Dharam Sarup vs The State on 8 August, 1952

Equivalent citations: AIR1953ALL37, AIR 1953 ALLAHABAD 37

JUDGMENT

Agarwala, J.

1. This is an appeal by Brahm Sarup Patwari against his conviction under Section 5(2), Prevention of Corruption Act, 1947, and sentence of two years' R. I.

2. The appellant was a Patwari of village Najabatpura Pargana Paranagar, district Baijnor. In the aforesaid village there is a hamlet, Ganj, where a grove formerly owned by Swami Krishna Nand is situated. In January 1949 Swami Krishna Nand transferred a half-share in the grove to Yati Vishokha Nand complainant by means of a deed of gift, and in respect of the other half, he made a bequest in favour of the donee. Subsequently, in August 1940 Swami Krishna Nand executed a deed of gift in respect of the entire grove in favour of Nagamagum Vidyalaya, Ganj. The person in charge of the Vidyalaya, Swami Kawela Nand, made two applications for mutation in respect of the grove. Yati Vishokha Nand did not object to the mutation in respect of that half about which there was only a bequest in his favour, but he objected to the mutation in respect of the other half which he had obtained under the deed of gift. This objection was made on 13-8-1949 and 20-8-1949 was fixed for hearing.

3. The prosecution case was that two days earlier than the date fixed in the case, the appellant Brahma Sarup Patwari met the complainant and informed him that Swami Kawela Nand was offering him Rs. 1,500 to obtain from him a cancellation of Yati Vishokha Nand's name from the revenue papers and that if the complainant paid him more he would not cancel his name. The complainant said that he would think over the matter. The appellant told the complainant that he would meet him at Ganj in the evening the next day. The parties, however, could not meet in the evening of 19th August. The appellant then went to the complainant's place on the 20th of August in the morning and it was settled that they would again meet in the Tahsil compound the same day. In the Tahsil compound, the appellant told the complainant, that there were a number of witnesses against him and that unless the complainant paid Rs. 100 at least that very day he would file his extract from the khewat against him. The complainant went to his counsel for consultation.

On the way the complainant met one Kr. Aditya Vir Singh, his friend, and told him about the Patwari's demand. Kr. Aditya Vir Singh took the complainant to the S. P. Bijnor who took them to the S. D. M. Bijnor, Sri Raghunandan Sarup Bhatnagar. The latter signed ten currency notes of Rs. 10 each in the presence of the S. P. and told the complainant to offer the same to the appellant. The complainant took the ten currency notes to the Tahsil compound and called the appellant outside the building and offered the ten currency notes to him. The appellant did not accept the currency notes there, and suggested that they should be offered to him at his house. The complainant and Kr.

Aditya Vir Singh went to the Kotwali and informed the S. P. and the S. D. M. Bijnor of what had happened.

Then the complainant and Kr. Aditya Vir Singh went to the house of the appellant and after having ascertained that the appellant was already inside the house, Kr. Aditya Vir Singh returned to take the S. P. and the S. D. M. to that place. The S. P. and the S. D. M. came to the residence of the Patwari, but remained outside at a short distance. The complainant went inside the house and offered the currency notes to the appellant in a room whose outer door was open. The appellant took the currency notes and placed them inside one of his settlement volumes kept in an open almirah. Kr. Aditya Vir Singh was also standing outside the door with his cycle and noticed the complainant offering the currency notes to the appellant. As soon as the currency notes had been delivered, the S. P. and the S. D. M. came inside the house and the S. D. M. searched the person of the appellant but the currency notes could not be found, The complainant pointed towards the almirah. On search of the papers in the almirah, the ten currency notes which had already been signed by the S. D. M. were recovered from a settlement volume. The currency notes were taken into possession and the Patwari was arrested.

4. The S. D. M. lodged the first information report at the Kotwali, Bijnor, the same day. After investigation a charge sheet was prepared by the police and was sent to the restrict Magistrate for according sanction to prosecute the appellant. In this charge sheet the name of the complainant was mentioned as Swami Yatiji obviously referring to Yati Vishokha Nand. The appellant's name was mentioned as the accused. In col. 7 in which the offence, the name of the accused, section under which the prosecution is intended, and a short statement of the relevant facts are required to be mentioned, it was stated as follows :

> " 'Shrimanji Yatiji complained to the S. P. about Brahma Sarup Patwari having taken bribe from him on 20th August 1949. The complaint was investigated and an offence under Section 161, Penal Code was established. The case is being sent to Court.' On the reverse of the charge sheet the names of the prosecution witnesses were mentioned. There was a note by the special prosecuting officer, 'submitted to District Magistrate for favour of necessary sanction for prosecution'."

The District Magistrate ordered "Prosecute. Judicial Officer, Bijnor will please try this case." Although in the charge sheet the offence mentioned was under Section 161, Penal Code, the Judicial Magistrate framed a charge under Section 5 (2), Prevention of Corruption Act, 1947. The charge was in these words :

> "That you on 20th August 1949 at the house of Sri Madho Prasad in Mohalla Sotian Bijnor obtained by corrupt means illegal gratification of ten currency notes Ex. 1 valued at Rs. 100 from Sri Yati Vishokha Nand by abusing your position as a public servant as a patwari of village Nijabatpura, Pargana Daranagar, District Bijnor, and thereby committed an offence punishable under Section 5 Clause (2), Prevention of Corruption Act, 1947, and within the cognisance of the Court of Sessions. And I hereby direct that you be tried by the said Court on the said charge."

