Supreme Court of India
Muni Lal vs Delhi Administration on 30 March, 1971
Equivalent citations: 1971 AIR 1525, 1971 SCR 276
Author: C Vaidyialingam
Bench: Vaidyialingam, C.A.

PETITIONER:
MUNI LAL

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT30/03/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
1971 AIR 1525 1971 SCR 276
1971 SCC (2) 48
CITATOR INFO :
RF 1992 SC 604 (125)

ACT:
Prevention of Corruption Act (2 of 1947), s. 5A-If officer conducting investigation should take every step himself-Objection not taken during trial- Effect of irregularity or illegality-If conviction illegal.

HEADNOTE:
The appellant was charged with the offenses under s. 5(2) read with s. 5(1) (d) of the Prevention of Corruption Act, 1947 and s. 161, I.P.C. The investigation was conducted by the Dy. Superintendent of Police but some of the statements, reports and memoranda were written, not by the Dy. Superintendent of Police, but by the Sub-Inspector. The appellant did not raise any objection before or during the trial that an illegality or irregularity was committed during investigation. At the stage of argument, it was contended that there was a violation of s. 5(A). The appellant was convicted and the conviction was confirmed by the High Court. In appeal to this Court, on the questions: (1) whether there was violation of s. 5(A) of the Prevention of Corruption Act, and (2) whether such violation rendered the trial and conviction of the appellant illegal,

HELD:(1) The Dy. Superintendent of Police gave evidence that the entire investigation was done by him and that the statements and reports which were in the hand-writing of the Sub-Inspector were written by the latter on his dictation and under his supervision. The evidence in the case also established that the Dy. Superintendent of Police was in complete charge of the investigation giving necessary directions and, never withdrew from the case at any stage. Though s. 5A is mandatory that the investigation should be conducted by the officer of the appropriate rank it is not necessary that every one of the steps in the investigation should be done by him in person or that he could not take the assistance of his deputies or that he was bound to go through each one of the steps himself. Therefore, there was no irregularity or illegality in the conduct of the investigation. [280 F-G; 282A-B, F-H; 283B]
(2)Where no objection was raised before trial commenced regarding any illegality or irregularity committed during investigation and where the cognizance of case in fact had been taken and the case had proceeded to termination the invalidity of the preceding investigation would not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. [281A-B, C-D, G]
H.N. Rishbud and Inder Singh v. State of Delhi, [1955] 1 S.C.R. 1150 and Munna Lal v. State of Uttar Pradesh, [1964] 3 S.C.R. 88, followed.
State of Madhya Pradesh v. Mubarak Ali, [1959] Supp. 2 S.C.R. 201, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Criminal Appeal 23 of 1968.

Appeal by special leave from the judgment and order dated September 18, 1967 of the Delhi High Court in Criminal Appeal No. 26-D of 1966.

E. C. Agarwal, for the appellant.

G. N. Dikshit and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Vaidialingam, J.-This appeal, by special, leave, is directed against the judgment and order dated September 18, 1967 of the Delhi High Court confirming the conviction of the appellant for offenses under Sections 5(2) read with Section (5) (1) (d) of the Prevention of Corruption Act, 1947 (hereinafter to be referred as the Act) and Section 161 of the Indian Penal Code. The High Court also confirmed the sentence of one year's rigorous imprisonment. In addition to this the Special Judge had imposed a fine of Rs. 500; but the High Court reduced the fine to Rs. 100. This was the only modification effected by the High Court with regard to the sentence.

