

(2014) 09 DEL CK 0080

In the Delhi High Court

Case No : Crl. A. 192 of 2008 and 348 of 2013

Aman Bhatia

APPELLANT

Vs

State
 Naval Kishore Vs State (GNCT of Delhi)

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Court Fees Act, 1870 — Section 24, 34
Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Income Tax Act, 1961 — Section 194H, 32-A(2)(b)(ii), 80-J(4)(iii)
Prevention of Corruption Act, 1988 — Section 13(1) (b), 13(1)(d), 13(2), 2, 2(b)
Stamp Act, 1899 — Section 69

Citation : (2015) CriLJ 207 : (2015) 2 Crimes 640 : (2015) 214 DLT 145

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Abhinav Bajaj, Bharat Sharma, Advocates, S.K. Rungta, Senior Advocate, Prashant Singh and Meena Dua, Advocate for the Appellant; Rajat Katyal and Isha Khanna, APPs, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J.—Both these criminal appeals raise an interesting question of law: Is a stamp vendor a public servant for the purposes of the Prevention of Corruption Act, 1988 ("PC Act")?

2. Criminal Appeal No. 192 of 2008 by Naval Kishore is directed against the judgement dated 4th February 2008 passed by the learned Special Judge in Complainant Case No. 21/2004 convicting the Appellant for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act"). The appeal is also against the order dated 5th February 2008 whereby for the offence u/s 7 of the PC Act, the Appellant was sentenced to undergo rigorous imprisonment ("RI") for a period of 6 months along with a fine of Rs.1,000/- and in default to undergo simple imprisonment ("SI") for a period of one month and for the offence u/s 13(2) read with Section 13(1)(d) of the PC Act he was sentenced to undergo RI for one year along with fine of Rs.1,000/-

and in default to undergo SI for a period of one month. Both sentences were directed to run concurrently.

3. Criminal Appeal No. 348 of 2013 by Aman Bhatia is directed against the judgement dated 30th January 2013 passed by the learned Special Judge in Complainant Case No. 11/2009 convicting the Appellant for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act as well as the order on sentence dated 31st January 2013 whereby for the offence u/s 7 of the PC Act, the Appellant was sentenced to RI for a period of 6 months along with a fine of Rs.1,000/- and in default to undergo SI for one month and for the offence u/s 13(1)(d) of the PC Act he was sentenced to undergo RI for one year along with a fine of Rs.1,000/- and in default to undergo SI for one month. Both sentences were directed to run concurrently.

4. What is common in both the appeals is that both the Appellants were at the relevant time licensed Stamp vendors. While Appellant Naval Kishore was holding licence No. 226 and was authorised to sell stamps and court fees at Karkardooma Courts complex, Appellant Aman Bhatia held licence No. 594 and was selling stamp papers at the office of the Sub-Registrar Janakpuri, Delhi.

Crl. A. No. 192 of 2008 by Naval Kishore

5. The allegations in both cases were also similar. As far as Naval Kishore was concerned, the allegation was that on 17th October 2003, the complainant Jai Singh (PW-5), who was working as a Court clerk with an Advocate, gave a complaint (Ex.PW/5A) to the Anti Corruption Branch ("ACB") which was recorded by Inspector Vipin Kumar Nair (Raid officer) (PW-8) in the presence of the panch witness Kumar Sambhav (PW-6) to the effect that the Appellant Naval Kishore was charging Rs.10/-, Rs.5/- and Rs.2/- in excess for stamp papers of denominations Rs.100/-, Rs.50/- and Rs.10/- respectively. PW-5 gave two Government currency notes ("GC notes"), one of Rs.100/- and the other Rs.10/- to PW-8 who noted down their serial numbers in the pre-raid report (Ex.PW5/B). The GC notes were treated with phenolphthalein powder and a demonstration was given of its effect by PW-8. The treated GC notes were then handed over to PW-5 in order to be given to the Appellant. PW-6 was instructed to remain close to PW-5 so that he could overhear and observe the transaction. At around 12.10 pm, the raiding team, which included PW-5 and PW-6, Inspector B.S.Yadav (PW-7), Investigating Officer ("IO") and certain others, went to the Karkardooma Court Complex. While PW-7 remained outside, PWs 5 and 6 moved towards the hall where the stamp vendors sat. At around 1.10 pm, PW-8 received the pre-determined signal from PW-6. PW-8 rushed to the spot where he was told by PW-6 that the Appellant had taken Rs.10/- extra for giving two stamp papers of Rs.50/- each and had kept it beneath the register lying on the table. PW-6 was asked by PW-8 to recover the bribe amount along with GC note of Rs.100/- from beneath the register. The serial numbers on the GC notes were tallied with the serial numbers recorded in the pre-raid report. The right hand wash of the Appellant turned pink and was transferred to two clean empty bottles which were

thereafter sealed and labelled. The stamp papers and the register were also seized. The Appellant was arrested.

