

1962

August 28.

R. G. JACOB

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and
RAGHUBAR DAYAL. JJ.)

Criminal Trial—Public Servant accepting valuable things for securing export permit—‘Subordinate’, Meaning of—If means functionally subordinate—Indian Penal Code, 1860 (Act 45 of 1860), s. 165.

The word ‘subordinate’ used without any qualification in s. 165 of the Indian Penal Code indicates that the Legislature intended to include within its ambit also such subordinates as had no connection with the functions with which the proceeding or business was concerned. That word cannot be read as ‘functionally subordinate’ so as to defeat the intention and policy of the Legislature.

Consequently, where an Assistant Controller of Imports was prosecuted for accepting valuable things for helping an applicant, who had appealed to the Joint Chief Controller of Imports and Exports, to secure a permit to export goods and was convicted under s. 165 of the Indian Penal Code by the special Judge and such conviction was affirmed by the High Court and the contention on appeal to this Court was that, although the appellant might be administratively subordinate to the Joint Chief Controller of Imports and Exports, he was not functionally so, having nothing to do with export permits, and was not, therefore, liable under the section.

Held, that the appellant was subordinate to the Joint Chief Controller of Imports and Exports within the meaning of the section and had been rightly convicted.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 116 of 1961.

Appeal from the judgment and order dated December 14, 1960 of the Madras High Court in Criminal Appeal No. 933 of 1959.

S. Mohan Kumar Mangalam, R. Ganapathy Iyer and G. Gopalakrishnan, for the appellant.

C. K. Daphtary Solicitor General of India, D. R. Prem, R. N. Sachthey and P. D. Menon, for the respondent.

1962. August 28. The Judgement of the Court was delivered by

DAS GUPTA, J.—The appellant who was the Assistant Controller of Imports in the office of the Joint Chief Controller of Imports and Exports, Madras, was tried by the Special judge, Madras, on three charges—one under section 161 of the Indian Penal Code, another under s. 5 (1) (d) read with s. 5 (2) of the Prevention of Corruption Act and the third—which was added later—under s. 165 of the Indian Penal Code. He was acquitted of the first two charges but was convicted of an offence under s. 165 of the Indian Penal Code and sentenced to rigorous imprisonment for one year. He appealed to the High Court of Madras; but the High Court dismissed the appeal and affirmed the order of conviction, but reduced the sentence to that of fine of Rs. 400/- in default rigorous imprisonment for three months. The High Court has however granted a certificate under Article 134 (1) (c) of the constitution that this was a fit case for appeal to this Court. On the basis of that certificate this appeal has been filed.

This prosecution case is that one K. R. Naidu (who has been examined as prosecution witness No. 8) a merchant having export business in onions, chillies and groundnuts made on January 21, 1958, an application for export of chillies. He was informed by a letter dated March 5, 1958, that the application had been rejected. This letter was purported to be signed by the Assistant Controller

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of Exports for the the Joint Chief Controller of Imports and Exports. Arumugam (prosecution witness No. 1) who had been acting on behalf of Naidu in this matter then sought the assistance of this appellant for getting a permit for Naidu. When he met the appellant later the same evening the appellant told him that an appeal would have to be preferred against the rejection order to the Joint Chief Controller of Imports and Exports, Rangaswamy. The appellant also proposed that if he was given two bags of cement and Rs. 50/- he would use his influence and help him to get him the permit. Arumugam agreed and the appellant gave Arumugam a sheet of paper stating the address to which the cement was to be sent. On the next day the memorandum of appeal was sent by registered post to Rangaswamy, the Joint Chief Controller. The same day Arumugam saw the Deputy Superintendent, Special Police Establishment, and gave him a complaint in writing mentioning all the facts. A trap was thereafter laid with a view to catch the appellant in the actual act of accepting the bribe. On the evening of April 3, 1958, Arumugam went to the house of the appellant with two cement bags which had been marked by putting attested cards inside the bags and Rs. 50/- in currency notes the number of which were noted by the Deputy Superintendent of Police. The appellant accepted the cement bags and the money from Arumugam. The two cement bags were put in a room of the building as directed by the appellant. Immediately after this the Deputy Superintendent of Police, who had been waiting according to the arrangement a little distance away from the house came into the house on getting the pre-arranged signal from Arumugam. He revealed his identity to the appellant and asked him to produce the money and cement bags. The accused then took him upstairs and opened an Almirah with his own keys

and produced from inside the Almirah the very notes of which the number had been taken by the Deputy Superintendent of Police. The cement bags with the marks inside were also found down-stairs.

The accused pleaded not guilty. He admits the recovery of the cement bags and the currency notes from his house but pleads that neither of these have been given to him and that the notes were found on the table and the cement bags were in the hall nearby; and these had been kept in his house without his knowledge or consent by Arumugam who wanted to make up a false case against him. According to him the whole story of his being approached by Arumugam or his asking for cement bags or money, or accepting them, is entirely false.

The Special Judge as also the High Court accepted the prosecution evidence in these matters as true and rejected the defence version and Mr. Kumaramangalam has rightly not tried to challenge before us the findings of facts. His principal contention in support of the appeal is that assuming the findings to be true, an offence under s. 165, Indian Penal Code had not been established. This contention is based mainly on the fact that the appellaut was Assistant Controller of Imports only and had no connection with the issue of export permits. According to the learned Counsel he was not therefore "subordinate" to the Joint Chief Controller of Imports and Exports to whom the appeal petition had been filed and consequently his acceptance of cement bags from Arumugam did not amount to an offence under section 165 of the Indian Penal Code. Section 165 of the Indian Penal Code runs thus:—

"165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any

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other person, any valuable thing without consideration, or for a consideration which knows to be inadequate from any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

What has been proved in this case is ; (1) that the appellant, a public servant, accepted some valuable things from Arumugam without consideration. (2) Arumugam was concerned in an appeal against an order rejecting an application for export licence. (3) this proceeding had connection with the official functions of the Joint Chief Controller of Imports and Exports who was a public servant. (4) The appellant knew that Arumugam was concerned in this proceeding having connection with the official function of the Joint Chief Controller of Imports and Exports. (5) The appellant was in respect of his official position subordinate to the Joint Chief Controller of Imports and Exports. It may be mentioned that it is not disputed that at the relevant time, viz., March, 1958, the accused was the Assistant Controller of Imports only and had nothing to do with export permits.