The case for the prosecution was as follows The appellant was employed in August, 1965 as Head Constable attached to Hauz Qazi Police Station, Delhi. One Som Nath used to park his rehri in the chowk of Hauz Qazi and sell Kulchey and Chholey. Som Nath had been plying this trade for about 8 or 10 years without payment of the necessary tax to the Municipal Corporation and without taking any licence. The appellant used to harass and threaten Som Nath that unless he paid bribe to him, he will be prosecuted. In particular on August 25, 1965 the appellant demanded from Som Nath as bribe a sum of Rs. 20 per month for not harassing him for carrying on his business without the necessary licence. Som Nath expressed his inability to pay such a heavy amount and ultimately the appellant agreed to receive Rs. 10 per month. He promised to make the first payment on August 26, 1965 between 2 and 3 P. M. At about 11 A. M. on August 26, 1965, Som Nath approached Sri Hamaik Singh, Deputy Superintendent of Police, attached to the Anti, Corruption Department and reported about the demand made by the appellant and to his having ultimately agreed to pay a sum of Rs. 10 between 2 and 3 P. M. on that day., This complaint was reduced to writing by Harnaik Singh, who has given evidence as P. W. 6. P. W. 6, summoned two employees from the office of the Deputy Collector, Tees Hazari, Sri Navneet Lal (P. W.2) and Hari Kisban (P. W. 3) and in their presence took from P. W. I the currency note of Rs. 10 and after noting the number handed it over to P. W. I with the instruction to, give the same to the appellant on demand. P. W. I was also informed that the police party will be hiding nearby and that he should give a particular signal after paying the amount to the appellant. The police party headed by P. W. 6 together with the com- plainant and P. Ws. 2 and 3 proceeded near the rehri of P. W. I. While P. W. I went to the rehri, the police party and P. Ws. 2 and 3 remained behind in hiding. At about 2. 45 P. M. the appellant came to the rehri of P. W. I and told him "give, my thing to me". P. W. I placed the currency note on the palm of the appellant saying that he was 'Making the payment with considerable difficulty. On signal given by P. W. 1, the Deputy Superintendent of Police along with others immediately went to the rehri of P. W. I and on being told by P. W. 1 that he had paid Rs. 10/to the appellant, the latter was asked to produce the same. P. W. 6 made a search of the appellant and recovered the currency note Ex. P. I from his pocket. The number of the currency note was checked with the number already recorded and it tallied. P. Ws. 2 and 3 also witnessed the search and seizure made by P. W. 6. Accordingly the appellant was prosecuted for the offenses mentioned above.

The prosecution relied mainly on the evidence of P. W. I Som Nath and the two persons who had witnessed the search and seisure P. Ws. 2 and 3 and the Deputy Superintendent of Police, P. W. 6. Certain other witnesses were also examined.

The appellant denied that he had either demanded or received any bribe from P. W. I He pleaded that the alleged recovery of the currency note from him is false and that the witnesses had been tutored to give false evidence at the instance of Ved Prakash, Sub-Inspector of Police, who was his enemy. According to the appellant, he had declined to accede to the request of Ved Prakash to give false evidence against two Sub-Inspectors of Police, Phool Singh and Jeeva Singh, whom he wanted to be implicated in a case. The appellant also examined two witnesses. D. W. 1 who was also having a rehri in the same chowk, had stated that the appellant had not received any bribe from P. W. I and that he also informed P. W. 6 about the same. D. W. 2 was the Secretary of the Rehri Labour Union and he has deposed to the fact that none of the members of the Union had ever complained against the appellant and that the latter had nothing to do with the prosecution of people under Section 34

of the Police Act.

The, learned Special Judge accepted the evidence of P. Ws. 1, 2, 3 and 6, and rejected the evidence of D. Ws. 1, and 2. The view of the learned Special Judge was that D. W. I was giving false, evidence on account of business friendship and that D. W. 2 had said nothing about the incident in question. In this view the Special Judge found the appellant guilty of the offenses with which he was charged and sentenced him to undergo one year's rigorous imprisonment and to pay a fine of Rs. 500. On appeal to the High Court, the appellant pressed the objection that the investigation of the case was done in violation of the provisions of Section 5A of the Act. According to the appellant, instead of P. W. 6 conducting the investigation, it was done by the Sub-Inspector Ved Prakash and, therefore, no conviction could be based on such investigation, which had been made contrary to law. The appellant also pleaded that the evidence of P. W. 1 is that of an interested witness and that P. Ws. 2 and 3 were tools in the hands of the police and as such no reliance can be placed on the testimony of these three witnesses. His plea was that the evidence of D. Ws. 1 and 2 should have been accepted.