6. Eight prosecution witnesses were examined. In his statement u/s 313 Cr PC, the Appellant Naval Kishore denied charging any excess amount. He stated that on 17th October 2003, PW-5 had given him Rs.110/- and asked for two stamp papers of Rs.50/- each. He made two entries numbered 29608 and 29609 in the register and kept the entry at 29610 blank as PW-5 had sought some time to let him know the name and address of the person in whose name the stamp paper was to be issued. Thereafter he issued stamp papers to other persons against entries at numbers 29611 to 29615. He claimed to be falsely implicated.

7. The trial Court found that PWs 5 and 6 not only corroborated each other's versions, but also fully supported the case of the prosecution. PW-5 denied having asked for stamp paper of Rs.10/- from the Appellant. PW-6 clearly stated that when PW-5 asked the Appellant to give two stamp papers of Rs.50/- each, the Appellant demanded Rs.10/- extra. The details of the raid proceedings as stated by the prosecution were fully substantiated by PWs 5 and 6.

8. The trial Court noted that entry 29610 was at the bottom of the page of the register and this was followed by the entries from 29611 to 29615 for which the entries were made by the purchase of stamp papers of Rs.50/- each by the same person. The name of the person was written against the serial no. 29611 and the line was drawn up to serial no. 29615 to indicate that the same person had purchased five stamp papers from serial no. 29611 to 29615. This pattern was followed in the entire register when the same person purchased more than one stamp paper. The modus operandi of leaving blank entries in the register and in particular towards the bottom was noticed at different pages in the register. It was observed that this modus operandi was employed by most stamp vendors to facilitate sale of stamp papers with a back date by charging extra. The trial Court observed that the Appellant Naval Kishore had been granted a licence for the collection and sale of stamps. Further, it had been deposed by Lekh Raj (PW-4), who was posted as Stamp Auditor in the Divisional Commissioner's office, Delhi, that the Appellant had received commission from the Government as per rules governing sale of stamp papers. It was held that the Appellant was a public servant within the meaning of 2(c) (i) of the PC Act. Consequently the Appellant was convicted.

Crl. A. No. 348 of 2013 by Aman Bhatia

9. In the appeal by Aman Bhatia, Shiv Charan (PW-1) gave a written complaint (Ex.PW1/A) to the Inspector R.S. Chahal (PW-6), the Raid Officer (RO) of the ACB to the effect that on 9th December 2003, when he had gone to the office of Sub-Registrar, Janakpuri, Delhi for purchasing a stamp paper of Rs.10/-, he met the Appellant Aman Bhatia who demanded Rs.12/- for giving him a stamp paper of Rs.10/-. PW-1 handed over to PW-6 one GC note of Rs.10/- and one GC note of Rs.2/-. The serial numbers of both GC notes were noted in the pre-raider

proceedings (Ex.PW1/B). The two GC notes were treated with phenolphthalein powder and demonstration of its effect was given by the RO (PW-6) to PW-1 in the presence of panch witness Manish Kumar (PW-4) (LDC working with the transport authority). The treated GC notes were then handed over to PW-1 in order to be given to the Appellant. PW-4 was asked to stay close to PW-1 in order to overhear and observe the transaction.

10. The raiding party then left for the office of the Sub-Registrar, Janakpuri, Delhi in a Government vehicle along with Inspector Sunder Dev (PW-9), who was the Investigating Officer (IO). While PWs 1 and 4 entered the place, others stayed back and took suitable positions. PW-1 asked for a stamp paper of Rs.10/- for which the Appellant demanded Rs.12/-. PW-1 took out the two treated GC notes and gave them to the Appellant who accepted them in his right hand. PW-4 gave the pre-determined signal upon which the raiding party arrived there. PW-6 stated that the GC notes were found lying on the register when he arrived there. In his deposition, he stated that they were recovered from the register. The right hand wash of the Appellant turned pink. The serial numbers of GC notes were tallied with the serial numbers noted in the pre-raid report (Ex.PW1/B).

11. The Appellant Aman Bhatia was thereafter arrested. Nine prosecution witnesses were examined. In his statement u/s 313 Cr PC, the Appellant Aman Bhatia claimed that the case against him had been registered at the instance of another stamp vendor, Devender Kumar, who had been competing with him and that he was falsely implicated.

12. Aman Bhatia filed CrI. M.C. No. 2283 of 2011 seeking quashing of the case after charges were framed against him by an order dated 2nd June 2008. By a judgment dated 23rd March 2012, the said petition was dismissed. This Court negated the contention that the Appellant was not a "public servant" within the meaning of Section 2(c)(i) of the PC Act. Aggrieved by the said order, the Appellant Aman Bhatia filed SLP CrI. 5795/2012. The said SLP was disposed of by the Supreme Court by an order dated 18th April 2013 "with the direction that the High Court, while deciding the appeal of the Petitioner against his conviction, will not be influenced by the findings and observations in the impugned order of the High Court that the petitioner though a stamp vendor was a "public servant" for the purpose of Prevention of Corruption Act, 1988 and the High Court will decide the aforesaid point on its own merits in accordance with law."

