Nani Gopal Mitra vs The State Of Bihar on 15 October, 1968

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Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah

PETITIONER:
NANI GOPAL MITRA

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
15/10/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.

CITATION:
1970 AIR 1636 1969 SCR (2) 411
CITATOR INFO :
R 1976 SC1471 (5)

ACT:
Prevention of Corruption Act 2 of 1947 s. 5(1), (2) and (3)-After conviction of appellant under s. 5(2) and before hearing of appeal by High Court, s. 5(3) repealed-If presumption in s. 5(3) could be invoked an appeal.
S. 5A-Magistrate not giving reasons for permitting Officer other than D.S.P. to investigate-If non-compliance with section.
Particulars-Insufficient particulars given in the charge-Appellant not complaining at trial or before High Court-Effect of.

HEADNOTE:
In connection with an investigation in January 1958 relating to another case, the appellant, who was employed as

a railway guard on the Eastern Railway, was found in possession of pecuniary resources disproportionate to his known sources of income. As it was thought that he' had come in possession of these pecuniary resources by committing acts of misconduct defined in clauses (a) ,to (d) of s. 5(1) of the Prevention of Corruption Act 2 of 1947, on the recommendation of the Deputy Superintendent of Police for the area, an Inspector of Police was appointed by an Order dated 27th February 1959 of the Magistrate, Ist Class, Sahibganj, to investigate the case against the appellant. The Investigating Officer, upon completion of the investigation and after obtaining sanction of the appropriate authority for prosecution of the appellant, submitted a charge sheet on March 31, 1960. The Trial Court convicted the appellant under s. 5(2) of the Act and s.411 I.P.C. In appeal, by a judgment dated September 14, 1965,. the High Court set aside the conviction and sentence of the appellant under s. 411 I.P.C. but confirmed his conviction under s. 5(2) of the Act and reduced the sentence awarded by the Trial Court.

On December 18, 1964 Parliament enacted the Anti-Corruption Laws (Amendment) Act 40 of 1964 which repealed sub-section (3) of s. 5 of the. Act and enlarged the scope of criminal misconduct in s. 5 by inserting a new clause (e) in s. 5(1) of the Act. In appeal to this Court it was contended on behalf of the appellant (i) that s. 5(3) of the Act having been repealed while the appeal was pending in the. High Court, the presumption enacted in s. 5(3) was not available to prosecuting authorities after the repeal 'and it was not open to the High Court to invoke the presumption in considering the case against the appellant; the presumption contained in s. 5(3) was a rule of procedural law and as alterations in the form of procedure are always retrospective in character, unless it was provided otherwise, it was not open to the High Court to apply the presumption in the present case; (ii) that the statutory safeguards under s. 5A of the Act had not been complied with as the Magistrate had not given reasons for entrusting the investigation to a Police Officer below the rank of Deputy Superintendent Police; and (iii) that the charge against the appellant under s. 5(2) the Act was defective as there were no specific particulars of misconduct as envisaged under clauses (a) to (d) of s. 5(1) of the Act, nothing was stated about the amounts the appellant took as bribes and the
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persons from whom he had taken such bribes so that the, appellant had no opportunity to rebut the presumption raised under s. 5(3) of the Act and to prove his innocence.

HELD: Dismissing the appeal v:

(i) The High Court was right invoking the presumption under s. 5(3) of the Act .even though it was repealed on December 18, 1964 by the Amending Act.

Although as a general rule the amended law relating to

procedure operates retrospectively, there is another equally important principle, which is also embodied in s. 6 of the General Clauses Act, that a statute should not be so construed 'as to create new disabilities or obligations or impose new duties ties in respect of transactions which were complete at the time the amending Act came into force. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure' under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up when s. 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 long before the amending Act was promulgated. It Was not therefore possible to accept the contention that the conviction pronounced by the trial Court had become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. [417 G; 418 D]

James Gardner v, Edward A. Lucas, [1878] 3 A.C. 582 at p. 603; King V, Chandra Dharrna, [1905] 2 K.B. 335; In re a Debtor [1936] .1 Ch.237 and In re Vernazza; [1960] A.C. 965; referred to.

