APPELLATE CRIMINAL

1951
Sept. 18

Before Mr. Justice Bavdekar and Mr. Justice Chainani.
STATE *v.* MAHADEO DHUNNAPPA GUNAKI.*

Indian Penal Code (Act XLV of 1860), ss. 161, 116—Offer of illegal gratification to public servant in order to induce him to show favour in exercise of his official functions—Public servant not in position to show desired favour—Whether facts constitute offence—Police officer laying trap to catch offender, not an accomplice.

Section 161 of the Indian Penal Code, 1860, only requires that the gratification should be given to a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour or disfavour in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person with any public servant. It does not require that the public servant himself must have the power or must himself be in a position to perform the act, to show favour or disfavour or to render service or disservice for doing, showing or rendering which the bribe has been paid to him.

In the case of a person who *offers* a bribe to a public servant, if the intention or object with which money is offered is to induce the public servant to perform an official act or show favour in the exercise of his official functions or render any service with any public servant, the offence under s. 161 read with s. 116, Indian Penal Code, would be complete, and it is immaterial whether the public servant is or is not actually in a position to do the act or show favour or render service for doing, showing or rendering which the bribe is offered to him.

Indur Advani v. *State of Bombay*,[1] *The Crown* v. *Phul Singh*,[2] *Kishan Lal* v. *King Emperor*,[3] *Emperor* v. *Ajudhia Prasad*,[4] and *Gopeshwar Mandal* v. *King Emperor*,[5] followed.

A police officer, who lays a trap and receives a gratification, not with the intention of taking it as a bribe but in order to bring to book the person who had offered him the gratification, cannot be regarded an accomplice, and consequently his evidence does not require corroboration.

Rex v. *Gokuldas Morarka*,[6] followed.

CRIMINAL REVISION APPLICATION from conviction and sentence passed by P. A. Apte, Additional Magistrate, First

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* Criminal Revision Application No. 399 of 1951.

[1] (1951) 53 Bom. L. R. 699.
[2] [1941] Lah. 402.
[3] (1904) 1 A. L. J. R. 207.
[4] (1928) 51 All. 467.
[5] (1947) Nag. 611.
[6] (1950) Cri. Appeal No. 454 of 1949, decided by Chagla C. J. and Gajendragadkar J., on January 11, 1950 (Unrep.).

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Class, Belgaum, confirmed on appeal by V. R. Paralkar, Additional Sessions Judge, Belgaum.

Mahadeo and Nagappa (accused Nos. 1 and 2 respectively) and one Pattan (deceased), the father-in-law of Nagappa, were doing extensive business in silk, yarn and other articles at Rabkavi in Belgaum district. On receiving information that the accused had evaded payment of income-tax by showing false returns of profits made by them in their business, one Gudi, Deputy Superintendent of Police, Anti-Corruption Branch, obtained sanction of the District Magistrate to investigate into the matter. On January 24 and 25, 1949, he accompanied by Naik, who was an Inspector in the police department, searched the shops and the houses of the accused and seized their account-books. The books were then taken to Belgaum and examined by Naik.

On March 12, 1949, Naik submitted a report stating that the accused had earned huge profits which they had not shown in their income-tax returns, that they had made false entries in their account-books and that they had suppressed many account-books from the income-tax authorities. Before Naik submitted his report, the accused approached him through his friend Keshavain, and offered to pay him Rs. 30,000 in order that the investigation of the charges against them might be dropped. Naik, in consultation with Gudi, decided to lay a trap to bring the accused to book for offering that bribe.

On March 23, 1949, Keshavain arranged for the meeting of the accused with Naik at Belgaum at 7 or 7-30 p. m. near Mitra Samaj. The accused asked Naik to take Rs. 15,000 which they had brought with them but Naik told them that it was not advisable to talk about such things on a public road and that the accused should see him in his room in the Police Club at about 10-30 p. m. Before the appointed hour Naik submitted a report stating that he had been offered a bribe of Rs. 15,000 by the accused and that action should be taken against them according to law. On that report the District Magistrate granted permission to investigate the offence and accordingly Gudi arranged a trap at the place of the meeting with the help of the panchas.

The accused arrived at 10-30 p. m. and went to Naik's room. Naik asked the accused as to what help they wanted from him. The accused said that he should save them from the income-tax inquiry and arrange for the return of their

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account-books to them. Accused No. 2 then handed over a bundle of currency notes of Rs. 15,000 wrapped in a towel to Naik. Naik made sure that the bundle contained currency notes, engaged the accused in some more conversation and then signalled to Gudi who was waiting outside. Gudi raided the place, seized the notes and then arrested the accused.

