

APPELLATE CRIMINAL

Before Gurnam Singh, J.

TARA SINGH,—Appellant.

versus

THE STATE OF HARYANA,—Respondent.

Criminal Appeal No. 139 of 1973.

December 4, 1975.

Prevention of Corruption Act (11 of 1947)—Section 5(1) (d)—Ingredients of—Stated—Acts complained of—Whether necessary to be done by the accused in the discharge of his official duties.

Held, that the ingredients of an offence under section 5(1) (d) of the Prevention of Corruption Act 1947 are :

- (1) that the accused should be a public servant,
- (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant,
- (3) that he should have obtained valuable thing or pecuniary advantage, and
- (4) for himself or any other person.

To bring home an offence under Section 5(1) (d) of the Act it is not necessary to prove that the acts complained of were done by the accused in the discharge of his official duty. The words "in the discharge of duty" occurring in section 5(1) of the Act do not constitute an essential ingredient of the offence under section 5(1) (d) thereof.

(Para 11).

Appeal from the order of Shri Salig Ram Seth, Special Judge, Hissar, dated the 6th February, 1973, convicting the appellant.

Charge :—U/s. 5(1) (d) read with section 5(2) of the Prevention of Corruption Act.

Sentence :—To undergo two years' R. I. and to pay a fine of Rs. 500. In default to pay the fine, to undergo further R. I. for three months.

D. S. Bali, Advocate, for the appellant.

V. M. Jain, Advocate for the State, for the respondent.

JUDGMENT

Gurnam Singh, J.—(1) Tara Singh, who was working as a Sub-Inspector in the office of the District Food and Supplies Controller, Hissar, has been convicted under section 5(1) (d) read with section 5(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500, or, in default, to further undergo rigorous imprisonment for three months by the learned Special Judge, Hissar. Tara Singh has filed this appeal.

(2) Succinctly the facts of the case are that Tara Singh appellant, who was working as a Sub-Inspector in the office of the District Food and Supplies Controller, Hissar, used to purchase wheat from Hissar Mandi for the Government. On 16th May, 1972, Jai Singh of village Kharrar Alipur had brought 80 quintals of wheat for sale at the shop of Co-operative Society in Hissar Mandi. On that day the wheat was to be purchased by the Food Corporation of India. As the wheat of Jai Singh was not of first quality, the employees of the Food Corporation of India refused to purchase the same. The next day, i.e., 17th of May, 1972, was fixed for the purchase of wheat by the Food and Supplies Department. Tara Singh appellant came to the Mandi at about 10 A.M. and asked Jai Singh to remove the foreign matter from the wheat. Jai Singh got the wheat cleaned but even then it was rejected by Tara Singh appellant. Tara Singh again asked him to get the wheat cleaned and he did so twice or thrice but even then it was not purchased by the appellant. Ultimately Tara Singh appellant asked Jai Singh that his wheat could be purchased if he would pay Rs. 1.50 ps. per quintal by way of bribe. Saying this Tara Singh appellant went away. After sometime Dalip Singh, son of Jai Singh came in the Mandi and learnt that the appellant was demanding bribe. Dalip Singh also approached the appellant and the latter repeated his demand. Dalip Singh told the appellant that he would give him Rs. 100 forthwith and the remaining amount would be paid later and saying this he first went to his father and then left the Mandi. In the meantime the appellant came to the shop of the Co-operative Society and directed Mohar Singh, Labour Contractor to weigh the wheat of Jai Singh and to fill it in the bags.

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(3) Dalip Singh went towards Police Lines Chowk and found Bakshi Amolak Ram, Deputy Superintendent of Police, Sub-Inspector Tilak Raj and some constables standing there. He told Bakshi Amolak Ram that Tara Singh appellant was demanding Rs. 1.50 ps. per quintal by way of bribe for purchasing their wheat. He also handed over a written complaint to the Deputy Superintendent of Police, which was endorsed by the latter and sent to Police station City, Hissar, for registration of the case. Formal First Information Report, Exhibit P.W. 4/2, was drawn up by Sub-Inspector Joginder Singh.