(ii) Although the Magistrate's order on the, petition filed by the DepUty Superintendent of Police suggesting that the Inspector of Police be empowered to investigate the case does not state any reasons for his granting the permission sought, the High Court had rightly concluded 'that as the Magistrate was working in the area for a period of two years prior to the passing of the order in question he must have known that the Deputy Superintendent of Police could not devote his whole. time to the investigation of the case and therefore the inspector of Police .should be entrusted to do the investigation. [419 F]

(iii) The charge, as framed, dearly stated that the appellant accepted gratification other than legal remuneration and obtained pecuniary advantage .by corrupt ,and illegal means. The absence of sufficient particulars could not invalidate the charge though it may be a ground for asking for. better particulars. The appellant never complained in the trial court or the High Court that the charge did not contain the necessary particulars, he , was. misled on that account in his defence. In view this and the provisions of s. 225 Cr. P.C. it could not be said that charge was defective. [421 F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 181 of 1965.

Appeal by special leave from the judgment and order, dated September14, 1965 of the Patna High Court in Criminal Appeal No. 268 of 1962.

S.C. Agarwala, for the appellant.

D. Goburdhun, for the respondent.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Patna High Court dated September 14, 1965 in Criminal Appeal No. 268 of 1962 filed by the appellant against the judgment of the Special Judge, Santhai Pargangs, Dumka dated March 31, 1962.

In January, 1958 the appellant was employed as a Railway Guard on the Eastern Railway and was posted at Sahibganj Railway Station. On January 18, 1958 Hinga Lal Sinha (P.W.

47) who was in charge of squad of traveling ticket examiners caught hold of Shambu Pada Banerji (P,.W. 54) as he found him working as a bogus traveling ticket examiner in a train. P.W.47 handed Shambu Pada Banerji to Md. Junaid (P.W.48) who was a police officer in charge of Barharwa Railway outpost. A Fard Beyan was recorded on the statement of P.W. 47 and G.R.P. Case No. 12 (1)58 was registered against Shambu Pada Banerji. In connection with the investigation of that case the house of the appellant which was at a distance of 300 yards from Sahebganj Railway station was searched on January 19, 1958 at about 3. p.m. by P.W. 56 along with other police Officers, Md. Junaid (P.W. 48) and Dharrnadeo Singh (P.W. 57). Various articles were recovered from the house of the appellant and a search list (Ex. 5/17) was prepared. A charge sheet was submitted in G.R.P. Case No. 12 (1)58 against the appellant and Shambu Pada Banerji. Both of them were tried and convicted by the Assistant Sessions Judge, Dumka by a judgment dated June 12, 1961. The appellant flied Criminal Appeal No. 405 of 1961 against his conviction under s. 474/466 of the Indian Penal Code. The appeal was allowed by the High Court by its judgment dated September 14, 1962 on the ground that there was no proof that the appellant was in conscious possession of the incriminating articles.

During the course of the investigation of G.R.P. Case No. 12 (1)58, the Investigating Officer (P.W. 56) found a sum of Rs. 51,000 standing to the credit of the appellant in the Eastern Railway Employees' Co-operative Credit Society Ltd., Calcutta. He also found the appellant in possession of National Savings Certificates of the value of Rs. 8,000. On August 24, 1958 the Investigating Officer (P.W.56) handed over charge of the investigation of G.R.P. Case No. 12(1)58 to P.W. 46 of Sahebganj Government Railway Police Station. P.W. 46 completed the investigation on February 26, 1958. Since by that time it was found that the appellant was in possession of pecuniary resources disproportionate to his known sources of income it was thought that he had come in possession of these pecuniary resources by committing acts of misconduct as defined in clauses (a) to (d) of sub- s. (1) s. 5 of the Prevention of Corruption Act, 1947 (Act 2 or 1947), hereinafter referred to as the 'Act', and since the investigation of a case under the Act could be carried only in accordance with the provisions of s. 5A of the Act, under the orders of the superior officers, the case being G.R.P. Case No. 12 (1)58 was split up in the sense that a new case against the appellant being Sahebganj Police

Station Case No. 11(2)59 was started upon the first information report of P.W. 46 made on February 26, 1959 to Gokhul Jha (P.W. 45), Officer in charge of Sahebganj Police Station. By his order dated February 27, 1959 Sri R.P. Lakhaiyar, Magistrate First Class, Sahibganj accepted the recommendation of the Deputy Superintendent of Police that Inspector Madhusudan Haldar, P.W. 55 may investigate the case. Accordingly Madhusudan Haldhar, P.W. 55 proceeded to investigate the case and after obtaining sanction of the appropriate authority for prosecution of the appellant submitted a charge sheet on March 31, 1960. Cognizance was taken and the case was transferred to Sri Banerji a Magistrate First Class who committed the appellant and the. two co-accused Baldeo Prasad and Mrs. Kamla Mitra to stand trial before the Court of Session. By his judgment dated March 31, 1962, the Special Judge, Santhai Parganas convicted the appellant under s. 5(2) of the Act and s. 411, Indian Penal Code. The appellant and the other co-accused Baldeo Prasad and Mrs. Kamla Mitra were acquitted of the charge of conspiracy under s. 120(B) read with ss. 379, 411,406 and 420, Indian Penal Code and s. 5(2) of the Act. The Special Judge also acquitted the appellant of the charge under s. 474/466, Indian Penal Code. The matter was taken in appeal to the High Court which by its judgment dated September 14, 1965 set aside the conviction and sentence of the appellant under s. 411, Indian Penal Code and confirmed the conviction of the appellant under s. 5(2) of the Act. The High Court, however, reduced the sentence of 6 years simple imprisonment and a fine of Rs. 40,000 to 2 years imprisonment and a fine of Rs. 20,000.