The High Court has expressed the view that there is a cer- tain amount of irregularity in the investigation of the case inasmuch as the statements, reports and memos were all written by Ved Prakash and not by the Deputy Superintendent of Police, P. W. 6. But as there is only an irregularity and as the trial has not been vitiated, it cannot be said that the trial and other proceedings conducted against the appellant have to be set aside. The High Court agreed with the Special Judge that the evidence of P. Ws. 1, 2, 3 and 6 clearly establishes the case of the prosecution and as such the appellant has been rightly found to be guilty of the offenses with which he was charged. While confirming the conviction and the sentence of one year's rigorous imprisonment, the High Court, however, reduced the fine to Rs. 100.

Mr. E. C. Agarwala, learned counsel for the appellant raised two contentions : (1) the trial and conviction of the appellant are illegal inasmuch as the investigation in this case has been conducted in violation of the provisions of Section 5A of the Act, and (2) the prosecution evidence should not have been accepted as the whole case has been engineered by the enemy of the appellant Ved Prakash, who has not appeared before the court. The second contention of Mr. Agarwala can be straightaway disposed of. Both the Special Judge as well as the High Court have accepted as true the evidence of P. Ws. 1, 2, and 3 supported as it was by the evidence of the Deputy Superintendent of Police, P. W. 6. The Evidence of D. W. I has been categorically rejected as false. D. W. 2 does not say anything about the incident and as such his evidence is of no assistance to the appellant. No doubt the appellant has stated when he was examined under Section 342 Cr. P.-C. that the prosecution witnesses Nos. 1, 2 and 3 are under the influence and threat of the police and that they have been prompted by Ved Prakash due to enmity to give false evidence against him. This plea has not been accepted by any of the courts. We are satisfied that the evidence adduced by the prosecution has been properly accepted by the courts.

This leaves us the consideration of the first contention that the investigation has not been conducted in accordance with Section 5A of the Act. We must frankly admit that the observation made by the High Court that there has been a certain amount of irregularity in the investigation of the case has given scope for this argument. According to the learned counsel for the appellant the entire

investigation in this case has been done not by the Deputy Superintendent of Police P. W. 6, but by the Sub-Inspector of Police Ved Prakash, who has also not appeared before the court. The contention of the learned counsel in this regard is based upon the fact that some of the statements, reports and memos have been written not by P. W. 6 but by Ved Prakash. Mr. G. N. Dixit, learned counsel appearing for the Delhi Administration, has drawn our attention to the various reports, statements and memos exhibited in the case to show that the investigation has been done not by Ved Prakash, but by P. W. 6 and it is not violative of Section 5A of the Act. He has also placed considerable reliance on the evidence of P. W. 6 in this regard to show that the entire investigation was done by him.

There is no controversy that the case before us could not have been investigated under Section 5A of the Act by any police officer below the rank of a Deputy Superintendent of Police. The only question is whether the investigation has been done by Ved Prakash as alleged by the appellant or by P. W. 6 as stated on behalf of the respondent The contention on behalf of the appellant is that some of the statements recorded appear to be in the hand writing of Ved Prakash and, therefore, the inference is that it is he who has conducted the investigation. It is true that Section 5A is mandatory and not directory and an investigation conducted in violation thereof is illegal. But as held by this Court in H. N. Rishbud and Inder Singh vs. The State of Delhi (1) if cognizance in fact has been taken on a police report in breach of the mandatory provi- sions relating to investigation, the results, which follow cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. It has been further emphasised in the said decision that an illegality committed in the course of a n investigation does not affect the competence and jurisdiction of the Court for trial. The same propositions have been reiterated in Munna Lal vs. State of Uttar Pradesh (2) (1) [1955] 1 S. C. R. 1150. (2.) [1964] 3 S. C. R. 88.

From the above propositions it follows that where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that Section 5A of the Act was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned counsel for the ap- pellant has been unable to show us how there has been any miscarriage of justice in this case and how the accused has been prejudiced by any irregular investigation. Admittedly the appellant did not raise any objection before the trial commenced regarding any illegality or irregularity committed during the stage of investigation. On the other hand, the trial was allowed to proceed and it came to an end. That contention was raised only at the stage of arguments. In this connection we may also refer to the decision in The State of Madhya Pradesh v. Mubarak Ali(1), There the objection was taken before the trial began before the Special Judge, that the investigation has been carried on in breach of Section 5A of the Act. The matter was taken to the High Court and it directed that it in order to rectify the defects and cure the illegality in the investigation, the Special Judge should have ordered the Deputy Superin- tendent of Police to carry on the investigation himself while the case remained pending in the court of the Special Judge. That order of the High Court was challenged and this Court confirmed it and declined to interfere on the ground that as the objection has been taken at the earliest stage before the trial

