C.S. D. Swamy vs The State on 21 May, 1959

Equivalent citations: 1960 AIR, 7 1960 SCR (1) 461

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
C.S. D. SWAMY

Vs.

RESPONDENT:
THE STATE

DATE OF JUDGMENT:
21/05/1959

BENCH:
SINHA, BHUVNESHWAR P.
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SINHA, BHUVNESHWAR P.
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1960 AIR 7 1960 SCR (1) 461
CITATOR INFO :
RF 1961 SC 583 (8)
R 1962 SC 605 (19)
D 1962 SC1204 (4)
R 1964 SC 464 (13,37)
F 1971 SC 786 (13)
R 1977 SC2091 (5)
R 1979 SC 602 (6)
R 1981 SC1186 (11,13)
R 1990 SC1459 (30)

ACT:
Prevention of Corruption-Criminal misconduct in discharge of official duty-Charge in respect of specific instances of corruption found unsustainable on evidence-Conviction based on presumption Validity-Prevention of Corruption Act, 1947, (2 of 1947), ss.5(1)(a), 5(1)(d), 5(3).

HEADNOTE:
The appellant was put up on trial on charges under ss.

5(1)(a) and 5(1)(d) of the Prevention of Corruption Act, 1947. Payments of particular sums by way of bribe were not proved against him. But the High Court, holding that the appellant's bare statements from the dock unsupported by any other acceptable evidence could not satisfactorily account for the large deposits standing to his credit in his bank accounts raised the presumption under s. 5(3) of the Act and held him guilty of criminal misconduct in the discharge of his official duty under s. 5(1)(d) of the Act, concerning the conviction and sentence passed on him by the
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special Magistrate. It was contended on behalf of the appellant that the charge relating to specific instances of bribery having failed, the contrary to the presumption under S. 5(3) Of the Act should have been held as established and in absence of any finding that his statements were false it should have been held that the charge against him had not been proved beyond all reasonable doubt.

Held, that S. 5(3) of the Prevention of Corruption Act did not create a new offence but only laid down a rule of evidence that empowered the Court to presume the guilt of the accused in certain circumstances, contrary to the well-known principle of criminal law that the burden of proof was always on the prosecution and never shifted on to the accused.

The Legislature by using the expression " satisfactorily account " in S. 5(3) of the, Act, cast the burden on the accused not only to offer a plausible explanation as to how he came by the large wealth disproportionate to his known sources of income, but also to satisfy the court that his explanation was worthy of credence. Consequently, cases under the general law where it had been held that the accused could be exonerated if he offered a plausible explanation could have no application.

The expression " known sources of income " used in that section referred to such sources of income as became known to the prosecution as a result of the investigation and could not mean those that were witthin the special knowledge of the accused, and it was no part of the duty of the prosecution to lead evidence in that regard.

Where the prosecution fulfilled the conditions laid down by the earlier part of s. 5(3) Of the Act, the statutory presumption had to be raised and it would be for the accused to rebut the same by cogent evidence.

Rex v. Carrbriant, (1943) 1 K.B. 607, and Otto George Gfeller v. The King, A.I.R. (30) 1943 P.C. 211; Hate Singh Bhagat Singh v. State of Madhya Bharat, A.I.R. 1953 S.C. 468 and Regina v. Dunbar, 1958 1 Q.B. 1, held inapplicable.

The failure to substantiate a charge under S. 5(1)(a) of the Act on evidence would not necessarily mean an acquittal in respect of a charge under S. 5(1)(d) of the Act. If the requirements of the earlier part of S. 5(3) were established

by evidence, conviction for criminal misconduct under s. 5(1)(d) based on the presumption under S. 5(3) Of the Act would be perfectly valid in law.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 177 of 1957.

Appeal by special leave from the judgment and order dated April 11, 1957, of the Punjab High Court in Criminal Appeal No. 7-D of 1955, arising out of the judgment and order dated January 19, 1955, of the Court of Special Judge, at Delhi in Corruption Cas No. 2 of 1953. G. S. Pathak, R. Ganapathy Iyer and G. Gopalakrishnan, for the appellant.

C. K. Daphtary, Solicitor-General of India, G.C. Mathur and R. H. Dhebar, for the respondents. 1959. May 21. The Judgment of the Court was delivered by SINHA J.-This appeal by special leave is directed against the judgment and order of the High Court on Judicature for the State of Punjab at Chandigarh dated April 11, 1957, affirming those of the Special Judge, Delhi, dated January 19, 1955, convicting the appellant under s. 5(2) of the Prevention of Corruption Act (2 of 1947). The sentence passed upon the appellant was six months' rigorous imprisonment.

