

MAHENDRA SINGH CHOTELAL BHARGAD

v.

STATE OF MAHARASHTRA AND ORS.

DECEMBER 12, 1997

[M.K. MUKHERJEE AND K.T. THOMAS, JJ.]

Indian Penal Code, 1860.

Section 163—Conviction under—Two police officers allegedly demanding illegal gratification for dropping criminal case and directing the gratification money to be paid to appellant—Money paid accordingly and subsequently recovered from appellant—High Court acquitted the police officers for an offence committed under Section 161 and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947—Appellant convicted under Section 163—Held, in view of the acquittal of the police officers, conviction of the appellant under Section 163 IPC unsustainable—Penal Code, Section 161—Prevention of Corruption Act, 1947, Sections 5(1)(d) and 5(2).

For obtaining an illegal gratification from PW-1 for dropping the criminal case pending against him through the appellant, A-1 and A-2, two police officers were convicted under Section 161 IPC read with Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, while the appellant was convicted under Section 163 IPC. Two separate appeals were filed before the High Court against said conviction. The High Court affirmed the conviction of the appellant and acquitted the two police officers. Hence this appeal.

Allowing the appeal, the Court

HELD : 1.1. High Court, after having disbelieved the prosecution case qua A1 and A2, could convict A3 and that too for an offence under Section 163 IPC. On a plain reading of Section 163 IPC, it is manifest that to convict an accused for the said offence the following ingredients are required to be proved :-

(i) The accused accepted or agreed to accept, obtained or attempted to obtain for himself or anyone on his behalf, a gratification;

A (ii) **The gratification must be as a motive or reward to induce a public servant by the exercise of personal influence :-**

(a) **to do or to forbear to do any official act, or**

(b) **to show in exercise of his official functions favour or disfavour; or**

B

(c) **to render or attempt to render any service or disservice to any person with the Central Government or with any public servant as such.**

[468-A-D]

C 1.2. **The gist of the offence, therefore, is that the person arraigned must accept the gratification to induce a public servant by the exercise of his personal influence (emphasis supplied) to do any of the acts mentioned in the Section. It is the positive case of the prosecution, as testified by PW1, that it was A1 and A2 who initially demanded the money from PW1 and in terms of the arrangement that he had with A1 and under his instruction and direction that he paid the money to the appellant. It was not the**

D **appellant who struck the deal and received the money to induce A1 and A2 to show some favour to a Guest House and its proprietor. On the contrary, it was A1 and A2 who had struck the deal and the appellant was the recipient of the money in terms of an arrangement which he had (obviously) entered into with A1 and A2. By no stretch of imagination, therefore, can it**

E **be said that the appellant is guilty of the offence under Section 163 IPC. Of course acceptance of money by the appellant from PW1 for handing over the same to A1 and A2 certainly constitute an abatement of the offences allegedly committed by A1 and A2, but then this aspect of the matter need**

F **detain this court : firstly because, such was not the charge framed against the appellant and secondly, because, A1 and A2 stand acquitted of the offences alleged against them. [468-E-H; 469-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 663 of 1994.

G From the Judgment and Order dated 20.1.94 of the Bombay High Court in Crl. A. No. 6 of 1993.

A.K. Sanghi for the Appellant.

D.M. Nargolkar and S.M. Jadhav (NP) for the Respondents.

H The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. For obtaining an illegal gratification of Rs. 3000 from Rajkumar Mohanram Sawani, (P.W.1) through Mahendra Singh, the appellant before us, Uttamrao Baburao Raut, Inspector and Abdul Kadar, Sub Inspector (hereinafter referred to as A1 and A2 respectively), of Ramdaspath Police Station, Akola were convicted under Sections 161 I.P.C. and 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947, while the appellant was convicted under Section 163 I.P.C. Aggrieved thereby they preferred separate appeals before the Bombay High Court which were disposed of with an order of affirmation of the conviction of the appellant and acquittal of the two Police Officers. Hence this appeal.