5. Neither before the Sessions Judge nor before the Judicial Magistrate was any objection on the ground of defect in the sanction taken. The Sessions Judge found the accused guilty of the offence with which he was charged and sentenced him to rigorous imprisonment for two years.

6. In this appeal the first point urged before me is that there was no valid sanction for the prosecution of the appellant under Section 5 (a), Prevention of Corruption Act, 1947, and that therefore the proceedings should be quashed. It is urged that the sanction was not a valid sanction for two reasons, first, that it did not disclose the facts which could have enabled the District Magistrate to grant the sanction in a proper manner and, secondly, that the sanction, if any, was in respect of the prosecution of the appellant for an offence under Section 161, Penal Code and not for an offence under Section 5 (a), Prevention of Corruption Act.

7. In so far as the first objection is concerned, I do not think it can be sustained. No special form is prescribed for according sanction under Section 6, Prevention of Corruption Act. It has, however, been held that the prosecution must show that the sanctioning authority had before it the relevant facts on the basis of which prosecution was desired.

8. In Gokulchand Dwarkadas v. The King, 1948 ALL. L.J. 170, the Privy Council had occasion to consider this matter. Their Lordships held that the sanction to prosecute was an important matter; that it constituted a condition precedent to the institution of the prosecution and that where there was nothing on the face of the sanction or other extraneous evidence to indicate that the sanctioning authority knew the facts alleged to constitute the offence, the sanction was invalid. In the case before their Lordships the sanctioning authority had before it the name of the accused and the clause under which he was sought to be prosecuted. It had no other facts before it when it granted the sanction to prosecute. Their Lordships held that the sanction was invalid. This case does not, in my opinion, help the appellant because in the present case something more than merely the name of the accused and the section of the Penal Code under which he was to be prosecuted, was brought to the notice of the District Magistrate.

9. In State v. Karim Bux, 1950 ALL. L.J. 383, I had a case before me in which there was no specific order sanctioning the prosecution of the applicant. The charge sheet was sent to the S. P. (who happened to be also the officer who could have accorded the necessary sanction for the prosecution of the accused). The S. P. merely as an officer responsible for the prosecution in the ordinary way, wrote down on the charge sheet which was submitted to him that "it may be sent to the proper Court through the Chief Inspector." I held that this order could not be construed as sanction to prosecute because it did not appear that the S. P. had applied his mind to the question whether he should sanction the prosecution of the accused or not, and that he had merely forwarded the charge sheet to the Court in the normal manner as any head of the police would do in ordinary cases that were investigated and desired to be sent to the Court for trial. I further observed that:

> "A sanction to prosecute a particular person for an offence implies, first, a full knowledge of the facts upon which it is sought to prosecute him and, secondly, a deliberate decision of the sanctioning authority that ho may be prosecuted."

In my judgment, this decision also does not help the appellant. In the present case a definite request was made to the District Magistrate to accord the sanction to prosecute. The District Magistrate considered the matter and in definite terms accorded the sanction. There was, therefore, an actual exercise of the discretion vested in the sanctioning authority. The relevant facts were in substance given in the charge sheet. The charge sheet contained sufficient indication of the incident in respect of which the appellant was to be prosecuted. It mentioned the name of the complainant, the name of the appellant, and the date on which the offence was said to have been committed. The nature of the offence 'bribery' was mentioned. The section under, which prosecution was to be launched was also indicated.

10. It is not necessary that full details of the prosecution case be mentioned in the charge sheet or brought to the notice of the sanctioning authority. It is enough if the essential facts on which the prosecution is based are stated. The present case is practically on all fours with the case of Pearey Lal v. Rex, A. I.R. 1950 ALL. 507 where the facts mentioned in the police charge sheet were held to be sufficient for according sanction.

11. The case reported in Maqsud Khan v. State, 1950 ALL L. J. 533 is not very helpful to the appellant. In that case it did not appear on the record for what offence the sanctioning authority had granted the sanction.

