Biswabhusan Naik vs The State Of Orissa on 7 April, 1954

Equivalent citations: 1954 AIR 359, 1955 SCR 92, AIR 1954 SUPREME COURT 359, 20 CUTLT 366

Author: Vivian Bose

Bench: Vivian Bose, Mehar Chand Mahajan, Ghulam Hasan

PETITIONER:
BISWABHUSAN NAIK

Vs.

RESPONDENT:
THE STATE OF ORISSA.

DATE OF JUDGMENT:
07/04/1954

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
MAHAJAN, MEHAR CHAND (CJ)
HASAN, GHULAM

CITATION:
1954 AIR 359 1955 SCR 92
CITATOR INFO :
A 1955 SC 41 (11)
R 1959 SC 707 (5)
R 1961 SC1381 (10)
F 1977 SC 786 (9,12,14)

ACT:
Prevention of Corruption Act, 1947 (II of 1947) Section 5(1)(2),(3) and section 6-- sanction under section 6 --Whether necessary to be in any particular form-No particulars given in the charge or sanction-Legal effect thereof.

HEADNOTE:
Held, that it is not necessary for the sanction for an offence punishable under section 5(2) of the Prevention of Corruption Act, 1947 (Act II of 1947) to be in any Particular form or in writing or for it to set out the facts

in respect of which it is given. It is, however, desirable to state the facts on the face of sanction, because when the facts are not set out in the sanction, proof has to be given aliunde that sanction was given in respect of the facts constituting the offence charged but an omission to set out the facts in the sanction is not fatal so long as the facts can be and are proved in some other way.

Where the sanction was confined to section 5(2) of the Act, it could not, under the circumstances of the case, have related to anything but clause (a) of sub-section (1) of section 5 and therefore an omission to mention clause (a) in the sanction did not invalidate it.

under section 5(3) of the Act all that the prosecution has to do is to show that the accused or some person on his behalf is in possession of pecuniary resources or property disproportionate to his known sources of income and for which the accused cannot satisfactorily account. Once that is established then the Court is bound to presume unless the contrary is proved, that the accused is guilty of the new offence created by section 5 namely criminal misconduct in the discharge of his official duty.

Held, also that there was no illegality either in the sanction or in the charge on the ground that no particulars were given because the offence under section 5(1)(a) of the Prevention of Corruption Act does not consist of individual acts of bribe taking as in section 161 I.P. C. but is of a general character and individual instances are not necessary because of the presumption which section 5(3) requires the Court to draw.

Gokulchand Dwarkadas Morarka v. The King (A.I.R. 1948 P.C. 82) referred to.

JUDGMENT:

CRlMlNAL APPELLATE JURISDICTION: Criminal Appeal No. 33 of 1952.

Appeal under Article 134(1)(c) from the Judgment and Order dated the 19th February, 1952, of the High Court of Orissa at Cuttack in Criminal Appeal No. 66 of 1950 arising out of the Judgment and Order dated the 19th September, 1950, of the Court of the Additional Sessions Judge, Cuttack-Dhenkanal, Cuttack, in Sessions Trial No. 9-C of 1950.

Nur-ud-Din Ahmed, R. Patnaik and R. C. Prasad, for the appellant.

R. Ganapathy lyer, for the respondent.

1954. April 7. The Judgment of the Court was delivered by BOSE J. -The appellant was an Inspector of Factories under the Government of Orissa. 'It was a part of his duty to inspect factories and mills in the State of Orissa. He toured the districts of Koraput and Balasore from 18th August, 1948, to

27th August, 1948, and from 29th September, 1948, to 30th October, 1948, respectively. The prosecution case is that he collected bribes from persons connected with some of the mills he inspected in those districts. It is said that he used to threaten to close their mills and impose other penalties for alleged defects unless they paid him a bribe.

On 3rd October, 1948, he was camping at the Dak Bungalow at Basta in the Balasore district. Because of information received against him his person and belongings were searched on that day and a sum of Rs. 3,148 was recovered from him consisting of Rs. 450 paid at the time as a trap and Rs. 2,698 already in his possession. He was arrested on the spot but was later released on bail.