2. According to the prosecution case, in the night intervening April 12 and 13, 1984 A1 and A2 carried a raid at Seema Guest House of Akola and found Madhukar @ Shaligram Raut (P.W.10) and one Ashok Thakur indulging in immoral sexual activities with two girls. They were arrested and brought to the Police Station by A1 and A2. Rajkumar (P.W.1), the Manager of the Guest House, and Pramod Gangaramji Bhirad (P.W.5), a friend of the persons arrested, went to the Police Station and secured their release on bail after paying Rs. 1,200 to A2 as illegal gratification. It is the further prosecution case that a few days later A1 and A2 demanded a sum of Rs. 5,000 as a consideration to drop the prosecution launched against Seema Guest House and its proprietor for immoral trafficking, but ultimately the consideration was fixed at Rs. 3,000. On April 27, 1984 A1 instructed P.W.1 to pay that amount to the appellant, who stayed in a nearby hotel, on the following day. On the same day P.W. 1 lodged a written complaint with the Anti Corruption Bureau for the illegal demand made by A1 (Ext. 58) and Mr. Rade (P.W. 14), an Inspector of the Bureau, arranged a trap. On April 28, 1984 when the appellant accepted the currency notes worth Rs. 3,000 at the tea-stall of Mahadeo (P.W.3), as per earlier arrangement, the raiding party apprehended him with the notes.

3. To prove the accusation levelled against the three accused persons, the prosecution relied upon - and the trial Court accepted - the evidence of P.W.1 and the members of the raiding party, to convict them. The High Court, however, declined to accept the prosecution case regarding the demand made by A1 and A2 for illegal gratification as it found the evidence of P.W.1 (on which the prosecution solely relied to prove the demand made by A1 and A2) unsatisfactory. Since, however, the evidence

A of P.W. 1 that the amount of Rs. 3,000 was paid to the appellant stood corroborated by its recovery from the appellant, as testified by the trap witnesses, it convicted the appellant.

B 4. It passes our comprehension as to how the High Court, after having disbelieved the prosecution case qua A1 and A2, could convict A3 and that too for the offence under Section 163 I.P.C. On a plain reading of the said Section it is manifest that to convict an accused for the above offence the following ingredients are required to be proved :-

C (i) The accused accepted or agreed to accept, obtained or attempted to obtain for himself or anyone on his behalf, a gratification;

(ii) The gratification must be as a motive or reward to induce a public servant by the exercise of personal influence :

D (a) to do or to forbear to do any official act, or

(b) to show in exercise of his official functions favour or disfavour; or

E (c) to render or attempt to render any service or disservice to any person with the Central Government or State Government or with any public servant, as such.

F The gist of the offence, therefore, is that the person arraigned must accept the gratification *to induce a public servant by the exercise of his personal influence* (emphasis supplied) to do any of the acts mentioned in the Section. It is the positive case of the prosecution, as testified by P.W.1, that it was A1 and A2 who initially demanded the money from him (P.W.1) and in terms of an arrangement that he had with A1 and under his instruction and direction that he paid the money to the appellant. It was not the appellant who struck the deal and received the money to induce A1 and A2 to show some favour to Seema Guest House and its proprietor. On the contrary, it was A1 and A2 who had struck the deal and the appellant was the recipient of the money in terms of an arrangement which he had (obviously) entered into with A1 and A2. By no stretch of imagination, therefore, can it be said that the appellant is guilty of the offence under Section 163 I.P.C. Of course the acceptance of the money by the appellant G H from P.W.1 for handing over the same to A1 or A2 would certainly

constitute an abatement of the offences allegedly committed by A-1 and A2, A
but then this aspect of the matter need not detain us : firstly because, such
was not the charge framed against the appellant and secondly, because, A1
and A2 stand acquitted of the offences alleged against them.

5. We, therefore, allow this appeal, set aside the conviction of the B
appellant under Section 163 I.P.C. and acquit him. The appellant, who is
on bail, will stand discharged from his bail bonds.

R.K.S.

Appeal allowed.