began, the direction given by the High Court was justified as that will ensure a proper investigation being made and completed for the prosecution of the accused therein. Therefore the ratio of the. said decision cannot apply and the present case will be governed by the decision in The State of Madhya Pradesh v. Mubarak Ali(1). (1). But we make it clear that the above discussion has been made by us on the assumption that there has been an irregularity committed in the investigation in the case before us' But as we will presently show in the discussion to follow there is no such irregularity or illegality in the investigation as contended on behalf of the appellant. We are satisfied that the investigation in this case has been conducted not by Ved Prakash, Sub-Inspector of Police, but by the competent authority, namely, the Deputy Superintendent of

1. [1959] Supp. 2 S. C. R. 201

2. [1955] 1 S.C. R. 1150.

Police. P. W. 6. It is no doubt true that some of the statements recorded during the investigation conducted by P. W. 6 are in the hand writing of Ved Prakash. But P. W, 6 has categorically stated in his evidence that the entire investigation was done by him and that any statements or reports which are in the hand writing of Ved Prakash were written by the latter on his dictation and under his supervision. That P. W. 6 is the officer who conducted the investigation is also borne out by the, various documentary evidence produced in. the case. Ex. PA has been given by P. W. 1 to P. W. 6 and it bears the signature of the latter. The endorsement Ex. P. A 1 also bears the signature of P. W. 6. It is clearly stated therein that on receipt of the complaint Ex. PA from P. W. I., the Deputy Superintendent of Police sent for P. Ws. 2 and 3, two employees from the office of the Deputy Commissioner to appraise them about the nature of the complaint given by P. W. I and also making them witnesses for receiving the ten rupee currency note as well as handing over the same to P. W. 1 to be given as bribe to the appellant. The detailed instructions are given by P. W. 6 in the endorsement and to the said two witnesses. There is a further endorsement that he as Deputy Superintendent of Police has arranged a raiding party consisting of himself and the persons mentioned therein and that they are leaving for conducting the raid along with the complainant. There is also a further endorsement Ex. PA/2 by P. W. 6 giving in detail the actual incident relating to the search and seizure of ten rupee currency note from the appellant. All these are done by P. W. 6 and after the seizure and search, P. W. 6 sends the necessary report to the concerned police station for registering the case. The actual seizure memo is also prepared and signed by P. W. 6. The various articles seized from the appellant are also written out in the memo prepared and signed by P. W. 6. Therefore, all the above facts clearly establish that the investigation was conducted by P. W. 6, Deputy Superintendent of Police, as required by law and there has been no violation of Section 5A of the Act.

The High Court found irregularity in the investigation on the basis, as pointed out earlier, that some of the statements are. in. the hand writing of Ved Prakash. We are of the view that this was a wrong approach made by the High Court. It is clear from the evidence that P. W. 6 was in complete charge and control of' the investigation and he has never withdrawn from the same at any stage. He was the officer who was controlling and giving necessary directions in the course of investigation. Though it is clearly implicit in section 5A that the investigation should be conducted by the officer of the

appropriate rank, we do not think it is absolutely necessary that every one of the steps in the investigation has to be done by him in person or that he cannot take the assistance of his deputies or that he is bound to go through each and everyone of the steps in the investigation in every case. The above proposition also has been laid down by this Court in H. N. Rishbud and Inder Singh vs. The State of Bihar (1) are referring to the above aspect to emphasise that the mere fact that some of the statements have been written-by Ved Prakash to the dictation of P. W. 6 will not make the investigation as one not conducted by P. W. 6. Therefore, under the circumstances, we are not inclined to agree with the view of the High Court that there has been any irregularity or illegality in the conduct of the investigation.

We however agree with the conclusions arrived at by the High Court holding the appellant guilty of the offence as well as the sentence imposed on him.

In the result the appeal fails and is dismissed. The appellant will surrender his bail.

V.P.S.

(1) [1955] 1 S. C. R. 1150.