MAHESH PRASAD

1954

October 29

v.

THE STATE OF UTTAR PRADESH.

[MUKHERJEA, VIVIAN BOSE, and JAGANNADHADAS JJ.]

Indian Penal Code (Act XLV of 1860), s. 161—Accused's power or intention to do the official act—Relevancy—Charge—Prevention of Corruption Act (II of 1947), s. 6(c) (as it existed prior to August 12, 1952)—Indian Railway Establishment Code Vol. I (1951 Ed.), rule 1705(c)—Test of sanction.

When a public servant is charged under section 161 of the Indian Penal Code, and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the Court to consider whether or not the accused as public servant was capable of doing or intended to do such an act.

In a case where the illegal gratification is alleged to have been received by the accused as a public servant for influencing some superior officer to do an act, the charge framed against such accused under section 161 of the Code need not specify the particular superior officer sought to be so influenced.

In view of article 311(1) of the Constitution of India and rule 1705(c) of the Indian Railway Establishment Code, Volume I (1951 Edition) a sanction under section 6(c) of the Prevention of Corruption Act, 1947 (as it existed prior to August 12, 1952) may be given either by the very authority who appointed the public servant or by an authority who is directly superior to such appointing authority in the same department. But such sanction is also legal if it is given by an authority who is equal in rank or grade with the appointing authority. Sanction is invalid if it is given by one who is subordinate to or lower than the appointing authority.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 39 of 1954.

Appeal by Special Leave from the Judgment and Order dated the 5th May, 1953, of the Lucknow Bench of Allahabad High Court in Criminal Revision No. 200 of 1952, arising out of the Judgment and Order, dated the 17th May, 1952, of the Special Magistrate, Anti-Corruption for Uttar Pradesh at Lucknow in Case No. 40 of 1951.

Hardyal Hardy (*K. L. Arora* and *S. D. Sekhri,* with him) for the appellant.

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C. P. Lal for the respondent.

1954. October 29. The Judgment of the Court was delivered by

JAGANNADHADAS J.—The appellant in this case was a clerk in the office of the Running Shed Foreman of the East Indian Railway at Kanpur. He was convicted under section 161 of the Indian Penal Code and sentenced to rigorous imprisonment for one year and nine months, and also to a fine of Rs. 200. The conviction and sentence have been upheld by the Sessions Judge on appeal and by the High Court in revision. The charge against the appellant was that on the 6th of January, 1951, he accepted illegal gratification of Rs. 150 from the complainant, Gurphekan—a retrenched cleaner in the Locomotive Department of the Railway, examined as P.W. 2—as a motive for getting him re-employed in the Railway (by arranging with some superior officer). There was an alternative charge under section 162 of the Indian Penal Code but it is no longer necessary to notice it since the conviction is for the main charge under section 161 of the Indian Penal Code. The Special Police Establishment having received information of the demand of the bribe arranged for a trap and caught the appellant just at the time when he received the sum of Rs. 150 from the complainant and seized the amount. The appellant admitted the receipt of the money but denied that he demanded or accepted it as a bribe. His case was that the complainant had previously borrowed money from him and that this money was paid in discharge of the debt. The Courts below have rejected the defence and accepted the prosecution case and conviction followed thereupon.

Learned counsel for the appellant has tried to persuade us, with reference to the evidence in the case, that the view taken by the Courts below is unsustainable. It is unnecessary to notice this argument in any detail because this is an appeal on special leave and nothing so seriously wrong with the findings of fact have been shown, which call for interference by this

Court. It is sufficient to notice the main legal arguments that have been advanced.

It is pointed out that the appellant though employed in the Railway was not himself a person who was in a position to give a job to the complainant nor is it shown that he had any intimacy or influence with any particular official who could give a job. It is urged therefore that the offence, if any, committed by the appellant could only be one of cheating and not the receiving of a bribe. This argument is without any substance. By the terms of section 161 of the Indian Penal Code a person who is a public servant and accepts illegal gratification as a motive for rendering service, with any public servant as such, is guilty of the offence thereunder. To constitute an offence under this section it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is even aware of it. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. None the less he is guilty of the offence under section 161 of the Indian Penal Code. This is clear from the fourth explanation to section 161 of the Indian Penal Code which is as follows:

"'A motive or reward for doing.' A person who receives a gratification as a motive for doing what he does not intend to do (or as a reward for doing what he has not done) comes within these words."

