

## Rahas Behari Panday vs State on 2 September, 1954

**Equivalent citations: AIR1955ALL75, 1955CRILJ246, AIR 1955 ALLAHABAD 75**

### JUDGMENT

Randhir Singh, J.

1. The appellant in this case has been convicted under Section 161, I. P. C. and has been sentenced to rigorous imprisonment for a period of one year and six months and a fine of Rs. 200/-, in default to undergo further rigorous imprisonment for a period of three months by the Special Judge, Lucknow, appointed under the Criminal Law Amendment Act, 1952 (Act 46 of 1952).

2. It appears that the appellant was a booking clerk posted at railway station Colonelganj in March, 1952. Baskets of eggs are despatched from Colonelganj to Lucknow and, it was alleged on behalf of the prosecution that there was a general complaint that the booking staff at Colonelganj used to demand illegal gratification both in cash and kind at the time of the booking of such parcels. One Bahau also dealt in eggs and had to meet this difficulty. A few days before the occurrence Bahau is said to have met one Sri D. D. Kapur, R. S. O., S. P. E., Lucknow at the Lucknow City Station and he brought this complaint about illegal gratification demanded from the despatchers of eggs at Colonelganj to his notice. Sri Kapur told Bahau that he should meet him at Colonelganj when he next booked a consignment for Lucknow. On 10-3-1952 Sri Kapur came to Colonelganj accompanied by Sri Balbhaddar Singh, Inspector, Special Police Establishment and Bahau was called. Bahau was to book some baskets of eggs on that date and his statement was recorded by the Inspector, Sri Balbhaddar Singh.

Both these officers, namely, Sri Kapur and Sri Balbhaddar Singh, then went to the District Magistrate's residence at Gonda in order to ask him to arrange for a trap. The District Magistrate was, however, not available and his stenographer is said to have advised to go to the Railway Magistrate. They then went to the Railway Magistrate who told them that he would arrange for the trap after instructions from the District Magistrate. As the District Magistrate was not available, he thought it fit to arrange for the trap. The Railway Magistrate, Sri K. L. Trivedi, then went to Colonelganj and the statement of Bahau was recorded by him. Bahau had in his possession currency notes of the value of Rs. 20/- and they were signed by the Magistrate and their numbers were noted. Bahau was then asked to go to the railway station and book his baskets. He was told that the two officers as also the Magistrate would also go to the station and watch the payment of the illegal gratification demanded. One Hasan Ali was also called and Hasan Ali and Bahau went together. The two officers Sri D. D. Kapur and Sri Balbhaddar Singh as also the Railway Magistrate followed them. The two officers walked towards the western window of the room where the booking was to be done while the Magistrate walked into the verandah and near the eastern window.

Bahau told the appellant, who was on duty at the time of the occurrence, to book his parcels. He was asked to pay Rs. 16-3-0 and on being asked as to why so much money was demanded, the appellant is said to have told him that Rs. 2-7-0 was due on account of railway freight & the rest was bility-Karai. Another Babu, who was lying on a board in the same room, then asked Bahau as to whether he had brought eggs also and Bahau told him that he had brought 20 eggs only. The Babu then told him that he should have brought 50 eggs. Bahau then offered to pay price of the balance and he was asked that he should supply the remaining number of eggs when he would next come to the railway station to get his baskets booked.

Bahau delivered currency notes of the value of Re. 17/- to the appellant who returned extra coins of the value of 0-13-0 to Bahau and then prepared the Railway Receipt. Some labels were given to be attached to the baskets. After the Railway Receipt had been made out, the Magistrate and the two officers, who were watching the transaction, entered the room and the appellant is then said to have been asked to give a search. Thereupon the appellant took out the money from his pocket and gave it to the Magistrate. He then begged for pardon. The twenty eggs were recovered wrapped up on a 'Jhandi' used for signalling on a rack in the same room. The statement of the appellant was then recorded by the Magistrate and after the statement of Bahau had also been recorded, a telegram was sent to the D. T. S. at Gonda to suspend the appellant. Per-mission for investigation was granted by the Magistrate to Sri Balbhaddar Singh and after the investigation was completed, a complaint was filed by the Deputy Superintendent of Police, S. P. E. against the appellant,

3. The defence of the appellant was that he received no money as illegal gratification from Bahau and that no sum of Rs. 17/- had been recovered from his person. The prosecution examined a number of witnesses and some witnesses were examined also on behalf of the defence. The learned Special Judge who tried the case, found the appellant guilty under Sec. 161, I. P. C. and sentenced him to imprisonment and fine as mentioned above. He has now come up in appeal.