(4) Bakshi Amolak Ram, Deputy Superintendent of Police joined Mange Ram and Chhaju Ram. Dalip Singh handed over one currency note of the denomination of Rs. 100 to the Deputy Superintendent of Police. The Deputy Superintendent of Police initialled the currency note and after taking personal search of Dalip Singh handed over the same to him and prepared memo Exhibit P.W. 3/2, which was attested by Mange Ram and Chhaju Ram, P.Ws. The Deputy Superintendent of Police instructed Dalip Singh to hand over the marked currency note to the accused and to give a signal by placing his hand over his head after the money was passed. Mange Ram was directed to act as a shadow witness to watch and overhear what transpired between the accused and Dalip Singh and then to give a signal to the police party. Thereafter they all boarded a jeep and went to a street connecting Lona Mandi and Anaj Mandi. Dalip Singh along with Mange Ram proceeded towards the spot while the other members of the party stayed behind. The accused was present near the wheat of Jai Singh which at that time was being filled in bags. Dalip Singh met the accused and on demand handed over the marked currency note to him. The accused put that note in the right hand side pocket of his pants. Dalip Singh gave a signal and on seeing the same the shadow witness passed on the signal to the police party. The Deputy Superintendent of Police and the party came to the shop of the Co-operative Society. Mange Ram also accompanied them. The Deputy Superintendent of Police disclosed his identity to the accused and told him that he wanted to search his person in connection with a case under the Prevention of Corruption Act. After giving his search, the Deputy Superintendent of Police searched the right hand side pocket of the accused and recovered the currency note. The number of the currency note

recovered tallied with the number of the currency note mentioned in the memo Exhibit P.W. 3/2. The currency note was taken into possession,—*vide* memo Exhibit P.W. 3/3. The person of Dalip Singh was also searched and memo Exhibit P.W. 3/4 was prepared. The accused was arrested and from his personal search currency notes worth Rs. 460 and some papers were recovered and the same were taken into possession,—*vide* memo Exhibit P.W. 10/1. The Deputy Superintendent of Police recorded the statements of the witnesses. The accused and the case property were then taken to the police station. Sanction Exhibit P.W. 6/3 for the prosecution of the accused was obtained from the Director, Food and Supplies, Haryana. After necessary investigation of the case, the accused was challaned.

(5) The signed currency note recovered from the possession of the accused was lost and the prosecution was allowed to produce secondary evidence to prove the fact regarding the marked currency note.

(6) Dalip Singh, Mange Ram, Chhaju Ram, Shri Amolak Ram, Deputy Superintendent of Police and Sub-Inspector Tilak Raj, P.Ws., have deposed the facts of the case.

(7) Jai Singh (P.W. 5), stated that he had brought his wheat for sale and that the accused had demanded bribe at the rate of Rs. 1.50 ps. per quintal from him. He further stated that he talked about it to his son Dalip Singh, who had a talk with the accused and thereafter the accused came to him and directed the weighing of the wheat.

(8) The accused in his statement recorded under section 342, Criminal Procedure Code, admitted that he was working as Sub-Inspector in the office of the District Food and Supplies Controller, Hissar, but pleaded that it was not his duty to purchase wheat. He also denied having accepted any money from Dalip Singh. He examined Darshan Kumar in his defence.

(9) Darshan Kumar (D.W. 1), stated that the acceptances and rejection of wheat could be done by the Inspector alone and that the duty of the accused was to get the purchased wheat stored, to get the entries made and to get the purchased wheat loaded.

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(10) The learned counsel for the appellant vehemently contended that since it was not the duty of the accused to purchase wheat, he was, therefore, not in a position to demand illegal gratification from Jai Singh or Dalip Singh, P.Ws. He further pointed out that the prosecution has not produced any evidence to show that the currency note, the number of which was recorded in memo Exhibit P.W. 3/2, ever existed or that the accused accepted that very currency note as illegal gratification. Regarding the prosecution witnesses he urged that they were interested witnesses.

(11) It is a case in which the accused was charge-sheeted under section 5(1) (d) of the Prevention of Corruption Act punishable under section 5(2) of the said Act. To bring home an offence under section 5(1) (d), Prevention of Corruption Act, it is not necessary to prove that the acts complained of were done by the accused in the discharge of his official duties. The words "in the discharge of duty" occurring in section 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under section 5(1) (d) of the said Act. The ingredients of the offence under section 5(1) (d) of the said Act are :—

- (1) that the accused should be a public servant,
- (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant,
- (3) that he should have obtained valuable thing or pecuniary advantage and
- (4) for himself or any other person.

Thus the contention of the learned counsel for the appellant that the accused was not entrusted with the purchase of wheat and, therefore, could not demand any money as bribe will be of no help to the accused if it is proved that he by using corrupt or illegal means and by abusing his position obtained money from Dalip Singh for himself. It is not disputed that the accused was a public servant at the time of occurrence.