The accused were put up for trial before the Additional Magistrate First Class, Belgaum, on a charge of paying an illegal gratification of Rs. 15,000 to Naik in order that he might help them in getting the income-tax inquiry against them dropped and in order that he should see that the account books attached on January 24 and 25, 1949, were returned to them. Accused No. 2's father-in-law (Pattan) was also similarly charged but he died during the pendency of the trial. Both the accused admitted the payment of Rs. 15,000 to Naik but pleaded that they were told by Keshavain that the income-tax case could be compounded if they paid Rs. 15,000 and accordingly they paid that amount to Naik in settlement of the Government claim for income-tax due from them.

The trying Magistrate did not accept the defence of the accused and convicted them under s. 116 read with s. 161 of the Indian Penal Code and sentenced each of them to rigorous imprisonment for one year and a fine of Rs. 1,000.

The accused appealed to the Sessions Court at Belgaum. The appeal was heard by the Additional Sessions Judge, who confirmed their convictions and the sentences passed upon them and dismissed their appeal.

The accused applied in revision to the High Court.

K. A. Somjee, with *H. F. M. Reddy,* for accused No. 1.

Purshottam Tricumdas, with *G. N. Vaidya* and *H. F. M. Reddy,* for accused No. 2.

H. M. Choksi, Government Pleader for the State.

Chainani J.—[After narrating the facts the judgment proceeded:] The charge, which was framed against the accused by the trying Magistrate, was that on March 23, 1949, they and the deceased Pattan, in furtherance of their common intention, offered Rs. 15,000 as illegal gratification to Police Inspector Naik in his room at the police club, Belgaum, in order that he should help them in getting the income-tax inquiry against them dropped and in getting back their account-books, which had been attached by the police at Rabkavi. The investigation of the case, in which the accused

are said to have cheated Government of income-tax by not disclosing the greater part of their income and in which their account-books had been seized, was being conducted by the Deputy Superintendent of Police Gudi and by Inspector Naik, under Gudi's supervision. Naik could not, therefore, himself close the investigation or return the account-books to the accused. He could do so only after obtaining the permission of Gudi and probably also of higher officers. Naik has also stated that when the accused asked him to return the account-books, he told them that the sanction of the Magistrate was required for their return. It has, therefore, been urged that Naik was not in a position to do any official act in favour of the accused or to show them any favour in the exercise of his official functions and that consequently the accused are not liable. It is true that Naik had submitted a report against the accused on March 12, 1949. The accused were probably not aware of this report at the time when they paid Rs. 15,000 to Naik. It was, however, possible for Naik to submit a further report to his higher officers, stating for instance that he had made further inquiries into the matter, that he was satisfied with the explanations given by the accused and that their account-books should be returned to them. Although he could not himself return the account-books to the accused, he could perform an official act or show favour to them in the exercise of his official functions or render service to them with his superior officers by making a recommendation to his higher officers that the account-books should be returned to them. Assuming, however, that he was not in a position to do so, that would not make any difference. For, s. 161, Indian Penal Code, only requires that the gratification should be given to a public servant as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show favour or disfavour in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person with any public servant. It does not require that the public servant himself must have the power or must himself be in a position to perform the act, to show favour or disfavour or to render service or disservice, for doing, showing or rendering which the bribe has been paid to him. As observed by Mr. Justice Bhide in *The Crown* v. *Phul Singh*[1] (p. 406):

"It is difficult to see any principle on which a distinction should be made between cases in which the public servant is in a position to do

[1] (1941) 23 Lah. 402.

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the official act, or favour or service and those in which he is not in a position to do so, but is erroneously believed to be in that position."

We also agree with the learned Judge's observations (p. 406) that "the heinousness of the act obviously lies in the intention of the bribe-giver to corrupt the public servant" and that there is "no good reason, why the act should be considered to be less heinous merely because the public servant does not happen to possess the necessary power to do the required favour or service." In *Phul Sing's* case the Lahore High Court held that it is sufficient to constitute an offence under s. 161 read with s. 116 of the Indian Penal Code, if there is an offer of bribe to a public servant in the belief that he had the power in the exercise of his official functions to show the desired favour, although the public servant had in reality no such power. The same view has been taken by the Allahabad High Court in *Kishan Lal* v. *King Emperor*,[1] and *Emperor* v. *Ajudhia Prasad*,[2] and by the Nagpur High Court in *Gopeshwar Mandal* v. *King Emperor*.[3] These cases were followed by us in *Indur Advani* v. *State of Bombay*.[4] It is true that the case before us was that of a bribe taker, but the cases of the Allahabad and Lahore High Courts, on which we relied, were those of bribe givers. We see no sufficient reason to differ from the view which we took in *Indur Advani* v. *State of Bombay*.[4] In the case of a person, who offers a bribe, the essence of the offence, punishable under s. 161 read with s. 116, Indian Penal Code, consists in his corrupting or attempting to corrupt a public servant by offering him a bribe with the object that he might do or forbear to do any official act or show in the exercise of his official functions favour or disfavour to any person or render or attempt to render any service or disservice to any person with any public servant. The *mens rea* consists in his intention to give a bribe in order that it may induce the public servant to do or not to do something which he would otherwise not do or do. This state of mind of the person, who offers a gratification, has obviously nothing to do with the question whether the public servant, to whom the gratification is offered, is or is not in a position to do or not to do the act, for doing or for not doing which the amount is offered to him. If, therefore, the intention or object with which money is offered to a public servant is to induce him to perform an official act or show favour in the exercise of

