V. K. Sharma vs The State (Delhi Administration) on 13 March, 1975

Equivalent citations: 1975 AIR 899, 1975 SCR (3) 922

Author: N.L. Untwalia

Bench: N.L. Untwalia, A. Alagiriswami

PETITIONER:
V. K. SHARMA

Vs.

RESPONDENT:
THE STATE (DELHI ADMINISTRATION)

DATE OF JUDGMENT13/03/1975

BENCH:
UNTWALIA, N.L.
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UNTWALIA, N.L.
ALAGIRISWAMI, A.

CITATION:
1975 AIR 899 1975 SCR (3) 922
1975 SCC (1) 784
CITATOR INFO :
F 1975 SC1432 (8)

ACT:
Section, 4, 5(1)(a)(b)(d), 5(2) of Prevention of Corruption Act.--Section 161 of I.P.C.--Presumption under Section 4 of the Act--Competent authority to accord sanction whether should be competent to remove the accused from Govt. scrvice or from temporary office.

HEADNOTE:
The appellant was convicted under section 5(2) of the Prevention of Corruption Act read with section 5(1)(d) and under section 161of the Indian Penal Code by the Trial Court and was sentenced to rigorous imprisionment for 2-1/2 years. He was also sentenced to pay a fine of Rs. 1000. The Delhi High Court dismissed the appellant's appeal but reduced the sentence from 21 years to 1 year and reduced the fine from Rs. 1000 to Rs. 500. The appellant was a Lower

Division Clerk in the Central Secretariat. He was appointed to the temporary post of Rationing Inspector having a lien on the post in the Central Secretariat. The appellant demanded a sum of Rs. 100 as bribe from an owner of a Ration Depot. A trap was arranged and currency notes bearing initials were handed over to the appellant. He was caught red handed. The appellant admitted the receipt of the currency notes worth Rs. 80/-. He, however, gave explanation of the receipt of the money. Both the Courts below rejected the explanation as untrue.. The counsel for the appellant contended

(1) That the sanctiongiven by P. W. Iyer in this case was invalid and not in accordance with section 6of the Act.

(2) That P.W. Arora had no authority to lay a trip to search the person of the appellant or to make an investigation in the case. Whatever was done by him was in contravention of section 5A of the Act.

(3) That neither of the charges under section 5 (1) (d) of the Act or section 161 of the Penal Code was legally proved against the appellant.

HELD : While dismissing the appeal,

The appellant had his lien in the Central Secretariat. The Chief Controller, Ratioring would have been competent to remove the appellant from his office is Rationing Inspector but not from his office in the Central Secretariat. Therefore, he was not a competent authority for according sanction. The sanction is to be accorded by in authority competent to remove the accused from Government service. [925 B]

HELD FURTHER : Even if the search is assumed to be illegal it is of no consequence in this case. The presumption arising under section 4 of the Act when a public servant accepts gratification other than legal remuneration is not available to the prosecution for proving the charge under section 5 of the Act with reference to clause (d) of subsection (1) of section 5. The presumption arises in regard to an offence under section 161 of the Penal Code or to an offence under section 5 (1) (a) or (b). The High Court has elaborately and fully dealt with the submission made on behalf of the appellant. There is no justification to interfere with the order of the High Court. [925 D, E-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 73 of 1971.

Appeal by Special leave from the Judgment and Order dated the 7th September, 1970 of the Delhi High Court in Criminal Appeal No. 85 of 1968.

K. B. Rohtagi, for the appellant.

S. N. Anand and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by UNTWALIA, J. The appellant in this appeal by special leave has been convicted under section 5(2) of the Prevention of Corruption Act, 194 Thereinafter called the Act, read with section 5 (1) (d) and under section 161 of the Indian Penal Code. The Trial Judge sentenced the appellant under each count to undergo rigorous imprisonment foe 2-1/2 years. Sentences to run concurrently. He was also sentenced to pay a fine of Rs. 1,000/- under section 5(1) (d) of the Act. The Delhi High Court dismissed the appellant's appeal subject to the reduction in his Sentences. The concurrent sentence of rigorous imprisonment for 2-2-1/2 years has been reduced to one year under each, count and the imposition of fine of Rs. 1,000/- has been reduced to Rs. 500/-. The appellant was a quasi-permanent Lower Division Clerk of the Central Secretariat Clerical Service, Grade It and was borne on the cadre of Community Development and Co- operation. At the relevant time fie was working as Inspector in the Rationing Department.

