Supreme Court of India
Dhaneshwar Narain Saxena vs The Delhi Administration on 24 August, 1961
Equivalent citations: 1962 AIR 195, 1962 SCR (3) 259
Author: B P Sinha
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Sarkar, A.K., Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
DHANESHWAR NARAIN SAXENA

Vs.

RESPONDENT:
THE DELHI ADMINISTRATION

DATE OF JUDGMENT:
24/08/1961

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
BENCH:
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1962 AIR 195 1962 SCR (3) 259
CITATOR INFO :
R 1963 SC1116 (12)
R 1968 SC1323 (8)
R 1969 SC 17 (18)
E 1973 SC 330 (11,13)
R 1976 SC1497 (21)

ACT:
Prevention of Corruption--Public servant--Misconduct, not in the discharge of one's duty--Corrupting other public servant--Criminal Misconduct--Ingredients of offence--Prevention of Corruption Act, 1947 (2 of 1947) ss. 5 (1) (d), 5 (1) (d).

HEADNOTE:
The appellant who was an Upper Division Clerk in the office of the Chief Commissioner of Delhi was convicted of an offence under s. 5 (1) (d) of the Prevention of Corruption Act, 1947, punishable under s. 5 (2) of the Act. The prosecution case was that R who was anxious to obtain a licence for a double-barralled shot-gun sought the

assistance of the appellant who knew him, that the appellant who had nothing to do with the issuing of licences for firearms which was done by the office of the Deputy Commissioner offered to use his good offices in expediting and furthering the progress of R's application for a licence in the appropriate department if he was paid Rs. 250/ and that when the licence was cancelled on its being found that R was not entitled to it the appellant promised to have it restored if he was paid a further sum of Rs. 180/-. The trial judge found that the appellant taking advantage of his position as an employee in the Chief Commissioner's office and of R's ignorance and anxiety to get the licence, had induced him to part with the money on the promise that he would get his licence restored. The appellant pleaded that on the facts found no offence under s. 5(1) (d) of the Act had been Made out and relied on state of Ajmer v. Shiviji Lal , (1959) Supp. 2 S. C. R. 739.

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Held, that in order to constitute an offence under cl. (d) of s. 5 (1) of the Prevention of Corruption Act, 1947, it is not necessary that the public servant in question, while misconducting himself, should have done so in the discharge of his duty, and that the decision in State of Ajmer v. Shivji Lal. (1959) Supp. 2 S. C. R. 739, to the contrary, is wrong.

If a public servant takes money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, he commits an offence under s. 5 (1) (d), even though there was no question of his misconducting himself in the discharge of his own duty.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 6 of 1959.

Appeal by special leave from the judgment and order dated the February 4, 1957, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Appeal No. 173-C of 1956. T. C. Arathur, P. C. Mathur and A. N. Goyal, for the Appellants.

B. K. Khanna and T. M. Sen, for the Respondents. 1961. August 24. ;,The Judgment of the Court was delivered by SINHA, C. J.-This appeal was first heard by a Division Bench of three judges, composed of the Chief Justice, Imam and Shah, JJ., on the 19th of February last year. In the course of the argument, the learned counsel for the appellant invited the attention of the Court to the decision of a Division Bench of this Court in the State of Ajmer v. Shivji Lal (1). The Bench hearing the case, being of opinion that the decision aforesaid of this Court required reconsideration, referred the case to a larger bench, and that is how it has come before US.

It is necessary to state the following facts in order to bring out the question of law to be determined in. this case. The appellant was an upper Division Clerk in the office of the Chief Commissioner of Delhi. 'He had come to know (1) [1959] Supp. 2. S.C.R. 739.

Ram Narain, who is the chief prosecution witness in this case and who is a fireman serving in Delhi Fire Brigade. Ram Narain, aforesaid, had for a long time been anxious to obtain a licence for a double-barrelled shotgun. It is alleged that in this connection he bad sought the assistance of the appellant who had nothing to do with the issuing of licences for firearms, which is done by the office of the Deputy Commissioner, Delhi. The prosecution story, which, as indicated above, rests mainly on the statement of Ram Narain, is that he had submitted 'two applications during the year 1953 for the, purpose of obtaining the licence aforesaid, with the assistance of the appellant. These applications did not produce any results. In .1954, he made another attempt in the same direction and approached the appellant to help him. The appellant held out hopes of success in obtaining the licence if he was paid Rs. 250. Ram Narain paid only Rs. 140 and held out a promise to pay the amount after his sister's marriage. Thus, the third application for the licence was made in which Rain Narain's salary was declared to be Rs. 105 per month. This third attempt proved successful and Ram Narain was granted the necessary licence. Before the: learned single Judge of the High Court in Delhi, before whom the case came, up on appeal, it was not disputed that the appellant had used his good offices in expediting and furthering the progress of the application in the appropriate department. It appears that eventually the authorities concerned were appraised of the fact that the salary of Ram Narain was only Rs. 85 per month and that the declaration in the form that his salary was Rs. 105 per month bad been falsely made with a view to get over the difficulty that applications for licences for firearms by Government servants drawing less than Rs. 100 per month would not ordinarily be considered. When the authorities came to know- the true facts about Ram Narain's status in Government service.