Section 5 of the Act, as it stood before its amendment by Act 40 of 1964, read as follows:

> "5.(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty--
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> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or
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> (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person,any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
>
> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
>
> (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary

advantage.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

(3) In any trial of an offence punishable under subsection (2) the fact that the accused person or any other person on his behalf is in possession, for 'which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption.

(4) The provisions of this section-shah be in addition W, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against On December 18, 1964, Parliament enacted the Anti-Corruption Laws (Amendment) Act 1964 (Act No. 40 of 1964) which repealed subs. (3) of s. 5 of the Act and enlarged the scope Of criminal misconduct in s. 5 of the Act by inserting a new clause (e) in s. 5(1) of the Act to the following effect:

"(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income."

It was in the first place contended on behalf of the appellant that s. 5 (3) of the Act was repealed by Parliament while the appeal was pending in, the High Court and the presumption enacted in s. 5 (3) of the Act was not available to the prosecuting authorities after the repeal of the sub-section on December 18, 1964. The argument was stressed. that it was not open to the High Court to invoke the presumption contained in s. 5(3) of the Act in considering the case against the appellant. It was also said that the presumption contained in s. 5(3) of the Act was a rule of procedural law and not a rule of substantive law and alterations in the form of procedure are always. retrospective in character unless there is some good reason or other why they should not be. It was therefore submitted that the judgment of the High Court was defective in law as it applied to the present case the presumption contained in s. 5(3) of the Act even after its repeal. We are unable to accept the contention put forward on behalf of the appellant as correct. It is true that as a general rule alterations in the, form of procedure' are retrospective in character unless there is some good reason or other why they should not be. In James Gardner v. Edward A. Lucas(1), Lord Blackburn stated:

> "Now the general rule, not merely of England and Scotland, but, I believe, of every civilized nation, is ex. pressed in the maxim, Noya constitutio futuris formam imponere debet non prateritis'--prima facie, any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to shew it, might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that [1878] III App.Cass.582 at p.603 instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal."

In the King v. Chandra Dharma (1), Lord Alverstone.C.J. observed as follows:

> "The rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective (The Ydun, 1899 p. 236.), and it seems to me that it is impossible to give 'any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective. If the case could have been brought within the principle that unless the language is clear a statute ought not to be construed so as to create new disabilities or obligations, or impose new duties in respect of transactions which were complete at the time when the Act came into force, Mr.Compton Smith would have been entitled to succeed; but when no new disability or obligation has been created by the statute, but it only alters the time within which proceedings may be taken, it may be held to apply to offenses .completed before the statute was passed. That is the case here."

It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be, so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force--(See In re a Debtor(1) and In re Vernazza(3).The same principle is embodied in s. 6 of the General Clauses Act which is to the following effect:

> "6. Effect of repeal. 'Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or here-

(1) [1905] 2 K.B. 335. (2) [1936] 1 ch. 237. (3) [1960] A.C. 965.

after to be made, then, unless a different intention appears, the repeal shall not--

.....

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhai Parganas when s. 5 (3) of the Act was still operative. The. conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhai Parganas long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhai Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under s. 5 (3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We ,accordingly reject the argument of the appellant on tiffs aspect of the case.