P.W.3 Madan Lal was the owner of Rationing Depot in Gandhi Nagar. Delhi. His complaint was that the appellant had been demanding, Rs. 100/- per month by way of bribe under threat of implicating him in some false case. The appellant came to the said witness on 1.7.1967 and demanded the payment of Rs. 100/- that very day. Madan Lal complained to P.W. Gian Chand Sharma, a Municipal Council about this demand and the latter called him to his house in the afternoon. P.W. S.L. Arora, Assistant Controller of Rationing was called to the Councillor's place. He after recording the statement of Madan Lal, initialled 8 currency notes of Rs. 10/- each, of the total value of Rs. 80/-. Shri Arora instructed Madan Lal to go to the appellant's office alongwith two witnesses. Madan Lal proceeded to the appellant's office with P.W.5 Agya Ram Batra and P.W.8 Deputy Lal Telwar. He handed over the amount of Rs. 80/ to the appellant saying that he would pay Rs. 20/'- later on.' On the giving of signal by Deputy Lal, Arora arrived and recovered the currency notes from the pocket of the appellant's bush-shirt. The amount recovered from the appellant's bush-shirt consisted of the same 8 currency notes which had been earlier initialled. by Arora. After obtaining the sanction of P.W.1 S. P. Iyer, Deputy Secretary, Department of Community Development and Co-operation, Government of India for the prosecution of the appellant and after investigation the police filed a challan against him under section 5(1)(d) of the Act and under sec- tion 161 of the Penal Code.

The appellant admitted the receipt of the sum of Rs. 80/- in the 8 currency notes from Madan Lal but denied to have- received the sum by way of illegal gratification or by corrupt or illegal means abusing his position as public servant. He gave an interesting and curious explanation of the receipt of Rs. 80/- by him from Madan Lal.

The two courts below relying upon the evidence of Prosecution Witnesses Madan Lal, Arora, Agya Ram and Deputy Lal and rejecting the explanation of the appellant as untrue have convicted and sentenced him as stated above. Mr. K. B. Rohtagi, learned counsel for the appellant made the following submissions to press for the acquittal of his client (1) That the sanction given by P. W. Iyer in this case was invalid and not in accordance with section 6 of the Act.

(2) That P.W. Arora had no authority to lay a trap or to search the person of the appellant or to make an investigation in the case.

Whatever was done by him was in contravention of section 5A of the Act.

(3) That neither of the charges under section 5(1)(d) of the Act or section 161 of the Penal Code was legally ,proved against the appellant.