his licence was cancelled and he was called upon to show cause why he should not be prosecuted for having made a false statement. Ram Narain made his representation to the authorities and showed cause against the action proposed to be taken against him, alleging that his monthly salary had been falsely declared in the 'relevant form for application for the firearm on the advice of the appellant. The prosecution story further is that when Ram Narain got into the trouble, as aforesaid, about the false statement in his application form, he again approached the appellant. The appellant' demanded another Rs. 180 as a reward for his getting the licence restored. Ultimately, Ram Narain agreed to pay the appellant Rs. 90 in advance and promised to pay the remaining Rs. 90 after the licence had actually been restored to him. Ram Narain for reasons of his own, appeared to have approached his superior officers and thus the matter reached the Chief Fire Officer, who appraised the police of the proposed illegal transaction between Ram Narain and the appellant. The police decided to lay a trap for catching the appellant red-handed. Accordingly, Ram Narain saw the appellant in the Chief Commissioner's office and accompanied him to the canteen run by Kishorilal, who has been examined as Defence Witness 1 This canteen is situated on the Alipore Road near the Chief Commissioner's office. There, Sarwan Singh a taxi driver, and Head Constable Gurbachan Singh in plain clothes, who were examined as prosecution witnesses, were present by arrangement. Ram Narain handed over the ninety rupees, which he had been given by the police, to the appellant. On the prearranged signal being given by Sarwan Singh, Inspector Surendra Pal Singh Prosecution

Witness 16, at once entered the canteen. At that time the appellant, suspecting that he was being trapped, attempted to hand over the money received by him from Ram Narain to Kishorilal, the proprietor of the canteen The head constable Gurbacban Singh, however, seized the accused and prevented him from handing over the currency notes to Kishorilal. That is the story which was recited in the First Information Report drawn up in the. Civil Lines Police Station at 2-30 P.m. that very day, August 5, 1954. After investigation by a competent police officer tinder permission from the Magistrate, the appellant was placed on his trial before Shri Jawala. Dass, Special Judge Delhi. He framed the following charge against him.

I, Jawala Dass, Special Judge, Delhi, hereby charge you (Dhaneshwar Narain) son of Babu Lakshmi Narain resident of 21, Todar Mal Lane, New Delhi as follows:

That you on or about 5th August 1954 in the canteen on 6, Alipore Road, being a public servant employed in the office of the Chief Commissioner, Delhi by corrupt and illegal moans and by otherwise abusing your position as a public servant obtained for yourself a sum of Rs. 90 from Ram Narain at the aforesaid Canteen for the restoration of his cancelled licence for the double-barrelled gun which had been originally grant to him, by the District Magistrate Delhi and thereby committed an offence u/s 161 I.P.C. or in the alternative u/s 5(1)(d) punishable u/s 5(2) of the Prevention of Corruption Act, which is within my cognizance.

And I hereby direct that you be tried by this Court for the aforesaid offences mentioned in the charge".

The learned Judge came to the conclusion that the evidence produced by the prosecution brought the charge home to the accused, and that the accused, taking advantage of his own position as an employee in the Chief Commissioner's office, and of Ram Narain's ignorance and anxiety to 'get the licence had induced him to part with the money on the pro- mise that he will get his licence restored. He also found that at the time of making this demand the appellant had not told Ram Narain that he wanted the money for someone who was in a position to issue the licence and that therefor, the case did not fall within s. 161 of the Indian Penal Code. On that reasoning he convicted the appellant under s.5(1) (d) punishable under s. 5 (2) of the Prevention of Corruption Act (If of 19 7) hereinafter called the Act - and sentenced him to six months, rigorous imprisonment. The appellant preferred an appeal which was heard by Mr. Justice Falshaw of the Punjab High Court. The learned Judge, by his judgment and order dated February 4,1957 substantially affirmed the findings of the learned Special Judge and maintained the order of conviction and sentence. He accordingly dismissed the appeal. The appellant, failing to obtain a certificate from the High Court that his was a fit case for farther appeal to ',his Court, applied for, and obtained from this Court, special leave to appeal from the judgment of the single, Judge of the High Court. Before this Court it has been strenuously argued that on the findings of fact arrived at by the courts below, accepting the prosecution story as told by the main prosecution witness Ram Narain, no offence under s. 5(1)(d) of the Act has been made out. Reliance was placed mainly upon the, decision of the Division Bench of this Court in State of Ajmer v. Shivji Lal (1). That case, if correctly decided, certainly supports the appellant, contention, because it has been laid down in that case that in order to attract the operation of s. 5 (1)(d) of the Act it was necessary element of the crime charged that, the public servant should have

misconducted himself in the discharg -of 'his own duty, and that if the official favour promised by the public servant to the giver of the money was not in the hands of the public servant, he could not be said to have misconducted himself in 'he discharge of his own duty. In that case the accused (1) [1959] Sapp. 2 S.C.R.739.

