 3,99,556-8-0. The wood was to be supplied at three places in different quantities. 630 tons were to be consigned to the District Controller of Stores, C.W.E., Matunga, Bombay, 26 1/2 tons were to be supplied to the Assistant Controller of Stores, Lallaguda and 650 tons were to be supplied to the Assistant Controller of stores, Jhansi. Prior to the supply, the wood was to be inspected by the Chief Engineer (Sleeper Passing Branch), Southern Railway, Madras, or an officer acting for him, and the places of inspection were Kallayi, Mangalore and Vallapatnam. The first and the last of the places were in the Kerala State. The payments were to be made by the Pay and Accounts Officer, Ministry of Works, Housing and supply, New Delhi. The procedure to be followed in obtaining the payment was as follows.

4. Immediately after despatch, the Contractor could submit his bill and claim 90% of the price. Along with the bill he had to attach the first copy of the inspection note. The balance, viz., 10% of the price, was paid later when two further copies of the inspection note and certain other documents had to be submitted.

5. Subsequent to the acceptance of the tender, the District Controller of Stores, Central Railways, C.W.E. Depot, Matunga, was also added as the Inspection Authority and Inspection Officer, for the wood to be supplied to D.C.O.S. Matunga. Still later, the Chief Mechanical Engineer, Central Railways, Bombay, was made the Inspection Authority and the Assistant Works Manager, Timber Inspection, C.W.E. Central Railways, Matunga, Bombay, was named as the Inspecting Officer. The places of Inspection were also changed to Bombay, Calicut and Baliapatam. The period of contract was also extended and the total cost of wood to be supplied was Rs. 4,08,741/-.

6. The prosecution allegation is that the wood actually supplied was of inferior quality, that Thomson and other officers issued false inspection notes certifying the quality of the wood to be per specification and on the basis of these false inspection notes the aforesaid Firm received payment of Rs. 3,77.771/- from the Pay and Accounts Officer in the Ministry of Works, Housing and Supply, Government of India.

7. The case against the accused appellants was first sent up to the Court of the Special Judge in Kerala. He framed six charges against the accused. Charge No. 1 was framed against all the accused and was for an offence under s. 120-B.I.P.C. Charge No. 2 was against the two partners of the Firm for an offence under s. 420 I.P.C. Charges No. 3 and 4 were against the two employee-appellants, for an offence under s. 420 read with s. 109 I.P.C. Charge No. 5 for a similar offence was against Thomson. Charge No. 6 was against Thomson for an offence under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act. The second charge for the offence under s. 420 I.P.C. was with respect to the Firm obtaining Rs. 1,41,309/- for the supply of 521 tons of timber. Charge No. 6 stated that Thomson abused his position as a public servant and obtained for the partner-appellants, on behalf of the Firm, pecuniary advantage.

8. This Court transferred the case from the Court of the Special Judge, Kerala, to the Court of the Special Judge, Poona. The Special Judge, Poona, amended the charges and also added a 7th charge against the four appellants connected with the firm for abetting Thomson in his committing the offence under s. 5(1)(d) read with s. 5(2) of the Prevention of the Corruption Act. Charge No. 2 was amended to the effect that the amended charge referred to the supply of the entire quantity of wood, i.e. 1306 1/2 tons of wood and to the receipt of Rs. 3,77,771/-. Charge No. 6 was amended, inter alia, to the effect that Thomson, by abusing his position as public servant obtained advantage for himself from the partners of the firm. The accused-appellants went in revision to the High Court of Bombay and questioned the legality or propriety of the various charges. The High Court ordered certain minor modifications in the charges, with which we are not concerned and restricted charge No. 2 to the supply of 521 tons of wood and to the receipt of Rs. 1,41,309/- in accordance with the charge originally framed by the Special Judge, Kerala, as the Kerala Court did not have jurisdiction to try the offence committed in respect of the supply of wood to places outside its jurisdiction.

9. The Union of India has filed Criminal Appeal No. 190 of 1961 against the High Court's order restricting the charge No. 2 to the supply of 521 tons of wood and to the receipt of Rs. 1,41,309/- odd.

