
(1992) 02 RAJ CK 0013
In the Rajasthan High Court
Case No : Criminal Appeal No. 76 of 1980

Ahmed Khan

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 342
Evidence Act, 1872 — Section 101
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1988 — Section 4, 5

Citation : (1992) 1 WLN 246

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—Appellant Ahmed Khan was tried for the charges u/s 5(1)(d) (2) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code by the Special Judge, Anti Corruption Cases, Bikaner. Vide judgment dated January 18, 1980 the appellant was convicted for the charges and sentenced to R.I. for one year and a fine of Rs. 500/-, in default of payment of fine to undergo three months R.I. on the first count and R.I. for six months and a fine of Rs. 200/-, in default of payment of fine to undergo R.I. for one month on the second count.

2. The facts of the case as disclosed in the First Information Report Ex,P/7 filed by Abdul Hakim on June 29, 1977, before the Deputy Superintendent of Police, (Anti Corruption) Bikaner are that, he i.e. the complainant had constructed a varandah without permission. That, while construction was going on appellant Ahmed Khan posing to be the Jamadar of Municipal Council, demanded money as bribe so that he may get the matter settled. That despite his making the demand three or four times money was not paid and he threatened the complainant that action will be taken against him. That, on June 29, 1977, the appellant demanded the money at Which Abdual Hakim told him that he would reach near the shop of

Mangilal Panwala or at the hotel of Munikji at 11.00 A.M. and would give the money there. That, as the complainant did not intend to give the bribe, he approached the Anti Corruption Department and lodged the complaint. He gave five currency notes of ten Rupees denomination to the Deputy Superintendent of Police.. The Deputy Superintendent of Police initialed them and applied phenolphthalein powder on them. Trap was arranged. Kamal Kishore and Rameshwar were taken as witnesses to the trap. Teg Bahadur (P.W.4), Dy.S.P., Anti Corruption remained at some distance and asked the complainant and the witnesses to give the signal as soon as the money was given by the complainant. Abdul Hakim decoy along with the witnesses went twice to the place where accused was to meet him but he was not available. They then went third time to the hotel and stayed there. The appellant went there. Abdul Hakim and Ahmed Khan sat on the chairs at one table and Kamal Kishore was sitting behind them. Rameshwar was at some distance. Ahmed Khan and Abdul Hakim talked a while and the latter passed the money to the former. Abdul Hakim then took out his aspects and cleaned it which was to be taken as signal by the trap party. The Deputy Superintendent of Police with his staff rushed to the site. Ahmed Khan threw the notes on the floor. He was asked to clean his hands. The water turned red. The notes were taken from the ground and sealed. Appellant was arrested. The case against him was registered and chargesheet was filed in the Court of Special Judge, (Anti Corruption), Bikaner. The learned Judge chargesheeted him and recorded his plea. He denied the charges and claimed to be tried. Five witnesses were examined by the prosecution. In his statement u/s 313 of the Code of Criminal Procedure, Ahmed Khan denied the allegations levelled against him and stated that he was appointed as "Bhisti" (water carrier) and not as Jamadar in the Municipality and that he had entered into a transaction of supply the bricks with Abdul Hakim who was dealing in the business of bricks. That, when Abdul Hakim did not supply the bricks, he demanded the Rs. 50/- given as advance to Abdul Hakim back who asked him to reach the Hotel and assured him that he would return the money. That, it was that money which was given to him at the hotel and not any bribe. The learned Judge believed the prosecution case and passed the judgment under appeal.

3. I heard Mr. Sandeep Mehta, learned Counsel for the appellant and Mr. K.L. Thakur, learned Public Prosecutor for the State and carefully examined the record of the case.

4. Mr. Sandeep Mehta, learned Counsel for the appellant strenuously contended that the defence version is plausible and the judgment of the learned trial Judge is not justiciable as he has over looked the evidence of the prosecution witness Kamal Kishore and the entries in the memos about the defence taken by the appellant. It had also been argued that the appellant was not holding the post of importance so as to enable him to help Abdul Hakim. The learned Counsel, emphasized that it is not a case in which the decoy might be an innocent and ignorant person of the post so as to give the money to anybody demanding from him. Rather, he was a sub-inspector of Customs Department who had been

dismissed from service on the charge of taking bribe. That, he had been to Municipality a number of times, as stated by himself, and he could have very well known the position and the post, the appellant was holding.

5. Another argument advanced is that prosecution has failed to establish as to where the bottles containing the water remained after the date of the occurrence and therefore, it cannot be said that the sample sent for Chemical Examination was the same which was taken at the site.

6. The learned Public Prosecutor referred to the provisions of Section 4(1) of the Prevention of Corruption Act [hereinafter to be referred as "the Act"] and submitted that there is a presumption against the accused that he had taken bribe and it was for him to rebut the presumption which he could not do..

