Pearey Lal vs Rex on 27 February, 1950

Equivalent citations: AIR1950ALL507, AIR 1950 ALLAHABAD 507

ORDER

Agarwala, J.

1. This is an application in revision by Pearey Lal Patwari against his conviction under Section 161, Penal Code, by a Magistrate of Farrukhabad and the dismissal of his appeal by the Sessions Judge of that District. The applicant has been sentenced to one year's rigorous imprisonment. The facts of the case briefly put are as follows :

2. The applicant was a Patwari of village Siroli in the district of Farrukhabad. In that village there was a widow Mt. Raj Kumari who had a certain tenancy land. After the death of her husband, she got a lease executed in her own favour in respect of four plots of 14 bighas. She did not know whether her name had been entered in the village records. On enquiry, she was told that the name of one Chunni was entered as a tenant and that her name was not so entered. She approached the applicant a number of times but the applicant would not make an entry in her favour without taking illegal gratification. He at first demanded a sum of Rs. 50 by way of bribe. She approached some congressmen of the village. The congressmen planned a trap. A sum of RS. 40 was settled to be paid to the applicant through one Tulai Singh. Two notes of Rs. 10 each were signed by a Magistrate, Mr. N. S. Mathur, and handed over to one Gaya Din who gave them as loan to Raj Kumari to be handed over to the patwari and Rs. 20 she had of her own. On 2nd November 1947, Raj Kumari and Tulai Singh went to the applicant's house while Raivari Lal, the Secretary of the Mandal Congress Committee and another villager Ram Charan and the Magistrate, Shri Mathur, stood by in the vicinity of the applicant s house. Raj Kumari handed over the four notes as bribe to the applicant who was sitting on a cot with Tulai Singh. On proper signal being given the three persons, Raivari Lal, Ram Charan and Shri Mathur appeared on the scene. On seeing them the applicant took out the notes from his pocket where he had kept them after accepting them from Raj Kumari and threw them on the cot. The Magistrate asked who Pearey Lal Patwary was. The applicant stood up and the Magistrate found that four notes of rupees ten each were lying on the cot on which he and Tulai Singh were sitting.

3. The applicant was -then prosecuted. In support of the prosecution case, the prosecution examined Raivari Lal, Ram Charan, Raj Kumari, Tulai Singh, Gaya Din and Shri Mathur and others whom it is not necessary to mention. There was one important discrepancy in the statements of these witnesses. While Raivari Lal and Ram Charan stated that the patwari took out the notes from his pocket and put them on the cot when they arrived on the scene; Shri Mathur merely stated that when he entered the house he saw the notes lying on the cot. He did not see the applicant taking them out from his pocket. The Magistrate believed the prosecution witnesses and convicted the accused. The appellate Court agreed with the Magistrate and maintained the conviction.

4. In this revision two points have been urged before me. It was urged that there was no proper sanction for the prosecution of the applicant. The sanction to prosecute is required by Section 6 of Act II[2] of 1947. It is conceded that since the applicant was a Patwari, the sanction should have been of the Collector in charge of the district. The actual sanction accorded in this case was that of the District Magistrate of the District. It is not disputed that the District Magistrate was the same person as the Collector. What is urged is that, in the first place, the sanction was of the particular individual acting as a District Magistrate and not as a Collector and, in the second place, that he did not apply his mind to the question whether he should accord the sanction or not.

5. As regards the first argument that the particular officer accorded the sanction as District Magistrate and not as a Collector, I see no force in it. It is merely a technical objection without any substance. One officer holding two offices is sometimes described by one capacity and sometimes by the other. When he acts as a Collector it does not matter that he describes himself as the District Magistrate provided his action is of an officer acting as Collector.

6. In according the sanction the officer did not even describe himself as the District Magistrate. All that happened in this case was that the Investigating Officer who asked for his sanction addressed him as the District Magistrate instead of Collector. In my opinion this discrepancy has absolutely no substance and does not affect the prosecution of the applicant.

7. As regards the question whether the Collector applied his mind to the case, I find that the sanction was accorded on the charge sheet which contains all the material particulars of the case, the name of the applicant the offence alleged to have been committed by him the facts found against him and the names of the witnesses that would be produced against him. There is no reason to suppose that the Collector did not read the charge sheet when he accorded the sanction. No doubt he wrote the words "Sd" merely to indicate 'sanctioned'. These executive officers are in the habit of using abbreviated forms. Though the practice is not desirable, it cannot be said that it vitiates their action. In my opinion there is no defect in the sanction.

8. The other question raised is that on the evidence led by the prosecution the applicant should not have been convicted. This is a pare question of fact depending upon a consideration of the reliability of the witnesses. Both the Courts below have considered the nature of the evidence and have concurrently come to the conclusion that the applicant was guilty.

9. It has been urged that the practice of this Court has been that in bribery cases revisions are treated as appeals. Reference, in this connection, has been made to a decision of Bajpai J., in Dwarka, Nath Srivastava's case, Cri. Revn. No. 921 of 1942, D/- 9-3-1943. On the other hand, it has been contended that no such practice has been uniformly followed in this Court. Reference has been made to an order of a Bench in Manzuruddin Ahmad Siddiqui's case, Cri. Revn. No. 636 of 1946, D/- 6-7-1948. In that case Allsop. A. C. J. and Malik J,, (as he then was)t observed :

> "In out judgment, there is no such thing as the practice of the Court which controls the discretion of Judges, If there is a rule of law, the Judges must observe it, but in so far as questions of discretion arise each Judge must exercise his discretion according

> to his lights and according to his conscience. The law of criminal procedure does not make it incumbent upon any Judge of this Court to go into any question at all. When an application in revision is made, the applicant is not even entitled by law to be heard on any point. The object of our revisional jurisdiction is to enable us to correct any obvious mistakes and substantial injustices which may have been caused by errors or misconceptions by the Courts below. It was certainly never the intention that this Court should exercise an appellate jurisdiction under another name; when the Legislature has specifically not allowed a right of appeal in certain oases. Whether a substantial' injustice has been caused or not or whether it is advisable in any particular case to examine the evidence and to go into questions of fact is a matter which must be left to the discretion of every Judge in every case which comes before him,"

10. In my judgment, there is nothing to make any distinction between a revision concerning a bribery matter or any other revision. The fact that it affects the services of an officer is wholly immaterial. If the Legislature thinks that such a matter requires to be considered as an appeal it can very well amend the law However that may be, I have gone through the evidence in the present case in deference to the wishes of Mr. Darbari and I am satisfied that the view taken by both the Courts below is correct. (After discussing the evidence his Lordship proceeded): Accordingly I see no force in this revision and dismiss it. The applicant is on bail. He shall surrender to his bail and, serve out the sentence.