10. The relevant part of the main charge of conspiracy against all the accused may now be quoted :

> "That you all between July 1955 and September 1956 at Bombay Baliapatam, Kannanore, Calicut, Ferok, Kallayi..... entered into conspiracy, by agreeing among yourselves..... to commit illegal acts and/or acts by illegal means, to wit, to supply in fulfilment of the contract..... `bottom boards' in inferior jungle wood and not in the species of Aine, Kalpine and Haldu, as agreed to supply as per contract and tender, referred to above, to have the said bottom boards fraudulently passed by accused No. 5, by abusing his position as public servant by corrupt and illegal means to get false inspection notes and certificates from accused No. 5 and others to the effect that the bottom boards were of the species of Aine, Kalpine and Haldu as per species and specifications detailed in the said contract, when to your knowledge they were not, but were of inferior jungle wood and which inspection notes and certificates were issued by accused No. 5 by abusing his position as public servant by corrupt and illegal means to obtain pecuniary advantage for himself and for others i.e., accused Nos. 1 and 2; to induce the Assistant Pay and Accounts Officer in the Ministry of Works, Housing and Supply..... to part with a sum of Rs. 3,77,771/- as value thereof, by claiming in bills, supported with inspection notes..... which acts amount to 'offence' punishable under ss. 420/109 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, 1947, and thereby committed an offence punishable under s. 120-B of the Indian Penal Code....."

11. It is contended for the appellants in appeal No. 113 of 1961 that the obtaining of money by submitting each separate bill amounted to one distinct offence for which a separate charge should have been framed in view of s. 233 of the Code of Criminal Procedure and that the charge as framed is a combination of a number of charges with respect to several offences of cheating committed by obtaining money on the presentation of eighteen or nineteen bills and was therefore against the provisions of s. 233 of the Code. It is also contended that the charge for cheating should have been framed against that particular accused who had submitted the bill and obtained money. The High Court considered these objections and held that a schedule giving the details of each item of cheating would sufficiently meet the requirements of law and that the bills were presumably signed by the Firm just as the forwarding letters were and that therefore both the partners could be properly charged for the offence of cheating.

12. The cheating was in pursuance of the conspiracy entered into between the various accused. The salient features of the conspiracy were that in pursuance of the contract for the supply of 1306 1/2 tons of specified wood, inferior wood be supplied and that for the success of the scheme false inspection certificates be obtained from the Inspecting Officers and that such false inspection notes should accompany the bills purporting to be for the supply of wood per specifications. The object of the conspiracy was to obtain the full contract price from the Government on supplying material inferior in quality from that undertaken to be supplied under he contract. Naturally, the entire supply could not be made at the same time even if it was to be made at one place. Actually the supply was to be made at three places. The wood inspected at a particular place of inspection could be distributed to the various places of supply. The bills could be for the supply made at the particular time by the Firm to one place alone or to places more than one. It is therefore obvious that the conspiracy entered into by the appellants was not for obtaining diverse amounts by cheating but to

obtain the entire contract money by cheating. This circumstances justifies the conclusion that the offence of cheating contemplated by the conspirators was one offence and that was of obtaining, by cheating, the full amount due under the contract for the material supplied. The charge framed for the offence under s. 420 does not contravene s. 233 of the Code.

13. There is another way of looking at the same question. The obtaining of money for each bill supported by false inspection note, amounted to the offence of cheating in pursuance of the conspiracy. All such individual offences on the basis of the various bills, were of the same kind as the single offence of obtaining the total amount as a result of the presentation of the various bills and, in view of s. 71. I.P.C., the accused could not be punished for more than one of such offences it being provided that 'where anything which is an offence is made up of parts any of which is itself an offence, the offender shall not be punished for more than one such offence unless it be so expressly provided'. Illustration (a) explains this provision and is :

> "A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating".

14. It is to be noted that the whole beating is considered to constitute one offence while each of the blows also amounted to the offence of voluntarily causing hurt. It can be said, therefore, that while the obtaining of money by cheating on the presentation of an individual bill did constitute the offence of cheating, the obtaining of the entire money in pursuance of the terms of the single contract and the single conspiracy entered into also constituted the offence of cheating. When the accused could not be punished with the punishment for more than one such offence, it cannot be the intention of law that the accused be charged with each of the offences which were in a way included in the complete offence made up by the entire course of conduct of the accused in pursuance of the conspiracy.

15. Section 233 Cr. P.C. reads :

> "For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239."

16. The expression 'every distinct offence' must have a different content from the expression 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence.

17. The question is, what is meant by 'every distinct offence' ? 'Distinct' means 'not identical'. It stresses characteristics that distinguish while the word 'separate' would stress the 'two things not being the same.' Two offences would be distinct if they be not in any way inter-related. If there be some inter-relation, there would be not distinctness and it would depend on the circumstances of

the case in which the offences were committed whether there be separate charges for those offences or not.

18. Such a view has been the basis of certain decisions by the High Courts and this Court.

19. In Chunnoo v. State Kidwai J., said at p. 797 :

> "The use of the word 'distinct' is of great significance and the Legislature having inserted it, we must, so far as possible, give it a meaning and not treat it as redundant. `Every distinct offence' cannot be treated as having the same meaning as 'every offence'. The only meaning that the word 'distinct' can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. If there is such a connection, one action is not 'distinct' from other actions and each of them, even if it constitutes an offence, does not constitute a 'distinct' offence".