All the ingredients of an offence under s.165, Indian Penal Code, appear therefore to have been proved prima facie. Mr. Kmaramangalam's contention is that the fifth fact mentioned above, viz., that the appellant was in respect of his

official position "subordinate" to the Joint Chief Controller of Imports and Export is not sufficient to establish his "subordination" to the Joint Chief Controller of Imports and Exports within the meaning of s. 165.

Subordination of public servants to other public servants is a well known and inevitable feature of public administration. And, when a question arises in any case whether a public servant A is a subordinate to public servant B it presents little difficulty. Thus, in that branch of the State's public administration which deals with regulation of Imports into and exports from India, one would state without difficulty that an Assistant Controller of Imports is "subordinate" to the Joint Chief Controller of Imports and Exports; so also the Assistant Controller of Exports is subordinate to the Joint Chief Controller of Imports and Exports; but the Assistant Controller of Exports is not subordinate to the Assistant Controller of Imports; nor is the Assistant Controller of Import subordinate to the Assistant Controller of Exports. According to the learned Counsel, in s. 165 the word "subordinate" should be interpreted as "functionally subordinate". He contends that while the appellant was administratively subordinate to the Joint Chief Controller of Imports and Exports he was not "functionally subordinate" to that officer; as Assistant Controller of Imports, he had nothing to do with the matter of appeal against the rejection of the application for exports, so, he was not "subordinate" to the Joint Chief Controller, within the meaning of the section.

The use of the words "functionally subordinate" does not appear to be very happy; as in every case of administrative subordination there is also subordination in respect of some functions at least. What the learned Counsel really means

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by his argument is that "subordinate" in the section means "subordinate in respect of those very official functions with which the business or transaction has connection." In support of his arguments he has drawn our attention to the provisions of s. 161, s. 162 and s. 163 of the Indian Penal Code and he points out that s. 161 makes punishable the taking by a public servant of gratification in respect of his official act or his official functions; s. 162 makes punishable the taking of gratification by any person for inducing by corrupt or illegal means a public servant to do or not to do some thing in connection with his official functions; s. 163 makes punishable the taking of gratification by any person for inducing by the exercise of personal influence a public servant to do or not to do something in connection with his official function. Section 164 it may be mentioned makes punishable the abetment of offences under s. 162 and 163. In this context, the learned Counsel argues, the words in s. 165 should be so interpreted as to make punishable only such taking of gratification by a public servant as has in some way connection with his own official functions, and so he argues "subordinate" in the section should be interpreted as suggested by him. To emphasise his point he gave this illustration. X the Collector of a District is dealing with a matter of assessment of revenue on A's application. Y a office Peon of a department under the Collector which has nothing to do with revenue matters accepts money from A knowing that A has such business with X; Y will then be committing an offence under s. 165 even though Y has no connection whatsoever with the functions of X in respect of A's application.

It will perhaps not often happen that Y will have an opportunity of accepting money from A

when he has not even a plausible chance of doing something for A in connection with the application. But, assuming that he has that opportunity and does accept the money as stated in the illustration above, we cannot see what untoward consequences will ensue if Y's conduct is made punishable under s. 165. It has to be noticed that s. 165 has been so worded as to cover cases of corruption which do not come within s. 161 or s. 162 or s. 163. When with that intention the legislature has used the word "subordinate" in s. 165 without any limitation there is no justification for reading into the word the limitation suggested by the learned Counsel by the words "in respect of those very functions". It is plain that the inter-pretation suggested by Mr. Kumaramangalam needs the addition of some words in the section, and that is clearly not permissible. By the use of the word "subordinate" without any qualifying words, the legislature has expressed its legislative intention of making punishable such subordinates also who have no connection with the function with which the business or transaction is concerned. To limit the meaning of "subordinate" in the section as suggested by the learned Counsel would be defeating that legislative intention and laying down a different legislative policy. This the Court has no power to do. The argument that "subordinate" means something more than "administratively subordinate" must therefore be rejected. The appellant has therefore rightly been held to be "subordinate" to the Joint Chief Controller, even though the appellant had no functions to discharge in connection with the appeal before the Joint Chief Controller of Imports and Exports.

Mr. Kumaramangalam then wanted to argue that the facts and circumstances of the case showed that Arumugam was a police informer and that he was really not concerned in the appeal before the

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Joint Chief Controller of Imports and Exports. Therefore, he points out, it would be reasonable to hold that no offence under s. 165 had been committed by his client. We find however that the High Court granted the certificate only on the ground that the question raised by the Counsel as regards the interpretation of the word "subordinate" in the section was a substantial question of law, which was not covered by any specific authority and was also a question of public importance. In view of this we do not think it right to investigate the further question sought to be raised by Mr. Kumaramangalam in this case and we have not allowed him to argue that matter.

We think it proper to add that we have not been able to appreciate why the High Court thought it necessary to reduce the sentence imposed by the Trial Court.

The appeal is accordingly dismissed.

Appeal dismissed.
