Supreme Court of India
State Of Andhra Pradesh vs P.V. Narayana on 9 February, 1971
Equivalent citations: AIR 1971 SC 811, 1971 CriLJ 676, (1971) 1 SCC 483, 1971 III UJ 339 SC
Author: S Sikri
Bench: S Sikri, P J Reddy
JUDGMENT S.M. Sikri, C.J.

1. This appeal is by certificate granted by the Andhra Pradesh High Court against its judgment allowing the appeal of the respondent and quashing the proceedings against him. He had been convicted by the learned Special Judge for S.P.E. cases, Secunderabad, Under Section 161 I.P.C. & Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to various terms of imprisonment.

2. The facts of the case and the points raised before us are as follows :

3. The respondent was working as Head Train Examiner and was posted at Waltair in the South Eastern Railway. It was alleged that on 14th July, 1964, the respondent demanded & accepted an amount of Rs. 5/-as gratification, other than legal remuneration, from P.W. 1 who too was a railway employee, as a motive or reward for having attested on 1-7-1964 an Urban Bank Pay Order dated 20-6-1964 for Rs. 265 80 nP. drawn in favour of P.W. 1 and for having posted him for duty at the Waltiar Goods Yards. It appears that P.W. 1 approached the Inspector of the Special Police Establishment and informed him that the respondent was harassing him for a payment of bribe of Rs. 5/-. The Inspector made confidential enquiries and learnt that the respondent was indulging in corrupt practices and that there was truth in the complaint made by P.W. 1. On 13-7-64 he presented the requisition Ex. P14 before the 1st Class Magistrate, Visakhapatnam, requesting him to authorise the Inspector to investigate the case. After stating the facts briefly in this requisition he said, "As the Superintendent of Police, S.P.E., is engaged in administrative matters and supervising investigations at Hyderabad and the other two Deputy Superintendents of Police are also engaged in the investigation of important cases and other enquiries and as it is not possible to secure their presence in the near future at Waltair to investigate into said complaint of Sri Appanna, I request that I may be permitted Under Section 5(A) of the Prevention of Corruption Act (Act II of 1947) and Section 155(2) Criminal Procedure Code to investigate the allegations and to lay a trap." On the same day the District Munsif-cum-First Class Magistrate, Visakhapatnam, passed the following order :

Whereas it is alleged that respondent is demanding and accepting illegal gratification from his staff for showing official favours and that he demanded Rs. 5/-as bribe from Shri Ella Appanna for having attested his cheque.

And Whereas, I am satisfied that the Superintendent of Police and the two Deputy Superintendents of Police, Special Police Establishment, Hyderabad, are otherwise engaged and unable to take up investigation of the allegations complained of;

And Whereas, I Shri D. Krishnam Raju, am satisfied on a perusal of the petition of the Inspector Police, and on hearing Shri P. Sreerama Murthy, Inspector of Police, that that there are reasonable

and good grounds to authorise investigation of the allegations. I do hereby authorise Shri P Sreeramamurthy, Inspector of Police, Special Police Establishment, Hyderabad Under Section 5(A) of Act II of 1947 and 155(2) Cr.P.C. to investigate the allegations and to lay a trap.

4. It would be seen from the requisition and the order of the Magistrate that it is not stated that the Inspector of Police had contacted the Superintendent of Police or the two Deputy Superintendents of Police or he was told by them that they were engaged in administrative matters and supervising investigation of important cases and they were unable to take up the investigation of either this case or other cases. In his evidence he admitted that before giving the requisition he did not send any memo or letter to his office for ascertaining whether the D.S.P. or S.P. were engaged in any other case. So, the net result seems to be that the Inspector made the requisition at his own initiative without getting into contact with the S.P. or the D.S.P. The Magistrate was apparently satisfied that the assertion of the Inspector of Police that the Superintendent of Police and the two Deputy Superintendents of Police were unable to investigate or unable to take up the investigation It seems to us that the procedure adopted is wholly unwarranted by the provisions of the Prevention of Corruption Act. It may be that the Inspector though that it was not necessary that the Superintendent of Police or the Deputy Superintendents of Police should themselves write to Magistrate or apply that the Inspector of Police be authorised to investigate but it seems to us that they must be in the picture before the Inspector of Police applies for permission. In other words they must tell the Inspector of Police that they are too to take up the investigation of this case or they must on this ground authorise him to apply to the Magistrate to permit him to investigate the case. This procedure which has been adopted by passes the provisions of the Act and nullifies the objective of Parliament that the senior Officers should ordinarily investigate such cases. The High Court in our view rightly held that the grant of permission to investigate the case is not merely a mechanical act and the Magistrate had erred in giving the sanction.

5. It appears that the Superintendent of Police felt that the permission, which P.W. 11 had obtained from the Magistrate was some what defective and, therefore, it was felt that the Magistrate be requested again to give a fresh sanction. Accordingly he applied to the Fourth City Magistrate on 24th July, 1964, that as he himself and the Deputy Superintendent of Police were engaged in the investigations and secret inquiries and were unable to take up investigation personally, the Inspector of Police be authorised to conduct further investigations. On 25th July, 1964, the Magistrate gave the necessary authorisation But the High Court rightly remarked that the main investigation had already been done by that time. The High Court on being satisfied rightly held that the investigation was unauthorised and as such the proceedings were vitiated. Before the High Court, the learned Counsel for the respondent argued on the facts of the case but as the sanction itself was held invalid, the High Court did not give its opinion with regard to the facts of the case.

6. The learned Counsel for the appellant Shri P. Ram Reddy contended that assuming the sanction was bad, this Court has held on a number of occasions that an illegal investigation does not violate the trial. In other words, that in order to set aside the conviction it must be shown that there has been miscarriage of justice as a result of bad and irregular investigation The earliest case on the point is H.N Rishbud and Inder Singh v. The State of Delhi . This Court observed : If, therefore, cognizance is in fact taken on a police report vitiated by the breach of a mandatory provision relating

to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice.... We are, therefore clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to terminate, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

7. The latest decision to which our attention is invited was an unreported case Dr. M.C. Sulkunte v. State of Mysore U.J. (S.C.) 1971 p. 83. It is clear from these authorities that the High Court tired in quashing the proceedings against the respondent solely on the ground of illegal investigation.

8. The High Court did not go into the question whether the illegal investigation had resulted in prejudice to the respondent. The learned Counsel for the respondent contended that the very fact that the main investigation was conducted without a valid sanction had resulted in prejudice to the respondent. It seems to us that the High Court should, apart from other questions which it did not deal with, also go into this question of prejudice. We accordingly accept the appeal, set aside the judgment and order of the High Court and remand the case to it for disposal in accordance with law.