20. In Bhagat Singh v. The State ([1952] S.C.R. 371.), a person hit two others with a single shot from his gun. Fazl Ali, J., said at p. 375 :

> "The word 'offence' has been defined in the Criminal procedure Code as meaning 'any act or omission made punishable by any law for the time being in force.' There seems to be nothing wrong in law to regard the single act of firing by the appellant as one offence only. On the other hand, we think that it would be taking an extremely narrow and artificial view to split it into two offences. There are several reported cases in which a similar view has been taken and, in our opinion, they not been incorrectly decided."

21. We refer to these cases later. It was further stated at p. 376 :

> "In Sudheendrakumar Ray V. Emperor (I.L.R. 60 Cal. 643) a person who was chased by two constables had fired at them several times, but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided."

22. In Empress v. Raghu Rai ((1881) A.W.N. 154.) the accused was convicted of stealing two bullocks by one act of theft. It was held that the offence committed was one. The rationale of the decision could be nothing but that the entire transaction of stealing or the entire action leading to the theft of the bullocks was one act and therefore constituted one offence irrespective of the fact that more than one bullock was stolen.

23. In Poonit Singh v. Madho Bhot ((1886) I.L.R. 13 Cal. 270.) a person's furnishing the police with false information against two persons was held to result in one offence under s. 182 I.P.C., as the false statement he had made was one though the information conveyed by the statement related to two persons.

24. In John Subarna v. King Emperor ((1905) 10 C.W.N. 520.) a person, who asked the villagers to pay certain amount per head for signing their parchas was held to have committed one offence of cheating as he did not ask each individual villager, but spoke to them in a body and the contention that he had made as many attempts to obtain money as there were villagers from whom he had sought remuneration was not accepted. In this case it is clear that the accused's act aimed at obtaining money from all the villagers whom he addressed and that act in its entirely was held to constitute one offence even though his asking the villagers in a body could be said to amount to his asking each individual villager for the money and thus to constitute as many offences as there were villagers whom he asked.

25. In Promotha Natha Ray v. King Emperor ((1912) 17 C.W.N. 479.) one charge was framed under s. 406 I.P.C., with respect to dealing with several books of accounts. It was held that the books formed one set of account books of the estate, were found together in two locked boxes the keys being with the appellant, and that therefore they may be fairly regarded as one item of property with which the appellant was dealing in one particular way. It was not accepted that a separate offence was committed with respect to each of the books.

26. We therefore hold that a single charge for the offence of cheating in the circumstances of the case, does not contravene the provisions of s. 233 of the Code.

27. This view also disposes of the other objection with respect to charge no. 2, it being that with respect to the cheating constituted by the obtaining of money on each bill, only that partner should have been charged for that offence who had actually signed that bill. Both the partners conspired to cheat the Government. The bills were, as held by the High Court, presumably presented on behalf of the Firm and therefore both the partners would be responsible for the obtaining of the money on the presentation of each bill. The charge therefore does not suffer from any defect on this account.

28. The main contention in the appeal by Thomson is that the Special Judge, Poona, was not competent to amend the charge No. 6 to the effect that Thomson, by abusing his position as a public servant, had obtained pecuniary advantage for himself, as the sanction given for the prosecution of Thomson did not state that he had abused his position for his personal gain. We do not wish to express any opinion on the merits of this contention as it is still open to the prosecution to lead evidence to the effect that the sanction given for the prosecution was based on facts which referred to his obtaining money for himself. It may also be open to the prosecution to urge that it is a matter of inference from the alleged conduct of Thomson that he obtained benefit for himself. Suffice it to say that the trial of Thomson for the charge as framed at present is not illegal.

29. It has been held by this Court in Purushottam Das Dalmia v. The State of West Bengal and L.N. Mukherjee v. The State of Madras that a Court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of the fact that any or all other offences were not committed within its territorial jurisdiction. The special Judge, Poona, could try the appellants with respect to the offence of cheating and abetment thereof in connection with the supply of wood to places outside Kerala and for the obtaining of the price of that wood. The charge No. 2 as framed by the Special Judge is correct. The order of the High Court

restricting the charge to the obtaining of Rs. 1,41,309/- only for the supply of 521 tons of wood is wrong.

30. In the result, we dismiss Criminal Appeals Nos. 113 and 114 and allow appeal No. 190 of 1961.

31. Cr. A. Nos. 113 and 114 dismissed.

32. Cr. A. No. 190 allowed.