person was a school teacher and the charge against him was that he had promised to the giver of the money to secure a job for him in the Railway Running Shed at Mount Abu., It was not a part of his duty to make any such appointment and therefore, when he took the money for procuring a job for the complainant, he could not be convicted for committing misconduct within the meaning of s. 5 (2) of the Act. The ratio of the decision is contained in the following paragraph of the judgment in that case :

> "The offence under this provision consists of criminal misconduct in the discharge of his duty. In order, therefore, that this offence is committed there should be misconduct by the public servant in the discharge of his duty.

In other words the public servant must -I o something in connection with his own duty and thereby obtain money for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. If a public servant takes money from a third person in order to corrupt some other public servant and there is no question of his misconducting himself in the discharge of his own duty, that action may be an offence under s. 161 of the Indian Penal Code but would not be an offence s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act. The essence of an offence under s. 5(2) read with s. 5 (1) (d) is that the public servant should do something in the discharge of his own duty and thereby obtain any valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. The words ,(by otherwise abusing his position" read along with the words in the discharge of his duty, appearing in s. 5 (1)(d) make it quite clear that an offence under that section requires that the public servant should misconduct himself in the discharge of his own duty. In the present- case, the accused was a teacher and it was no part of his duty to make appoint- ments in the Running Shed at Abu Road. There would, therefore, be no question of his committing misconduct in the discharge of his duty when he took money for procuring a job for Prem Singh in the Running Shed. so far, therefore, as the charge under s. 5(1)(d) is concerned, we are of opinion that there was no question of the accused misconducting himself in the discharge of his own duty in the circumstances of this case and it must fail." The relevant portion of s. 5 of the Act is in these terms :

"5. Criminal misconduct in discharge of official duty-

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

(a)

(b)

(c)

(d)if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

(2)Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

It will be observed that the heading of S. 5 is ,Criminal misconduct in the discharge of official duty'. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like those under ds.161 etc. The legislature advisedely widended the scope of the crime by giving by giving a very wide definition in s.5 wiht a view to punish those who holding public office and taking advantage of their official position obtain any valuable thing or pecuniary advantage. The necessary ingredient of an offence under s. 161, Indian Penal Code, is the clause as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person or for rendering or attempting to render any service or dis-service to any person with the Central or any State Government or Parliament or the Legislature of any State or wiht any public servent."But it need not be there in order to bring an offence under s.5 of the Act home to the accused . the offence under s.16, indian penal code . The words in the discharge of his duty" do not constitute an essential ingredient of the offence. The mistake in the judgemnt of this court in the aforsaid ruling in the State of Ajmer v. Shivji Lal (1) shas arisen from reading those words. which are part merely of the nomenclature of the offence created by the Statute, whose ingredients are set out in sub-claused (1) to

(d) that follow as descriptive of an essential and additional ingriedent of each of the types of offence in the four sub-clauses. That that is the source of the mistake is apparent from the erroneous way in which the section has been quoted at p.744 of hte Supreme Court Report, in the aragraph preceedomg the paragarph quoted above. The ingredients of the particular offence in cl.(d) of s.5 (1) of the ACt are;(1) that he should be a public servant (2) that he should use some corrupt or illegal means or otherwise abouse his position as a public servant;(3) that he should have thereby obtained a valuable thing or pecuniery advantage; and (4) for himself or for any other person. In order to bring the charge [1959] Supp. 2 S.C.R. 739 home to an accused person under cl. (d) aforesaid of the section, it is not necessary that the public servant in question, while misconducting himself should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. "Duty" and ",misconduct" go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That `misconduct', which has been made criminal by s. 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provisions of cl. (c) of s. 5 (1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of Hori Ram Singh v. The Crown (1). An application for special leave to appeal from that decision was refused by the Privy Council in Hori Ram Singh v. The King-Emperor (2). This Court therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the

description of the offence into the definition portion of it. It is not necessary to constitute the offence under el. (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the dis- charge of his own duty, he has not committed an offence under s. 5(1)(d). It is also erroneous to hold that the essence of an offence under s. 5 (2), read with a. 5(1) (d), is that the public servant (1) [1939] F.C.R. 159.

(2) [1940] F.C.R. 15.

should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage. These observations dispose of the present appeal and it must be held that there is no merit in the contentions raised in support of the appeal. As the only point raised in support of the appeal fails, it is accordingly dismissed. Appeal dismissed.