Illustration (c) to section 161 of the Indian Penal Code which runs as follows also elucidates this:

"A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section."

Thus where a public servant who receives illegal gratification as a motive for doing or procuring an

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official act whether or not he is capable of doing it or whether or not he intends to do it he is quite clearly within the ambit of section 161 of the Indian Penal Code.

The next contention that has been raised is that the charge does not specify the particular public servant who was intended to be influenced by the appellant in consideration of his receiving the money. It is urged that section 161 of the Indian Penal Code would not apply to such a case. It is suggested that the phrase "with any public servant" in section 161 of the Indian Penal Code must relate to a specified public servant. In the present case the evidence of the complainant and the finding of the High Court is that the appellant "purported to attempt rendering of a service to the complainant with another public servant, *viz.*, the Head-clerk at Allahabad." But even apart from such a finding there is nothing in the terms of section 161 of the Indian Penal Code requiring that the public servant contemplated therein must be a specified public servant. The material portion of the section is as follows :

"for rendering or attempting to render any service or disservice to any person, with the Central or Provincial Government or Legislature, or with any public servant as such."

The phrase "Central or any Provincial Government or Legislature" does not contemplate any specified individual or individuals. There is no reason why the phrase "any public servant" used in the same context should be taken to mean any specified public servant. The gist of the offence under section 161 of the Indian Penal Code (in so far as it is relevant here) is the receipt by a public servant of illegal gratification as a motive or reward for the abuse of official position or function, by the receiver himself or by some other public servant at his instance. There is, therefore, no substance in this argument.

The only serious argument that has been advanced and which requires a little closer examination is that there was no valid sanction for the prosecution. There is no doubt that this is a case to which the Prevention

of Corruption Act, 1947 would apply and that by virtue of section 6(c) thereof the prosecution requires the sanction of the authority "competent to remove the appellant from his office." It is urged that this requirement was not satisfied on the facts of this case. It has been pointed out that the appellant is a civil servant of the Indian Union and that by virtue of article 311(1) of the Constitution he cannot be removed by an authority subordinate to that by which he was appointed. This appears also to be the position under rule 1705(c) of the Indian Railway Establishment Code, Volume I (1951 Edition) which is as follows:

"No railway servant shall be removed (or dismissed) by an authority lower than that by which he was appointed to the post held by him substantively."

The sanction for the prosecution in this case was granted under Ex. 10 by one Shri L. R. Gosain, Superintendent Power, East Indian Railway, Allahabad. The order of appointment of the appellant, Ex-F, shows the Divisional Personnel Officer, East Indian Railways, Allahabad, as the appointing authority. It may be mentioned that in the appeal before the Sessions Judge a contention was raised that the appointment of the appellant was in fact made by the Divisional Superintendent and that Ex. F was only signed by the Divisional Personnel Officer on his behalf. The Sessions Judge found against this contention and the same has not been challenged before us. What, however, is urged is that the Superintendent Power who gave the sanction for prosecution is *not* shown to be an officer *not* lower in rank than the Divisional Personnel Officer who made the appointment. The question as to the validity of the sanction has been raised both before the Sessions Judge as well as before the High Court. The High Court in considering the question appears to have merely satisfied itself that *under the Railway Regulations,* Shri L. R. Gosain, Superintendent Power, was a person competent to remove the appellant from his office within the terms of section 6 of the Prevention of Corruption Act. The High Court does not appear to have considered the further question whether or not the requirements of article 311(1) of the Constitution and

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rule 1705(c) of the Railway Establishment Code have been satisfied with reference to the *inter se* position as between the authority who appointed the appellant and the authority who sanctioned the prosecution. The learned Sessions Judge, however, has recorded a categorical finding that the Divisional Personnel Officer is in the same grade as the Superintendent Power. His finding is in the following terms :

"I, therefore, hold that the accused could be and was actually appointed by the Divisional Personnel Officer *who is in the same grade as the Superintendent Power*. It cannot therefore be said that the Superintendent Power Mr. L. R. Gosain was not authorised to remove the accused from service by virtue of rule 1705 and this argument advanced against the validity of sanction, Ex. 10, falls to the ground".