Is a stamp vendor a public servant?

13. Since a common question of law is involved in both these appeals, they have been heard together.

14. It was submitted by Mr. Rungta, learned Senior counsel appearing for the Appellant Aman Bhatia, that what was paid to the Appellant for the sale of stamp papers was not a commission, but a remuneration in the form of a discount allowed on the purchase of stamps from the Registry. He referred to the Delhi Province Stamp Rules, 1934 (DPS Rules) in particular Rules 28 and 34 thereof.

He referred to the decisions of Commissioner of Income Tax Vs. Singapore Airlines Ltd., and Ahmedabad Stamp Vendors Association Vs. Union of India (UOI), and urged that the complete ownership of the stamp papers passed to the stamp vendor once the stamps were purchased by him from the Treasury. What in fact is offered to the stamp vendors is a discount on the face value of the stamps. The Appellant was therefore not paid any commission for performing a public duty in terms of Section 2(c)(i) of the PC Act.

15. The above submissions were countered by Ms. Isha Khanna, the learned APP. She referred to the Law Lexicon and the Oxford English Reference Dictionary for the ordinary meaning of the word "commission". She also referred to the decisions in Corporation of City of Victoria v. Bishop of Vancouver Island 1921 Law Suit (PC) 154 and Commissioner of Income Tax, Bangalore Vs. Venkateswara Hatcheries (P) Ltd. etc. etc., .

16. Section 2(c)(i) of the PC Act defines "public servant" to be "any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty". Explanation 1 to Section 2 states "Person falling under any of the above sub-clauses are public servants, whether appointed by the Government or not."

17. There is no difficulty as far as the expression "public duty" is concerned. It is defined u/s 2(b) of the PC Act as "a duty in the discharge of which the State, the public or the community at large has an interest". Providing the public easy access to stamp papers which are essential for legal transactions can be said to be fall within the meaning of the expression "performance of a public duty". The said public duty, i.e., the vending of the stamps, is a licensed activity regulated under the statutes governing the sale of judicial or non-judicial stamp papers. The fact that they are sold at a discounted price to the stamp vendor and then sold by him to the public does not make it any less a public duty.

18. The second aspect is that in terms of Explanation 1 it is not necessary for the stamp vendor to be "appointed" by the Government in order to be a public servant. A person issued a licence by the Government to perform a public duty could well be a public servant.

19. The question then arises whether any "remuneration, fees or commission" was being paid to the stamp vendors by the Government? The DPS Rules are useful to understand the nature of the remuneration paid to stamp vendors. There are three categories of vendors envisaged under the DPS Rules. The first is an "ex-officio agent" who is the treasurer and is appointed to discharge the functions of a treasurer at a place where there is no treasury or post master. The second is a "licensed agent" who holds a licence to sell stamps. The term "vendor" includes both an ex-officio agent and a licensed agent and even a "specially licensed agent", i.e., a person licensed under the DPS Rules who is a Government servant and who can sell non-judicial stamps only on special terms. In the present case, we are concerned with neither an ex-officio agent nor a

pecially licensed agent. We are only concerned with a licensed agent who is a vendor of stamps.

20. Rules 28 and 29 of the DPS Rules read as under:

"28. Every license granted under these rules shall be subject to the following conditions-

.....

(vi) The vendor shall not sell stamps of any kind the use of which has been discontinued or prohibited by the competent authority.

(vii) The vendor shall be bound to sell to any person upon immediate payment any stamps of a kind or value permitted by his license, but not of any other kind or value. The vendor shall not demand or accept for any stamp any consideration exceeding the value of such stamp.

.....

(xvii) (b) The licensee is not allowed to charge more than face value of stamps.

.....

(xx) The remuneration to the vendor shall be in the form of discount allowed from time to time under the orders of the local Government.

"29. The infringement of any of these rules or conditions shall render the holder liable to the cancellation of his license in addition to the penalties prescribed in Section 69 of the Indian Stamp Act, 1899/ Section 34 of the Court Fees Act, 1870, namely imprisonment for a term which may extend to six months or fine not exceeding five hundred rupees, or both."