The High Court has elaborately and fully dealt with the submissions made on behalf of the appellant many of which were repeated in this Court. We see no justification to interfere with the order of the High Court. As already stated the appellant was a quasi-permanent Lower Division Clerk of the Central Secretariat Clerical Service. He was borne in the cadre of Community Development and Co-operation. P.W. Iyer was the Deputy Secretary of that Department. He was competent to remove the appellant from his office within the meaning of clause (c) of sub-section (1) of section 6 of the Act. There was no dispute or debate in that 'regard. No question was put to him in his cross- examination to challenge his authority. But the contention on behalf of the appellant has been that at the time of commiting the alleged offence he was working in the post of Rationing Inspector having been appointed to that post sometime back, The Chief Controller of Rationing was the proper authority who could remove him from that post and hence he was the only competent authority to. accord sanction for the prosecution of the appellant. We see no substance in this argument. It is not clear whether the appellant came as a loanee to the Rationing Department from the Central Secretariat. What is, however, clear on the basis of the various documents considered in the judgment of the High Court is that the appellant was relieved of his duties in the Ministry of Community Development and Co- operation, Government of India on the afternoon of the 20th November, 1965 and thereafter he joined his duties as Rationing Inspector on being appointed to that post a few days earlier on the 15th of November. On a consideration of the relevant materials the High Court has rightly held that the appellant was an employee of the Central Secretariat at the time of the commission of the offence but was appointed to the temporary post of Inspector, Rationing. We may add that even assuming the argument put forward on behalf of the appellant to be correct that he did not come to the Rationing Department as a loanee from the Central Secretariat, there is no difficulty in appreciating that he' must have come temporarily to the Rationing Department with his lien on his post in the Central Secretariat. The purport of taking the sanction from the authority competent to remove a corrupt Government servant from his office is not only to remove him from his temporary office but to re- move him from Government service. The Chief Controller, Rationing would have been competent to remove the appellant from his office as Rationing Inspector but not from his office in the Central Secretariat. That being so P.W. Iyer in our judgment was the competent authority to accord sanction for the prosecution of the appellant. The second submission made on behalf of the appellant is devoid of any substance. After the incident. in the office of the appellant in the afternoon ofthe 1st of July, 1967 the First Information Report was lodged with the police. The investigation within the meaning of section 5A of the Act started thereafter. No semblance of any argument could be advanced before us to show that the investigation made thereafter was not in accordance with the said provision of law. Section 5A is not meant to clothe a person with authority or competency to lay a trap. It is not necessary to go into the question as to whether P.W. Arora was legally competent to search the person of the appellant.Even assuming it to be illegal it is of no consequence in this case. On search the 8 notes of Rs. 10/- each were recovered.The recovery of the notes is admitted by the appellant.

The High Court has 'relied upon several decisions of this Court for coming to the conclusion that the charges against the appellant must be deemed to have been proved. We may make a slight clarification here. The presumption arising under section 4 of the Act when a public servant accepts gratification other than legal remuneration,ion is not available to the prosecution for proving the charge under section 5(2) of the Act with reference to clause (d) of subsection (1). The presumption arises in regard to an offence under section 161 of the Penal Code or to an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of the Act. On the facts of his case, therefore, it must he held that the charge against the appellant that he obtained for himself pecuniary advantage in the sum of Rs. 80/- by corrupt or illegal means and by abusing his position as a public servant must be held to have been proved on the evidence of P.Ws Madan Lal, Agya Ram and Deputy Lal and trot on the basis of the rule of presumption engrafted in section 4. On the other hand the charge under section 161 of the Penal Code must be held to have been proved by pressing into service the rule of presumption enacted in section 4 of the Act. The explanation given by the appellant even on the test of preponderance of probability was not only unsatisfacory and unacceptable but untrue. In that view of the matter accept- ance of the gratification of Rs. 80/- by him from P.W. Madan Lal must be presumed to have been done as a motive or reward such as as mentioned in section 161 of the Penal Code. Almost an identical case on the point is the decision of a Constitution Bench of this Court in Sri C. I. Emden v. The State of U.P.(1). There also the appellant before the Supreme Court demanded from the complainant Rs. 400/per month in order that the complainant may be allowed to carry out his contract peacefully without any harassment. A sum of Rs. 375/- was proved to have been paid to the appellant. The conviction under section 161 of the Penal Code was maintained only on the basis of the presumption arising under. section 4 of the Act. On identical facts conviction under section 5(2) was also upheld. WC may refer to the decision of this Court in V. D. Jhangan v. State of Uttar Pradesh(1) On the facts of that case it was held that the prosecution evidence sufficiently established the charges under section 5(2) read with section 5(1)(d) of the Act and section 161 of the Penal Code. In regard to the latter charge the rule of presumption was applied as laid down by this Court in the case of C. I. Emden referred to above.

For the reasons stated above, we find no substance in the appeal and maintain the order of conviction and sentence passed against the appellant.

P.H.P. Appeal dismissed.

(1) [1960] (2) S.C.R. 592.

(2) [1966] (3) S.C.R. 736.