7. The giving of Rs. 50/- by Abdul Hakin and Ahmed Khan accepting the same is an admitted fact. In cases of this nature, burden is on the accused to show that the money he had received from the decoy was not by way of bribe. The point for determination in the case is whether the defence version stands substantiated by any material on record.

8. Out of the two motbirs Rameshwarhas not been examined, Kamal Kishore (P.W.1) has supported the contention of the appellant to this extent that while sitting in hotel, Abdul Hakim and Ahmed Khan had a talk regarding the bricks and lime. It has also come on record that at the time of the trap itself Ahmed Khan had told the trap party that the money was returned by Abdul Hakim which he had taken for supply of bricks in the transaction arrived at by him through the brother of Ahmed Khan. It is to be noted that brother of Ahmed Khan has since expired. Abdul Hakim has stated that he did not recollect as to witness such fact was told by Ahmed Khan to the Dy.S.P. or not. The Dy. S.P. had admitted that on being questioned about the notes Ahmed Khan told about the money being given in connection with the bricks. It has also been admitted that in Ex.P/3 and Ex.P/5, the report this fact that the money was concerning the bricks finds place.

9. The important point for consideration in the case is whether this fact coming on record in two documents and in the statements of Dy.S.P. and motbir Kamal Kishore can be taken to be sufficient to rebut the prosecution u/s 4(1) of the Act. The principle of law is that despite provisions of presumption against the appellant, it is for the prosecution to establish its case first. The prosecution has of course established the money being given by the decoy to the accused and its being recovered. The point for determination however, is whether that would be sufficient to hold the appellant guilty despite his defence. Another important correlated point for consideration is whether the appellant made a demand for bribe.

10. According to Abdul Hakim, the accused made a demand of money and on his giving the money further asked him whether he has brought the full amount. This fact is not corroborated by Kamal Kishore (P.W.1).

11. In the case of Panalal Damodar Rathi Vs. State of Maharashtra, while discussing the evidentiary value of the complainant in cases of bribe the court did not feel inclined to accept the evidence of the complainant on that aspect in absence of corroboration and his testimony regarding the demand for the money by the appellant.

12. It is to be seen whether there could be any motive for the demand. In other words, whether the appellant was holding a position by which he could be of any help to the decoy Abdul Hakim. The Dy.S.P. has admitted that he was appointed as a "Bhisti" (water carrier) in the Municipality. It is not a case in which complainant might not have known as to who could help him. As admitted by him, he had gone to the Municipality three four times. It is also not in dispute that he was serving as Sub- Inspector Customs and was dismissed from that post on the charge of bribery. He, therefore, cannot be believed that he took the word of Ahmed Khan as truth that he would help him and in case he would not give money to him, he would get his construction of "chabutri" demolished. In such a state of affairs, the case against the appellant cannot be believed on the solitary testimony of the complainant and the presumption u/s 4(1) of the Act would not come to the help of prosecution. As stated earlier, the presumption stands rebutted by the testimony of the prosecution witnesses and the plea taken by the accused at the time of the trap itself.

13. In the case of Trilok Chand Jain Vs. State of Delhi, their Lordships were pleased to discuss the provisions of Section 4(1) of the Act and observed as under:

The degree and the character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which u/s 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination u/s 342 Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged if the effect of the material brought on record in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour. It is not necessary for him to establish his case beyond a reasonable doubt.

14. In the case of Shiv Nandan v. State R.Cr.C 290 corroboration of the evidence of the decoy was held to be mandatory and in the absence of corroboration it was taken to be unsafe to base a conviction on the sole testimony of the complainant.

15. An important fact pointed by the learned Counsel for the appellant is that the complainant had stated that when he went to the shop of Mangilal Panwala and asked about Ahmed Khan, Mangilal told him that he has not come and he will come after sometime and that he may give the money to him. Mangilal has not been examined by the prosecution. If the statement of the decoy is taken to be

correct then according to the learned Counsel for the appellant it is to be taken note of that if Ahmed Khan was demanding the money as bribe, he would not have given publicity of it. That, it rather gives an impression that he was demanding the money he owned from Abdul Hakim and asked Mangilal to take the money if Abdul Hakim might bring. Regarding the bottles being kept or not in safe custody in proper sealed condition through out the period, the argument of the learned Counsel has force when he says that the Constable who had taken the sample to the Chemical Examiner has not been examined so as to state as to where from he took the sample and in what condition. It has also not come on record as to where the sample remained before its being sent to the Chemical Examination.

16. In view of the above discussion, the findings, of the learned trial Judge, that Ahmed Khan appellant could not rebut the presumption against him, does not hold good.

17. Consequently, the appeal of Ahmed Khan is allowed and he is acquitted of the charges levelled against him. His conviction and sentences are set aside. He is on bail. His bail bonds stand discharged.