The facts leading upto this appeal, may shortly be stated as follows: During and after the Second World War, with a view to augmenting the food resources of the country, the Government of India instituted a "Grow More Food Division"

> in the Ministry of Agriculture. S. Y. Krishnaswamy, a Joint Secretary in; that Ministry, was placed in charge of that Division, with effect from January 2, 1947. The appellant was working in that Department as Director of Fertilizers. He was a former employee of the well-known producers of fertilizers, etc., called "Imperial Chemical Industries ".

Fertilizers were in short supply and, therefore large quantities of such fertilizers had to be imported from abroad. As chemical fertilizers were in short supply not only in India but elsewhere also, an international body known as the " International Emergency Food Council "

> (I.E.F.C.) had been set up in United States of America, and India was a member of the same. That body used to consider the requirements of different countries in respect of fertilizers, and used to make allotments. Russia was not a member of that Organisation. Towards the end of 1946, a Bombay firm, called 'Messrs. Nanavati and Company', which used to deal in fertilizers and had bussiness contcts with Russia, offered to supply ammonium sulphate,from Russia to the Government of India. In the years 1947 and 1948, considerable quantities of ammonium sulphate were obtained through Messrs. Nanavati and Company aforesaid. One D. N. Patel, who was a former employee of Messrs. Nanavati and Company, joined a partnership

business under the style of Messrs. Agri Orient Industries Limited of Bombay'. This firm obtained a contract from the Government for the supply of twenty thousand tons of ammonium sulphate from United States of America, in February, 1950. In the course of this business deal, the said patel experienced some difficulty in obtaining Government orders regarding some consignments. The appelant was approached in that connection; and it is aleged that Patel paid to the appellant Rs. 10,000 at Bombay as bribe for facilitating matters. But in spite of the alleged payment, difficulties and delays occurred and the consignments, even after they had reached heir destination in India, were not moving fast enough, thus, causing considerable loss to the firm in which Patel was interested. Patel, therefore approached Shri K. M. Munshi who was then the Minister For Food and Agriculture in Delhi, and disclosed to him the alleged payment of bribe of Rs. 10,000, as also the fact that the appellant had been receiving arge sums of money by way of bribes for showing favours in the discharge of his duties in the Department. The Minister aforesaid directed thorough enquiries to be made, and the matter was placed in the hands of the Inspector-General of Special Police Establishment. A departmental committee was also set up of three senior officers of the Department to hold a departmental inquiry, and ultimately, as a result of that inquiry, the Minister passed orders of dismissal of the appellant, in August, 1950. A further inquiry in the nature of a quasi-judicial inquiry, was held by the late Mr. Justice Rajadhyaksha of the Bombay High Court, in 1951. The inquiry related to matters concerned with the import of fertilizers into India. After receipt of the report of the inquiry by the late Mr. Justice Rajadhyaksha, in January, 1952, and after consideration of the matters disclosed in that report, a first information report was lodged on April 4, 1952, and thorough investigations were made into the complaints. The result was that two cases were instituted. The first one related to an-" alleged conspiracy involving the appellant, Krishnaswamy and one of the proprietors of Messrs. Nanavati and Company, and several others, relating to bribery and corruption in connection with the supplies of ammonium sulphate from Russia. With that case, we are not concerned here. -The second case, out of which the present appeal arose, was instituted against two persons, namely the appellant and Krishnaswamy, that they had entered into a conspiracy to receive bribes and presents from various firms, in connection with the import of fertilizers. The learned Special Judge, who heard the prosecution evidence, came to the conclusion that it did not disclose any conspiracy as alleged, except in certain instances which formed the subject-matter of the charge of conspiracy which was being tried separately, as aforesaid. The present case, therefore, proceeded against the appellant alone under two heads of charge, namely, (1) that he had been habitually accepting or obtaining, for himself or for others, illegal gratifications from a number of named firms and others, in connection with the import and distribution of fertilizers- s. 5(1) (a) of the Prevention of Curruption Act, 1947 (hereinafter referred to as 'the Act'), and (2) that he had been habitually receiving presents of various kinds by abusing his position as a public servants. 6 (1) (d) of the Act. The High Court, in agreement with the learned Special Judge, found the evidence of P. Ws. 9 and 10, who were the principal prosecution witnesses as regards the passing of