It was next argued on behalf of the appellant that the statutory safeguards under s. 5A of the Act have not been complied with and the Magistrate has not given reasons for entrusting the investigation to a police officer below the rank of Deputy Superintendent of Police. Section 5A of the Act provides as follows:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank---
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> (a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police,
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> (b) in the presidency town of Bombay, of a superintendent of police, and
>
> (c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable Under section 161, section 165 or section 165A of the Indian Penal B Code or under sub-section (2) of section 5 of this Act, without the order of a presidency magistrate or a magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

..... In the present case the officer-incharge of Sahibganj police station (P.W. 45) filed a petition dated February 27, 1959 (Ex. 1) to the First Class Magistrate upon which the Deputy Superintendent of Police made an endorsement (Ex.1/1) suggesting that Inspector Haldhar may be empowered to investigate the case. The order of the Magistrate is Ex.1/2 and is dated February 27, 1959.The order states: "Inspector Sri M.S. Haldhar is' allowed to do it". The evidence of P.W. 11 is that he was posted at Sahebganj as a Magistrate from 1956 and used to do the work of the Sub-divisional Officer also in his absence. He passed the order (Ex. 1/2) authorising M.S. Haldhar to investigate the case because the Deputy Superintendent of Police used to remain busy with his work and the present case needed a whole-time investigation. It was argued on behalf of the appellant that there was nothing in the endorsement of the Deputy Superintendent of Police that he was busy and therefore the inquiry should be entrusted to Sri Haldhar. But the High Court has observed that P.W. 1 was a Magistrate working at Sahibganj for a period of two years prior to the passing to the order in question and he must have known that the Deputy Superintendent of Police could not devote his whole-time to the investigation of the case and therefore the Inspector of Police should be entrusted to do the investigation. On this point the High Court has come to the conclusion that the order of the Magistrate was not mechanically passed and the permission of the Magistrate authorising Haldhar to investigate the case was not illegal or improper. In our opinion Counsel on behalf of the appellant has been unable to make good his argument on this point.

It was then said that the charge against the appellant under s. 5(2) of the Act was defective as there were no specific particulars of misconduct as envisaged under cls.

(a) to (d) of s. 5 (1) of the Act. It was suggested that the charge was 'defective in as much as it deprived the appellant of the opportunity to rebut the presumption raised under s. 5(3) of the Act. .The charge against the appellant reads as follows ':

"First--That during the period of 1956 to 19th January, 1958 at Sahebganj Police Station Sahebganj G.R.P. and Sahebganj Local, District Santhai Parganas and at other places, within and without the said district, you, being a public servant viz. Guard of trains in the Eastern Railway of the Railway Department and while holding the said post, habitually accepted or obtained from persons for yourself gratifications other than legal remuneration as a motive or reward such as mentioned in sec. 161 of the Indian Penal Code, habitually accepted or obtained for yourself valuable things without consideration or for a consideration which you know to be inadequate from persons having connection with your official function, habitually, dishonestly and fraudulently, misappropriated or otherwise converted for your own use properties entrusted to you or put under your control as a guard of trains or otherwise, and habitually by corrupt and illegal means, or by otherwise abusing your position as a public servant obtained for yourself valuable things or pecuniary advantage, with the result that during the search of your house at Sahebganj aforesaid on 19-1-1958 and

during the investigation of the Sahebganj G.R.P.S. Case no. 12 dated 19-1-58 u/s 170 etc. I.P.C., you were found, during the month of Jan. 1958 in possession of cash amount to the extent of Rs. 59,000 and other properties fully described in the appendix no. 1 attached herewith and forming part of this charge [of Sahebganj P.S. Case No. 11(2)59], and that the said cash amount and properties are disproportionate to your known sources of income and that you cannot satisfactorily account the possession of the same and that you thereby committed the offenses of criminal misconduct, under clauses (a) to (b) of s. 5(1) of the Prevention of Corruption Act, 1947 (Act II of 1947), punishable under Sec. 5(2) of the said Act, within the cognizance of this Court.

..... It was argued that the charge did not disclose the amounts the appellant took as bribes and the persons from whom he had taken such bribes and the appellant had therefore no opportunity to prove his innocence. But, in our view, this circumstance does not invalidate the charge, though it may be a ground for asking for better particulars. The charge, as flamed, clearly stated. that the appellant accepted gratification other than legal remuneration and obtained pecuniary advantage by corrupt and illegal. means. The charge, no doubt, should have contained better particulars so as to enable the appellant to prove his case. But the appellant never complained in the trial court or the High Court that the charge did not contain the necessary particulars. The record on the other hand disclosed that the appellant understood the case against him and adduced all the evidence which he wanted to place before the Court. Section 225 of the Criminal Procedure Code says "that no error in stating either the offence B or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice." It also appears that the appellant never raised any objection either before the Special Judge or in the High COurt on the score that the charge was defective and that he was misled in his defence on the ground that no particulars of the persons from whom the bribes were taken were mentioned. We accordingly reject the argument of the appellant on this point. For the reasons expressed we hold that the judgment of the High Court dated September 14, 1965 is correct and this appeal must be dismissed.

R.K.P.S. Appeal dismissed.