4. The prosecution had examined in this case Sri K. L. Trivedi, Magistrate First Class, who was the Railway Magistrate at Gonda. He narrated the manner in which he was approached by the two officers and the trap laid. He stated that he saw from the eastern window of the booking office the passing of the currency notes to the appellant.

5. He also states that thereafter he entered the room and asked the appellant to search him and his companions as he was a Magistrate who wanted to search the person of the appellant. The appellant refused to search the persons of the witness and his companions and they themselves snowed him that they had nothing with them. The Magistrate then told the appellant to give his search as he had accepted a bribe from Bahau. Thereupon the appellant took out the money which he had in his coat pocket. The notes recovered tallied with the numbers of the notes already noted by the Magistrate. Bahau was found to have with him the remaining three notes of Re. 17- each as also the coins of the value of 0-13-0. The Magistrate also recovered the eggs wrapped up in a piece of cloth on a rack in the same room. Bahau, Hasan Ali, Sri D. D. Kapur and Sri Balbhaddar Singh also supported Sri K. L. Trivedi about the payment of the money in their view and the recovery of the money from the person of the appellant.

6. The learned counsel for the appellant has pointed out a number of discrepancies in the statements of these witnesses and it has been argued that the statement of Sri K. L. Trivedi or of the other witnesses should not be accepted. It has been pointed out that while the other witnesses for the prosecution in this case state that it was the other Babu in the room who had demanded the eggs, the Magistrate stated that the demand for the eggs was also made by the appellant. It has to be borne in mind that Sri K. L. Trivedi was walking outside in front of the eastern window. He was not acquainted with any of the two members of the railway staff who were inside the room and it is possible that he might have mistaken the words uttered by the other Babu in the room as words spoken by the appellant. I am unable to attach any great importance to this discrepancy.

Another discrepancy, which has been pointed out, is that Bahau has stated that the appellant was also searched while Sri K. L. Trivedi states that his pockets were felt. It is possible that Bahau may have taken this to be a search of the appellant. Lastly, it has been urged that there is a discrepancy in the statement of Bahau and of the other witnesses, particularly of Sri K. L. Trivedi about the place where the statement of Bahau was recorded after the recovery of the notes from the person of the appellant. It appears from a perusal of the statement of Sri K. L. Trivedi that he had refreshed his memory, while in the course of the deposition, from the report which he had ultimately submitted regarding the proceedings taken by him that night. This circumstance shows that his memory was not very green with respect to all the details of the occurrence. The occurrence took place in March, 1952 and the statement of the Magistrate was recorded sometime in November, 1952, After a lapse of so many months it is not surprising if he did not remember all the minute details about what happened on the date of the occurrence. The contradictions do not affect any material part of the evidence and these discrepancies would not be enough to throw a doubt on the veracity of the witnesses or the correctness of the story for the prosecution in the main.

7. It has further been argued on behalf of the appellant that the defence of the appellant that no money was recovered from his persons and that it was only after a search of the room that the eggs as also the currency notes of the value of Rs. 17/- were recovered from a corner of the room placed on a rack, finds support in some of the statements of the witnesses for the prosecution. One of the witnesses has stated that the tubes where tickets sold were also inspected after the search and it has been argued that it was not necessary to search the tubes or any other person if in fact the money had already been recovered from the person of the appellant. I am unable to attach any great importance to this circumstance in view of the clear statements of all the witnesses for the prosecution that the money was recovered from the person of the appellant.

8. The defence had examined three witnesses including the station master who was said to have been called to the booking office after the notes had been recovered from the person of the appellant. The Station Master states that the Magistrate had told him that no money had been recovered from the person of the appellant and that some currency notes and eggs were found wrapped up in a corner of the room. I am unable to give credence to the statement given by the station master in view of the fact that it was incredible that the Magistrate, who had reported about the incident the same day, should have made a statement quite in conflict with his report, in the presence of all persons. The evidence of the station master and the other two witnesses on this point has, therefore, been rightly rejected by the lower Court.