(12) It is in the evidence of Jai Singh, P.W., that he had brought his wheat on 16th May, 1972, and on that day the Food Corporation of India was purchasing wheat but his wheat was discarded by its employees. He further deposed that 17th of May, 1972, was fixed by the Food and Supplies Department for the purchase of wheat, that Tara Singh accused had asked him to remove the foreign matter

from the wheat, that he did so twice or thrice but the accused was not willing to purchase the wheat and that he (appellant) demanded Rs. 1.50 Ps. per quintal as bribe. Dalip Singh, P.W., is the son of Jai Singh. He came to the Anaj Mandi and found that his wheat was not purchased and that he contacted the accused and the accused demanded bribe from him also. Dalip Singh left the place telling Tara Singh accused that he would pay Rs. 100 for the time being and the rest later on and contacted the Deputy Superintendent of Police. The Deputy Superintendent of police joined Mange Ram and Chhaju Ram with him. Sub-Inspector Tilak Raj was also with the Deputy Superintendent of Police. Dalip Singh produced the currency note which was signed by the Deputy Superintendent of Police. Dalip Singh, as directed by the Deputy Superintendent of Police, handed over that currency note to the accused which was later on recovered from his possession. The signed currency note was lost while in the custody of the police and the prosecution was allowed to produce the secondary evidence in that respect. It is in the evidence of Bakshi Amolak Ram, Deputy Superintendent of Police, that the number of the signed currency note was mentioned in memo Exhibit P.W. 3/2 and that the same was recovered from the possession of the accused. He further stated that he handed over the case property to Sub-Inspector Tilak Raj for depositing the same in the *Malkhana*. Sub-Inspector Tilak Raj, examined as P.W. 16, stated that the case property was handed over to him and he took the same along with the accused to the police station and deposited the case property there. He further stated that on arrival in the police station he recorded a report in the daily diary and mentioned the number of the currency note there. Thus from the evidence of both Shri Amolak Ram, Deputy Superintendent of Police and Shri Tilak Raj, it is evident that the currency note of the denomination of Rs. 100 which had been produced before the Deputy Superintendent of Police by Dalip Singh and had been initialled by the former was handed over to Shri Tilak Raj, after its recovery from the accused, and was deposited in the *malkhana* of the police station. In the presence of this overwhelming evidence there was no necessity to produce any evidence from the Reserve Bank of India to show the existence of any such currency note.

(13) Dalip Singh followed by Mange Ram proceeded to the Co-operative Society shop. On seeing Dalip Singh Tara Singh accused enquired from him as if he had brought the money, Dalip Singh handed over the signed currency note to him and gave a signal by

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putting his hand on his head. On seeing that signal, Mange Ram informed the police party. The police party headed by the Deputy Superintendent of Police reached there and recovered the currency note from the possession of the accused. Mange Ram, Chhaju Ram, Shri Amolak Ram and Shri Tilak Raj, P.Ws., have corroborated the factum of the recovery of the signed currency note from the possession of the accused. They had no grouse to falsely implicate the accused. Thus it is established that Tara Singh accused had accepted a sum of Rs. 100 from Dalip Singh as illegal gratification and, therefore, committed the offence under section 5(1) (d) of the Prevention of Corruption Act punishable under section 5(2) of the said Act. His conviction under the abovesaid sections is, therefore, maintained but keeping in view the amount of the bribe taken by him, in my opinion the ends of justice will be met if his sentence is reduced from two years rigorous imprisonment to one year's rigorous imprisonment. The sentence of the appellant is, therefore, reduced from two years rigorous imprisonment to one year's rigorous imprisonment while the sentence of fine and imprisonment awarded in default thereof are maintained. The appellant be taken into custody for undergoing the remaining term of his sentence.

H.S.B.

LETTERS PATENT APPEAL

Before R. S. Narula, Chief Justice and Harbans Lal, J.

DAYA NAND,—Plaintiff-Appellant.

versus

THE STATE OF HARYANA,—Defendant-Respondent.

Letters Patent Appeal No. 747 of 1973

December 9, 1975.

Code of Criminal Procedure (V of 1898)—Sections 88 and 89—Code of Civil Procedure (V of 1908)—Section 9—Property of an absconder attached under section 88—Government taking possession of it but neither confiscating nor disposing of the same—Death of such absconder—Suit by an heir of the deceased for possession of such property—Whether barred

Held, that no provision in the Code of Criminal Procedure 1898 bars the jurisdiction of a Civil Court trying and adjudicating