(1) (1904) 1 All. L. J. 207.
(2) (1928) 51 All. 467.
(3) [1947] Nag. 611.
(4) (1951) 53 Bom. L. R. 699.

his official functions or render any service with any public servant, the offence punishable under s. 161 read with s. 116, Indian Penal Code, would be complete, and it is immaterial whether the public servant is or is not actually in a position to do the act or show favour or render service, for doing, showing or rendering which the bribe is offered to him. In this case, the Additional Sessions Judge has found that the amount of Rs. 15,000 was paid to Naik in order that he might show favour to the accused in the exercise of his official functions and not in payment of the amount of income-tax due from the accused. The accused would, therefore, be liable under s. 161, read with s. 116, Indian Penal Code, even if Naik was not actually in a position to help them in any way.

The second point which has been raised on behalf of the accused is that Naik was an accomplice and that his evidence cannot therefore form the basis of a conviction, unless it is corroborated by other independent evidence. This point arose for consideration before another Bench of this Court consisting of the Chief Justice and Mr. Justice Gajendragadkar in the case of *Emperor* v. *Gokuldas Morarka.*[1] It was held in that case that a police-officer, who lays a trap and who receives a gratification, not with the intention of taking it as a bribe but in order to bring to book the person who had offered him the gratification, cannot be said to be an accomplice. In his judgment, the learned Chief Justice cited with approval the following observations made by Mr. Justice Maule in *Reg.* v. *Mullins*[2] (p. 531):

".....An accomplice confesses himself a criminal, and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man, he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society; and if he does so, if he believes that there is no other method of counteracting the dangerous designs of wicked men, I can see no impropriety in his taking upon himself the character of an informer. The Government are, no doubt, justified in employing spies; and I do not see that a person so employed deserves to be blamed if he instigates offences no further than by pretending to concur with the perpetrators. Under such circumstances they are entirely distinguished in fact and in principle from accomplices, and although their evidence is entirely for the jury to judge of, I am bound to say that they are not such persons as it is the practice to say require corroboration."

[1] (1950) Crim. App. No. 454 of 1949, decided by Chagla C. J., and Gajendragadkar J., on January 11, 1950 (Unrep.).

[2] (1848) 3 Cox. C. C. 526.

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That is exactly the position of Naik in the present case. He had no intention to, and he did not, accept the amount as a bribe or in order to enrich himself. His only object in telling the accused that he would accept their offer of money and help them was to bring them to punishment for attempting to corrupt a public servant. He was, therefore, not a participator in the crime and cannot be regarded an accomplice. Consequently his evidence does not require corroboration.

[The rest of the judgment is not material to the report.]

The application is, therefore, dismissed and the rule is discharged. The accused should surrender to their bail.

Rule discharged.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

1951 Oct. 1

DAJISAHEB ALIAS LAXMANRAO NARAYANRAO MANE, AND OTHERS (ORIGINAL DEFENDANTS), PETITIONERS *v.* SHANKARRAO VITHALRAO MANE, AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 5), RESPONDENTS.*

Constitution of India, Art. 133 (1)—Civil Procedure Code (Act V of 1908), s. 10—Adaptation of Laws Order 1950, s. 27—Enlargement of Jurisdiction of the Federal Court Act (I of 1948)—Suit filed prior to coming into force of Constitution—Value of Subject-matter of Suit over Rs. 10,000 but below Rs. 20,000—Right of appeal to Supreme Court in respect of such suit.

Art. 133 (*1*) of the Constitution of India is not retrospective in its operation.

A right of appeal is a vested right which cannot be taken away retrospectively unless the Court discerns in the legislation dealing with the right of appeal a clear intendment that such right was intended to be taken away. There is nothing in the language of Art. 133 (*1*) of the Constitution which shows such intendment.

Where in a suit filed before the coming into force of the Constitution a litigant had a right to appeal to the Privy Council under s. 110 of the Code of Civil Procedure, 1908, or to the Federal Court by virtue of the Enlargement of Jurisdiction of the Federal Court Act, 1948, the appeal would lie to the Supreme Court after the Constitution comes into force,

* Civil Application No. 161 of 1950.