Departmental and other proceedings were taken against him and he was eventually brought to trial on 29th March, 1950, and charged under section 5(2) of the Prevention of Corruption Act (II of 1947) for criminal misconduct in the shape of habitually accepting illegal gratification. He was also separately charged and separately prosecuted under section 161 of the Indian Penal Code for three specific offences of bribe taking but we are not concerned here with that as he was acquitted on all three counts. His, conviction here is under section 5(2) alone. The trial Court sentenced him to rigorous imprisonment for four years and a fine of Rs. 5,000. The High Court upheld the conviction on appeal but reduced the sentence to two years and a fine of Rs. 3,000.

The accused applied for a certificate to appeal under article 134(1)(c) on three points. The High Court held that two of them were not of sufficient importance to justify the issue of a certificate-particullarly as one of the two was covered by the principle laid down by this Court. But it granted leave on all three as it considered that the first point was of importance. The points were formulated as follows:

> "(i) whether the view of this Court as to the requirement of sanction in a case of this kind and the interpretation of Morarka's case in A.I.R. 1948 P.C. p. 82 adopted by this Court in its judgment are correct;
>
> (ii)whether the interpretation of this Court relating to the requirements as to the corroboration of an accomplice witness in a bribery case with reference to the latest unreported case of the Supreme Court which has been referred to in the judgment and which has since been reported in 1952 S.C.J. p. 46 is correct;
>
> and
>
> (iii)whether the law as propounded by the decision now' sought to be appealed against with reference to the considerations that arise in judging the presumptions under section 5(3) of the Prevention of Corruption Act is correct."

The first point arises in this way. Four kinds of criminal misconduct are set out in section 5 of the Prevention of Corruption Act. They are enumerated in clauses (a), (b),

(c) and (d) of sub-section (1). The sanction is general and does not specify which of these four offences was, meant. It runs as follows:

" Government of Orissa.

Commerce and Labour Department.

Order No. 4561/Com., dated 3-11-1948.

In pursuance of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the Governor of Orissa is hereby pleased to accord sanction for prosecution of Sri B. B. Nayak, Inspector of Factories. Orissa, employed in connection with the affairs of the Province under sub-section (2) of section 5 of the said Act.

2. Nature of offence committed:

Criminal misconduct in discharge of official duty.

By order of the governor, Sd./-V. Ramanathan, Secretary to Government. It was contended that the Privy Council held in Gokutchand Dwarkadas Morarka v. The King(1) that such a sanction is invalid. The High Court rejected this argument. We agree with the High Court.

The passage of the Privy Council judgment on which reliance is placed is as follows "In their Lordships' view, in order to comply with the provisions of clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be' referred to on th; face of the sanction but this is not essential since clause 23 does not require the sanction to be in an particular form nor even to be in writing. But if the facts constituting the offence charged are not known on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority."

The Judgment of the Judicial Committee relates to clause 23 of the Cotton Cloth and Yarn (Control). Order, 1943, but the principles apply here. It is no more necessary for the sanction under the Prevention of Corruption Act to be in any particular form, or in writing or for it to set out the facts in respect of which it is given than it was under

clause 23 of the Order which their Lordships were considering. The desirability of such a course is obvious because when the facts are not set out in the sanction proof has to be given (1) A.I.R. 1948 P.C. 82.

aliunde that sanction was given in respect of the facts constituting the offence charged, but an omission to do so is not fatal so long as the facts can be, and are, proved in some other way.

The High Court finds that the facts to which the sanction relates were duly placed before the proper sanctioning authority. We need not consider the evidence about telephone calls and the like because the letter of the District Magistrate asking for sanction (Exhibit 26) is enough to show the facts on which the sanction is based. 'It is in these terms:

> "I have the honour to report that Sri B.B. Nayak, Inspector of Factories, Orissa, in the course of his visit to this district had been -visiting certain mills, and on information received by me that he had been collecting heavy sums as illegal gratification from the Manager or Proprietor of Mills under threat of mischief to the mill owners, it was arranged to verify the truth of this information by handing over 3 hundred rupee notes marked with my initials in presence of the Superintendent of Police and two other respectable gentlemen and millowners, on the evening of the 2nd October, 1948. On the 3rd October the Factory Inspector having actually received the illegal gratification of Rs. 450 which sum included the three marked hundred rupee notes, the Prosecuting Inspector seized the marked notes along with a further heavy sum of Rs. 2,698 from his possession. Under section 6 of the Prevention of Corruption Act, 1947, the accused being a public servant in the employ of the Provincial Government the sanction of the Provincial Government is necessary prior to taking cognisance of an offence under section 161, Indian Penal Code or subsection (2) of section 5 of the Act."