9. Reliance has been placed on a ruling of the Supreme Court in --- 'Shiv Bahadur Singh v. State of Vindhya Pradesh', AIR 1954 SC 322 (A), in which some observations made by their Lordships of the Supreme Court with regard to the impropriety of employing Magistrates to act as witnesses in traps have been made. Some such observations had also been made earlier in several other cases and in one case particularly by Mukherji, J. in a case -- 'M. C. Mitra v. The State', AIR 1951 Cal 524 (B). There can be no doubt that it was highly improper to make use of Magistrates as witnesses in laying police traps for the detection of such offences. In the reported case first mentioned however, it appears a sum of Rs. 25,000/- was provided by the police to a certain person to be paid as illegal gratification and a Magistrate's services were availed of for witnessing the transaction. Their Lordships of the Supreme Court have observed as follows:

"The police authorities in this step which they took showed greater enthusiasm than Nagindas himself in the matter of trapping the appellant No. 1. It may be that the detection of corruption may some times call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence.

We cannot too strongly disapprove of the step which the police authorities took in this case in the matter of providing the sum of Rs. 25,000/- to Nagindas who but for the police authorities thus coming to his aid would never have been able to bring the whole affair to its culmination."

10. In this reported case, therefore, it was the police who provided the instruments of the offence and in fact brought about the payment of the bribe by providing the means for it. Under these peculiar circumstances the Supreme Court did not even rely on the evidence of the Magistrate who accompanied the police to the place where the bribe was paid. In another case cited on behalf of the appellant -- 'Nitya Nand Prem Lal v. The State', AIR 1954 Punj 89 (C), a Division Bench of the Punjab High Court disapproved of the practice of employing Magistrates for the purpose of providing evidence of payment of bribe. In this reported case also, the police themselves induced one Chaman Lal to pay some money as bribe to the accused in that case. The practice, therefore, of employing Magistrates in such transactions calls for a strong disapprobation but the facts in the cases relied upon were slightly different.

In the present case the police or the Magistrate did not induce Bahau to pay the bribe. They only witnessed the transaction which was to happen in the normal course of events. Bahau used to book baskets of eggs to Lucknow and on the date of the occurrence he had brought ten baskets to be booked in the normal course. The trap lay only in the watching of the transaction. The observations made by Nevaskar J. in a case reported in -- 'K. N. N. Ayyangar v. State', AIR 1954 Madh B 101 (D) are as follows: "But however profound our disapprobation be with regard to this practice it is difficult to shut our eyes to the materials which might appear before us in particular cases. We cannot decide cases except on the basis of a careful weighing of such evidence as is placed before

us."

11. I respectfully agree, if I may say so, with the observations made above. In the present case, howsoever improper it might have been to take advantage of the services of a First Class Magistrate, the fact remains that he did witness the payment of the bribe to the appellant. The evidence satisfactorily established that the appellant accepted money much in excess of the railway freight and demanded it as 'bilty Karai'. This sum was paid in the view of the witnesses including the Magistrate. I am, therefore satisfied that the conclusions arrived at by the learned Special Judge were correct and the appellant has been rightly convicted under Section 161, I.P.C.

12. It remains now to be seen if the sentence awarded to the appellant is excessive. It has been urged on behalf of the appellant that he is a young man and as a result of his conviction he will lose his employment in the railway and that in case his conviction stands, a sentence of Imprisonment may not be inflicted. The offence was committed more than two years ago and there is no doubt that the appellant will not only lose his employment but will also not be employed by the Government in future. Taking this circumstance into consideration I do not think it fit to order the appellant to go back to jail, I, however, think it fair to enhance the sentence of fine to Rs. 300/-.

13. As a result, the appeal is allowed only to this extent that the conviction of the appellant under Section 161, I. P. C. is maintained but his sentence of imprisonment is set aside. The sentence of fine is maintained and this fine is enhanced to Rs. 300/-. The appellant shall pay the fine within one month. If the fine is not paid the appellant shall undergo rigorous imprisonment for a period of three months.