> certain sums of money from certain named firms to the appellant, as wholly unreliable. Further more, Patel, being in the position of an accomplice, his evidence did not find sufficient corroboration from other facts and circumstances proved in the case. The High Court, not being is a position to accept the tainted evidence aforesaid, found that the case of payment of particular sums of money by way of bribes, had not been established. But relying upon the presumption under sub-s. (3) of s. 8 of the Act, the High Court came to the conclusion that the appellant had not satisfactorily accounted for the receipt of Rs. 73,000 odd in cash and about Rs. 18,000 by cheques, during the years 1947 and 1948, which sums were wholly disproportionate to the appellant's known source of income, namely, his salary as a Government servant, and that, therefore, he was guilty of criminal mis-

conduct in the discharge of his official duties. In that view of the matter, the High Court confirmed the conviction and sentence of six months' rigorous imprisonment, passed by learned Special Judge of Delhi.

The learned counsel for the appellant has contended (1) that on the admitted facts, the ingredients of s. 5(3) of the Act, had not been established, (2) that when the charge in respect of specific instances of corruption, has not been proved, as found by the courts below, it should have been held that the contrary of the presumption contemplated by s. 5(3), namely, of the guilt of criminal misconduct, had been established, and (3) that the appellant's statement under s. 342 of the Code of Criminal Procedure, as also his statements contained in his written statement, had not been proved to be false, and that, therefore, it should have been held that the case against the appellant had not been proved beyond all reasonable doubt.

It is true that s. 5(3) of the Act, does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances a rule which is a complete departure from the established principles of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him. With reference to the provisions of s. 5(3) of the Act, it has been contended, in the first instance, that the charge of criminal misconduct in the discharge of his official duties, is now confined to the fact as disclosed in his bank accounts with the Imperial Bank of India (New Delhi Branch) and the Chartered Bank of India, Australia and China (Chandni Chowk Branch), that his nett credit with those banks totalled upto a figure just over Rs. 91,000. He accounted for that large balance by stating that he was the only son of his father who had been able to give him advanced education in England for a period of over seven years; that after his return to India, he had been holding highly paid posts for about 20 years in the Imperial Chemical Industries, in the Army and in the Government of India; that he had no children and no other dependants except his wife; that with his limited household expenses, he was able to save a good round sum out of his salary and allowances which were considerable, because his duty took him throughout the length and breadth of the country, thus enabling him to earn large sums of money by way of travelling allowances which he saved by staying with his friends and relations during his official tours. He added that he had received a gratuity for services rendered to the Army, and also considerable sums of money as his provident fund from the Imperial Chemical Industries,

towards the end of November, 1947. He also stated that his deposits in the two banks aforesaid, represented sums of money saved in cash out of his salaries, allowances and gifts from his parents, as also re-payments of loans advanced by him to his friends while he was in the Army, and later. He added that some of the deposits in cash were really re-deposits of earlier withdrawals from the banks, as also the sale-proceeds of his old car sold in June, 1948, for Rs. 5,500, together with the sale-proceeds of gold jewelry belonging to his wife. He also tried to explain the large deposits of cash in 1948, by alleging that he had borrowed a sum of rupees 20,000 from one Ganpat Ram on a pronote (which he, later on, re-paid and obtained a receipt), with a view to building a house of his own in Delhi, but as that negotiation fell through, he deposited that cash amount in his account in the two banks aforesaid in August, 1948, as the creditor aforesaid would not accept re-payment of the loan within a period of two years, unless the interest for that period was also paid at the same time. With reference to those statements of the accused from the dock, it was contended by the learned counsel for the accused that in view of those facts, it could not be said that the accused had not accounted for those large deposits with the two banks aforesaid. The High Court has pointed out that the matters alleged in the , statement aforesaid of the accused, were capable of being easily proved by evidence which had not been adduced; that allegation was no proof, and that his lucrative posts in the Imperial Chemical Industries and in the Army, were matters of history in relation to the period for which the charge had been framed. The High Court, therefore, found it impossible to accept the appellant's bare statement from the dock as to how amounts earned far in the past, could find their way into the banks during the years 1947 and 1948. It has been repeatedly observed by this Court that this Court is not a Court of criminal appeal, and we would not, therefore, examine the reasons of the High Court for coming to certain conclusions of fact. Apparently, the High Court considered all the relevant statements made by the accused under s. 342 of the Code of Criminal Procedure and in his written statement, and came to the conclusion that those statements had not been substantiated. We cannot go behind those findings of fact.

Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused person to "

> satisfactorily account." for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordinarily, an accused person is entitled to acquittal if he can account for honest possession of property which has been proved to have been recently stolen (see illustration (a) to s. 114 of the Indian Evidence Act, 1872). The rule of law is that if there is a prima facie explanation of the accused that he came by the stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well-

established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the Legislature has advisedly used the expression "satisfactorily account". , The emphasis must be on the word " satisfactorily ", and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible

explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the Investigating Officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary was the only source of his income. Now, the expression " known sources of income "

> must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that " known sources of income "

means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "

> specially within the knowledge" of the accused, within the meaning of s. 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a, Government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by -him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the Investigating Officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution. In the present case, the prosecution has adduced the best evidence as to the pecuniary resources of the accused person, namely, his bank accounts. They show that during the years 1947 and 1948, he had credit at the banks, amounting to a little over Rs. 91,000. His average salary per mensem, during the relevant period, would be a little over Rs. 1,100. His salary, during the period of the two years, assuming that the whole amount was put into the banks, would be less than one-third of the total amount aforesaid, to his credit. It

> cannot, therefore, be said that he was not in possession of pecuniary resources disproportionate to his known sources of income.
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> It was next contended that the burden cast on the accused by sub s.(3) of s. 5 of the Act, was not such a heavy burden as lies on the prosecution positively to prove all the ingredients of an offence. In that connection, reference was made to a number of decisions, particularly Rex v. Carrbriant(1), to the effect (1) (1943) 1 K. B. 607, referred to under Art. 3907 at p.

1511 in Archbold Criminal Pleading Evidence and Practice', 34th Edn.

that the onus of proof lies on the accused person to show that a certain proved payment was in fact not a corrupt payment, but that the burden is -less heavy than that which, ordinarily, lies on the prosecution to prove its case beyond all reasonable doubt. Reference was also made to Otto George Gfeller v. The King (1), Hate Sing Bhagat Singh v. State of Madhya Bharat (2) and Regina v. Dunbar(3). In our opinion, those decisions do not assist the appellant in the present case. In this case, no acceptable evidence, beyond the bare statements of the accused, has been adduced to show that the contrary of what has been proved by the prosecution, has been established, because the requirement of the section is that the accused person shall be presumed to be guilty of criminal misconduct 'in the discharge of his official duties " unless the contrary is proved." The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary. After the conditions laid down in the earlier part of sub-s. (3) of s. 5 of the Act, have been fulfilled by evidence to the satisfaction of the court, as discussed above, the court has got to raise the presumption that the accused person is guilty of criminal misconduct in the discharge of his official duties, and this presumption continues to hold the field unless the contrary is proved, that is to say, unless the court is satisfied that the statutory presumption has been rebutted by cogent evidence. Not only that, the section goes further and lays down in forceful words that "

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

Lastly, it was argued that when the section speaks of the burden being on the accused person to prove the contrary, it must mean adducing evidence to disprove the charge. The argument proceeds that as in the present case, the facts and circumstances mentioned in the charge had not been proved, the accused person must be acquitted as having disproved the charge with reference to the particular cases of bribery which had been held not proved. In our opinion, there is a (1) A.I.R. 1943 P.C. 211. (2) A.I R. 1953 S.C. 468. (3) [1958] 1 Q.B. 1 fallacy in this argument. The finding of the High Court and the court below, is that the prosecution had failed to adduce sufficient evidence to prove those particular facts and circumstances of criminal misconduct within the meaning of s. 5(1)(a) of the Act, but the failure to bring the charge home to the accused under s. 5(1)(a), does not necessarily lead to the legal effect contended for. As soon as the requirements of sub-section (3) of s. 5 have been fulfilled,the Court will not only be justified in making, but is called upon to make, the presumption that the accused person is guilty of criminal misconduct within the meaning of s. 5(1)(d). In order to succeed in respect of the charge under s. 5(1)(a), the prosecution has to prove

that the accused person had accepted or obtained or agreed to accept or attempted to obtain from any person any gratification by way of bribe within the meaning of s. 161 of the Indian Penal Code. That charge failed because the evidence of P.W. 9 was not accepted by' the High Court or the trial court. The charge under s. 5(1)(d) does not require any such proof. If there is evidence forthcoming to satisfy the requirements of the earlier part of sub-s. (3) of s. 5, conviction for criminal misconduct can be had -on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of the sub-s. (3) aforesaid. That is what has been found by the courts below against the accused person. Hence, the failure of the charge under cl. (a) of sub-s. (1) of s. 5, does not necessarily mean the failure of the charge under s. 5(1)(d). In our opinion, the judgment of the High Court is correct, and the appeal is, accordingly, dismissed. If the accused is on bail, he must surrender to his bail bond.

Appeal dismissed.