A sanction based on the facts set out in this letter,. namely the information received about the collection of heavy sums as bribes and the finding of Rs. 2,698 in his possession would be sufficient to validate the present prosecution. It is evident from this letter and from the other evidence that the facts placed before the Government could only relate to offences under section 161 of the Indian Penal Code and clause (a) of section 5(1) of the Prevention of Corruption Act. They could not relate to clauses (b) or (c). Therefore, when the sanction was confined to section 5 (2) it could not, in the circumstances of the case, have related to anything but clause (a) of sub- section (1) of section 5. Therefore, the omission to mention clause (a) in the sanction does not invalidate it. The present prosecution is confined to section 5(1)(a) which runs as follows:

> "(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty(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."

Then comes sub-section (3) which sets out a new rule of evidence in these terms:

> "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 therefor shall not be invalid by reason only that it is based solely on such presumption."

Therefore, all that the prosecution has to do is to show that the accused, or some person on his behalf, is in possession of pecuniary resources or property disproportionate to his known sources of income and for which the accused cannot satisfactorily account. Once that is established then the Court has to presume, unless the contrary is proved, that the accused is guilty of the new offence created by section 5, namely criminal misconduct in the discharge of his official duty.

Now the accused was found in possession of Rs. 3,148. He accounted for Rs. 450 of that sum by showing that it was paid to him at the time as a trap. He has been acquitted of that offence, so all he had to account for was the balance Rs. 2,698. This is a large sum for a touring officer to carry with him in cash while on tour. His explanation was not considered satisfactory and that is a question of fact with which we are not concerned in this Court. Therefore, all that remains to be seen is whether this was disproportionate to his known sources of income. The accused is a Government Factory Inspector and we were told that his salary is only Rs. 450 a month. The High Court finds that the total sums drawn by him during his entire period of service of thirteen months was Rs. 6,045 as salary and Rs. 2,155 as travelling allowance. It also finds that he owns 0.648 acres of land which brings in no income worth the name. On the expenditure side of the accused's account the High Court finds that he has a substantial family establishment which would not leave him enough margin for saving such a large sum of money. No other source of income has been disclosed. It is evident that no touring officer of his status and in his position would require such a large sum of money for his touring purposes even if he was away from headquarters for a month. His explanation was considered unsatisfactory by both Courts and was disbelieved. These are all questions of fact. Once the facts set out above were found to exist and the explanation of the accused rejected as unsatisfactory, section 5(3) was at once attracted and the Court was bound to presume (the word used in the section is "shall" and not "may") that the accused was guilty under section 5(2), especially as this part of the section goes on to say-

> "and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption."

These facts alone are enough to sustain the conviction and we need not consider the other matters. The High Court was right in holding that the sanction was sufficient and in convicting the accused.

The third point set out in the certificate of the High Court relates to the absence of particulars in the charge and, we gathered from the arguments, in the sanction. But no particulars need be set out in the charge in such a case because the offence under section 5(1)(a) does not consist of individual acts of bribe taking as in section 161 of the Indian Penal Code but is of a general character. Individual instances may be useful to prove the general averment in particular cases but it is by no means necessary because of the presumption which section 5(3) requires the Court to draw. There was therefore no illegality either in the sanction or in the charge; nor has the accused been prejudiced because he knew everything that was being urged against him and led evidence to refute the facts on

which the prosecution relied. He was also questioned about the material facts set out above in his examination under section 342 of the Criminal Procedure Code and was given a chance then as well to give such explanation as he wished. The appeal fails and is dismissed.

Appeal dismissed.