Learned counsel for the appellant urged that the requirement both of the Constitution and of the rule of the Railway Code, contemplates that the authority competent to remove must be either the very authority who appointed or any other authority directly superior to the appointing authority in the same department. We do not think that this contention is tenable. What the Constitution requires is that a person should not be removed by an authority subordinate to the one by whom he was appointed and what the rule in the Railway Code prescribes is substantially the same, *viz.*, "the authority competent to remove should not be lower than the one who made the appointment". These provisions cannot be read as implying that the removal must be by the very same authority who made the appointment or by his direct superior. It appears to us to be enough that the removing authority is of the same rank or grade. In the present case it does not appear into which particular branch of the department the appellant was taken, in the first instance in 1944 under Ex. F. But it is in the evidence of P.W. 4, the Head-clerk of the office of the Divisional Superintendent, that the office of the Running Shed Foreman in which the appellant was a clerk in 1951 was directly under the Superintendent Power. He was obviously the most appropriate officer to grant the sanction,

provided he was of a rank not less than the Divisional Personnel Officer.

Counsel for the appellant urges that the evidence does not support the finding of the learned Sessions Judge that Shri L. R. Gosain, Superintendent Power, was of the same grade as the Divisional Personnel Officer who made the appointment. P.W. 4 in his evidence, however, quite clearly speaks to this as follows :

"Divisional Superintendent is the head of the entire administrative division. The Divisional Personnel Officer is under him. The Superintendent Power and Superintendent Transport are *also* under him *and* also such other officers *of the same rank*.....Divisional Personnel Officer and the various Superintendents *are officers of the same rank. They are not subordinate to each other*".

It has been commented that this should have been substantiated by the official records and not by oral evidence. That no doubt would have been more satisfactory. The learned Sessions Judge on appeal, in order to satisfy himself, has referred to the Classified List of Establishment of Indian Railways and the same has also been produced before us for our information. This shows that both the Divisional Personnel Officer as well as Superintendent Power are officers in the senior scale drawing equal scales of pay, Rs. 625-50-1375. This is an indication that they are officers of the same rank and confirms the oral evidence of P.W. 4 who being the Head-clerk of the Divisional Superintendent's office must be competent to speak about these matters. It certainly cannot be said that the Superintendent Power who has granted the sanction for prosecution of the appellant at the time working under him, is of a rank or a grade lower than the Divisional Personnel Officer who appointed the appellant. This matter would probably have been more satisfactorily clarified in the trial court if the question as to the validity of the sanction had been raised not merely with reference to the wording of section 6 of the Prevention of Corruption Act but also as read with article 311(1) of the Constitution and rule 1705(c) of the Railway Establishment

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Code. On the material we are not satisfied that there is any reason to reverse the findings of the courts below that the sanction is valid.

All the contentions raised before us are untenable. This appeal must accordingly fail. It has been represented to us that the appellant who has been refused bail by this court when leave to appeal was granted but has been granted bail subsequently has already served nearly six months of imprisonment in the intervening period, that he is a young man and has lost his job. In the circumstances we consider that it is not necessary to send him back to jail. The result, therefore, is that the appeal is dismissed subject to the modification of sentence of imprisonment. We reduce the sentence of imprisonment to the period already undergone. The sentence of fine stands.

Appeal dismissed

ASSAM BENGAL CEMENT CO. LTD.

v.

THE COMMISSIONER OF INCOME-TAX, WEST BENGAL

[MEHAR CHAND MAHAJAN C.J., S. R. DAS, BHAGWATI and VENKATARAMA AYYAR JJ.]

Indian Income-tax Act (XI of 1922), s. 10(2)(xv)—Capital expenditure—Revenue expenditure—Meaning of and distinction between the two.

Section 10(2)(xv) of the Indian Income-tax Act, 1922, uses the term 'capital expenditure' for which no allowance is given to the assessee. The term 'capital expenditure' is used as contrasted with the term 'revenue expenditure' in respect of which the assessee is entitled to allowance under section 10(2) (xv) of the Act.

As pointed out by the Full Bench of the Lahore High Court in *Benarsidas Jagannath, In re* [(1946) 15 I.T.R. 185], it is not easy to define the term 'capital expenditure' in the abstract or to lay down any general and satisfactory test to discriminate between a capital and a revenue expenditure. Though it is not easy to reconcile all the decided cases on the subject, as each case had been decided on its peculiar facts, some broad principles could be