12. The last case cited before me was an un-reported decision of my learned brother Mootham, in Yadu Nath Bhatnagar v. State, Criminal Rev. No. 192 of 1950, decided on 29-11-1950. In that case a letter from the S. P. asking for sanction for the prosecution of the accused was very much similar in terms to the statement in the charge sheet in the present case. The District Magistrate ordered "prosecution of Yadunath Bhatnagar by law is sanctioned." One of the contentions was that the order purporting to be the sanction of the District Magistrate had not been duly proved. My learned brother held that although the signatures of a gazetted officer like the District Magistrate could be taken judicial notice of, the statements in the document could not be so taken notice of and that it was not clear how the document above referred to had come on the record. It was not marked as an exhibit, nor was it produced by any witness. On those facts it is obvious that the sanction had not been proved in the case. My learned brother, however, went on to observe:

> "The requirements of a valid sanction were laid down by their Lordships in the well-known case of Gokulchand Dwarkadas v. The King, 1918 All. L. J. 170, in which it was held that it must be proved that the sanction was given in respect of the facts constituting the offence charged. Those facts must, in my opinion, include (if it is known) the name of the person who was given or attempted to give the alleged bribe, the amount of bribe, and what is particularly important, the purpose for which the bribe was given, for unless the illegal gratification is given for the purpose specified under Section 101 no offence is committed. "

13. The law does not lay down that minimum facts must be brought to the notice of the sanctioning authority. The object of requiring sanction to be obtained before a public officer is prosecuted is to prevent his unnecessary harrassment and to safeguard the larger interests of the State. The

discretion to sanction prosecution is vested solely in the sanctioning authority and is absolute. Its exercise cannot be questioned in a Court of law. The satisfaction of the sanctioning authority is entirely subjective. He is the judge of the materials that should be placed before him for enabling him to accord the sanction. If the facts placed before him are not sufficient to enable him to exercise his discretion properly, he will ask for more particulars but it is for him and him alone to determine this matter. The Courts are concerned only with one matter--to find whether sanction for the particular prosecution was in fact accorded by the proper authority. If the record shows that the sanction was in fact accorded and the sanction was in respect of the particular transaction which is the subject-matter of the charge against the accused, the requirements of the law are fully satisfied. No hard and fast rule can be laid down as to what facts are necessary to be brought to the notice of the sanctioning authority. In my opinion the sanction accorded in the present case cannot be challenged on the ground that necessary facts were not brought to the notice of the sanctioning authority.

14. The second objection, however, raised by learned counsel, to the validity of the sanction must be accepted. As already stated, the charge-sheet mentioned Section 161, Penal Code as the offence for which the appellant was sought to be prosecuted. The sanction of the District Magistrate was for prosecution for that offence. The prosecution, however, was not under Section 161, Penal Code but under Section 5 (a), Prevention of Corruption Act, 1947. A new offence has been created under that section--an offence of criminal misconduct in the discharge of duty by a public servant. Clause 5 (1) of the Act which defines the offence consists of four clauses:

> "(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, 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
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> (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
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> (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."

Clause (2) of Section 5 lays down the punishment for the offence, the punishment may extend to seven years, or with fine, or with both. Clause (a) of Section 5 (1) of the Act deals with habitual acceptance of illegal gratification. This clause deals with the habitual commission of an offence under Section 161, Penal Code. Clause (b) relates to the habitual acceptance of a valuable thing without consideration or for inadequate consideration from persons with whom a public servant has to deal in his official capacity. This offence may or may not fall under Section 161, Penal Code. Clause (c) deals with misappropriation. This has nothing to do with Section 161, Penal Code. Clause (d) deals with accepting any valuable thing by a public servant for himself or for any other person by corrupt or illegal means by abusing his official position. This may or may not fall under Section 161, Penal Code.

15. It would thus appear that the offences under Section 5 (1) are not necessarily covered by Section 161. In some cases they may be so covered but in others they may not. The offence under Section 5 (1) is undoubtedly a graver offence than the one under Section 161, the former being punishable for seven years, while the maximum sentence under the latter section is only three years. Where sanction is accorded under Section 161, Penal Code, it does not amount to a sanction for a graver offence defined in Section 5 (1) and made punishable under Section 5 (2). As already stated, there was no sanction for the prosecution of the appellant under Section 5 (2). The facts alleged in the present case do, no doubt, fall both under Section 161, Penal Code and Section 5 (1) (d), Prevention of Corruption Act. The question is whether sanction having been granted for prosecution under Section 161 could be availed of by the prosecution for the prosecution of the appellant under Section 5 (2) of the Act.

16. Under Section 238, Criminal P. C. :

> "When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it."

Or again "when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it."

17. It was urged that on the analogy of Section 238, Criminal P. C., it may be held that where sanction is granted for a minor offence and no sanction is granted for a major offence, and the minor offence is established from the evidence on the record the conviction of the accused may be altered from the major offence to that of a minor offence. In my judgment, this cannot be done. Section 238 assumes that the trial of the accused for the major offence was valid in law. When the trial is valid and it is found that the person charged with a major offence is not guilty of that offence, but is guilty of a minor offence, he may be convicted of the minor offence. But when the trial itself is vitiated on account of certain extraneous facts, like the absence of a previous sanction, the authority of the Court to alter the conviction does not come into play, because the whole trial is vitiated and there is nothing before the Court upon which it can exercise the discretion vested in it under Section 238, Criminal P. C. There being no sanction for the prosecution of the appellant under Section 5 (2),

Prevention of Corruption Act, he cannot be convicted under Section 161, Penal Code.

18. I, therefore, allow this appeal and quash the conviction of the appellant as well as the proceedings of the Courts below. It will be open to the State to prosecute the appellant after obtaining a regular and proper sanction.

19. The appellant is on bail. He need not surrender.