

DELHI ADMINISTRATION

v.

S. N. KHOSLA

April 2, 1971.

[S. M. SIKRI, C. J. AND P. JAGANMOHAN REDDY, J.]

Prevention of Corruption Act, 1947—S. 5(1)(b) and (d)—Officer obtaining goods on credit without paying for the same.—If amounts to obtaining valuable thing without consideration or obtaining "pecuniary advantage".

The respondent, an income tax officer, obtained goods on credit from several shops without paying for the same. He was prosecuted and convicted under s. 5(2) of the Prevention of the Corruption Act, 1947. The High Court held that no offence under cl. (b) or cl. (d) of s. 5(1) was proved.

Dismissing the appeal to this Court,

HELD: There was consideration for the obtaining of goods on credit and it cannot be said that an officer, if he obtains goods on credit, even if he does not intend to pay is obtaining a valuable thing without consideration. The case may be different if it is proved that there was an agreement with the trader that the trader would not demand the money and the officer would not pay. There is no evidence to sustain such an inference in this case. [317C]

The words 'pecuniary advantage' are of wide amplitude; but even so in the context of s. 5(1) (d) obtaining goods on credit cannot be held to amount to obtaining pecuniary advantage. If there is an agreement between the officer and the trader that the officer is not expected to pay for the goods this would amount to obtaining pecuniary advantage. It does not appear that there was any suggestion that the respondent obtained the credit only because he was an income tax officer. [317E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 236 of 1966.

Appeal by special leave from the judgment and order dated December 24, 1965 of the Punjab High Court, Circuit Bench at Delhi in Criminal Appeal No. 16-D of 1964.

Deobrata Mukherjee, O. P. Malhotra and R. N. Sachthey, for the appellant.

C. K. Daphtary and H. K. Puri, for the respondent.

The Judgment of the Court was delivered by

Sikri, C. J.—The basic facts in this appeal, by special leave, are not in dispute and the only question involved is whether on

- A** the facts, as found, the respondent should be convicted under Section (5) (2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the Act). The respondent has been acquitted by the High Court (Dulat, J.).

- B** The relevant facts are as follows : The respondent was an Income-tax Officer for about ten years from December, 1950 to September, 1960. While he was posted at Amritsar during the year 1954-55 he obtained on credit petrol from a petrol pump and the bill came to Rs. 151. It is stated that the respondent did not pay this bill. Later, he was posted at Delhi from 1955 to 1958 and at Delhi he obtained goods on credit from M/s Empire Stores and during the period of about three years he purchased goods worth Rs. 2,876.20. These bills the respondent has also not paid. He also purchased goods on credit from M/s Sylco, who are cloth merchants as well as tailors. To them he owed Rs. 1,853.10 and he also has not paid this bill. He owed Rs. 71.75 to M/s Electronics Limited. He purchased a refrigerator from M/s Oriental Radio Corporation at a concession of Rs. 150. The respondent admitted his liability. According to the prosecution all this amounted to obtaining valuable things without consideration or for consideration which the respondent knew to be inadequate.

- E** The learned Special Judge found that the respondent had means to pay during the relevant period and he did not deliberately pay. From this he drew the inference that the respondent never intended to make the payment. He relied on the fact that the period of limitation to recover these amounts had expired. According to the Special Judge these contracts were *per se* illegal and void under Section 23 of the Contract Act.

- F** It was urged before the High Court that when a person obtained goods on credit he did not obtain them without consideration and assuming that he did not really intend to pay, even when he promised to pay, he might be cheating the creditor but the transaction was not without consideration for there was a clear promise to pay. The High Court held that clause (b) of sub-section (1) of Section 5 of the Prevention of Corruption Act did not contemplate the case of a purchase on credit accepted as a valid promise by the giver or the creditor. The High Court was accordingly unable to agree with the learned Special Judge that the obtaining of these goods was without consideration within the meaning of Section (5) (1) (b) of the Act.

- H** The High Court next considered Clause (d) of Section 5(1) of the Act. The High Court differed from the learned Special Judge and held that the credit sales were not illegal transactions. It was urged before the High Court that if the respondent never intended

to pay for the goods he purchased from the various shops then the respondent obviously cheated those shopkeepers, and since cheating was certainly illegal, it must be held that the respondent obtained goods by 'illegal means' and that would be an offence under Section 5(1) (d) of the Act. The High Court, however, felt convinced that Clause (d) of Section 5(1), although it did literally seem to cover the transactions, was not designed or intended to cover such cases.

In our opinion the High Court was quite right in holding that no offence had been committed under Section 5 (1) (b) of the Act. It seems to us that there was consideration for the obtaining of goods on credit and it cannot be said that an officer, if he obtains goods on credit, even if he does not intend to pay, is obtaining a valuable thing without consideration. The case may be different if it is proved that there was an agreement with the trader that the trader would not demand the money and the officer would not pay, and the bill and the reminders sent would be merely a formality. There is no evidence to sustain such an inference in this particular case.

Coming to Section 5 (1) (d), the question arises whether the respondent had obtained any pecuniary advantage. There is no doubt that the words "pecuniary advantage" are of wide amplitude but even so in the context of Section 5 (1) (d) obtaining goods on credit cannot be held to amount to obtaining pecuniary advantage. As we have said, if there is an agreement between the officer and the trader that the officer is not expected to pay for the goods then there is no doubt that this would amount to obtaining pecuniary advantage, but if there is no such agreement and the officer does not pay it cannot be said that he has obtained any pecuniary advantage. He does not act in any manner different from a non-official who obtains things on credit and then refuses to pay. In this case P. W. 13, Mukand Lal, partner of M/s. Empire Stores, who appeared as a prosecution witness, stated that the firm allowed the respondent credit sales in his capacity as a known customer and all their customers got credit facilities. He further said that the firm allowed customers fairly long terms of credit. They usually avoided going to court for the recovery of their dues, and they got payment from their customers of dues whose recovery had become barred by time. He also added that the firm still expected that the amounts standing against the respondent would be paid by him. It does not appear that there was any suggestion that the respondent obtained this credit only because he was an Income-tax Officer. Firms give credit to officers not because they are officers but because they know that they are persons with fixed salaries from which the bills could be realised. If we were to hold otherwise it would be impossible for any officer to go to a shop and

- A** obtain credit for if he did not pay within a reasonable time a charge could be levied against him under Section 5 (1) (d) of the Act. In our view the High Court was right in holding that offence under Section 5 (1) (d) had not been proved.

In the result the appeal fails and is dismissed.

B

K.B.N.

Appeal dismissed.