21. Rule 28 sets out the conditions governing the licence granted to a stamp vendor. One prohibition under Rule 28 (vii) is that "the vendor shall not demand or accept for any stamp any consideration exceeding the value of such stamp". It is therefore clear that a violation of the said Rule would amount to an illegal act. It also makes it clear that the remuneration to the vendor especially in the form of a discount is allowed from time to time by the orders of the local Government. The infringement of the Rules invites cancellation of the license. Incidentally, in the present cases, pursuant to the raids, the licenses of both Appellants were cancelled in terms of the DPS Rules. There is also a separate offence u/s 69 of the Indian Stamp Act and Section 24 of the Court Fees Act, 1970 with which the present cases are not concerned, since neither of the Appellants has been charged under those provisions.

22. Then there is Rule 34 of the DPS Rules which specifically talks about remuneration to stamp vendors. It reads as under:

"34. Remuneration of Vendors-

(i) No ex-officio agent shall, as such, be entitled to any discount or commission on the value of any stamps supplied to him for custody and sale upon thereof.

(ii) Commission allowed on Court-fee stamps? Every licensed vendor of Court fee stamps shall be entitled to "Discount at the rate of 1% on stamps up to Rs. 100 in a single transaction purchased by him from an ex-officio agent," provided that he shall not be entitled to any such discount when the total value of stamps purchased at any one time is less than Rs.10/- nor on any sum in excess of a multiple of Rs.10/-.

(iii) Every licensed agent and post master or sub-post master as vendors of non-judicial stamps shall be entitled to discount at the rates specified in the following schedule on the value of every non-judicial stamps purchased by him from an ex-officio agent, provided that discount shall not be allowed on the value of any stamp of a kind not specified in the said schedule, nor when the total value of the stamps purchased at one time is less than Rs.5/-

.

(a) Vendors holding ordinary licenses to sell stamps in following manner-

For Hundi stamps, Revenue stamps and Impressed stamp papers

(a) 3% up to Rs.100/- in single transaction.

(b) 2% for Rs.101 to Rs.500/- in single transaction."

23. While Rule 34 (ii) has a sub-title which reads "Commission allowed on Court-fee stamps", there is no such sub-title for clause (iii). However, for all other purposes the wording of both clauses (ii) and (iii) are similar. Both say that the licensed vendor would be entitled to discount on the value of the stamps purchased.

24. The question that arises is whether the discount availed by the stamp vendor at the time of purchase of stamps from the Treasury can partake the character of "commission" paid for purpose of performing a "public duty" in terms of Section 2(c)(i) of the PC Act. The Oxford English Reference Dictionary (2nd Edn. Revised, p.291) defines "commission" to include "a percentage paid to the agent from the profits of goods etc. sold, or business obtained". The word "commission" is also defined as "the pay of a commissioned agent". In the Law Lexicon (3rd Edn. 2012 p.300), the word "commission" is defined as "a compensation to a factor or other agent for services to be rendered in making a sale or otherwise; ... it is generally calculated as a certain percentage on the amount of the transactions or on the profit to the principal". It is also stated that "the word "commission" is used occasionally to mean "discount". What is called "commission" is a percentage deducted in the case of goods which are consigned the ordinary invoice price".

25. It is therefore seen that the word "commission" need not necessarily have a fixed connotation. The law of interpretation of statutes as accepted in common

law jurisdictions is to adopt a construction that gives effect to the legislative intent keeping in view the object of the legislation. As pointed by the Privy Council in the Corporation of City of Victoria (supra) "in the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense". In CIT, Bangalore v. Venkateswara Hatcheries (P) Ltd. (supra), the Supreme Court was asked to address the question whether chicks being animate creatures, could be termed as "articles or things" within the meaning of Section 32-A(2)(b)(ii) or Section 80-J(4)(iii) of the Income Tax Act in the sense that it could not be said that the assessee was "producing chicks". The Court answered the question by pointing out that "where the dictionary gives divergent or more than one meaning of a word, it would not be safe to construe the said word according to the suggested dictionary meaning. In such a situation, the word has to be construed in the context of the provisions of the Act having regard to the legislative history of the provisions of the Act and the scheme of the Act. It is a settled principle of interpretation that the meaning of the words occurring in the provisions of the Act must take their colour from the context in which they are so used".

26. The DPS Rules give a clear indication as to the exact nature of the remuneration paid to a stamp vendor. Whether it is a stamp vendor for the sale of court-fee stamps or non-judicial stamps the mode of remuneration is in the form of the discount allow on the purchase of the stamps. This amount is in fact the fee for performing the task of a licensed agent of the government and the DPS describes the stamp vendors as such. However, when one turns to Rule 34 of the DPS Rules, it is clear that both under clause 34(ii) and 34(iii) what is paid as commission to the stamp vendors is a discount at the given rate on the stamps purchased and that is in fact treated as the commission allowed. In fact the title to clause (ii), although absent in clause (iii), gives an indication that the intention was to treat the discount allowed to the stamp vendors as commission.

27. The decision in Ahmedabad Stamp Vendors (supra) was rendered in the context of the Income Tax Act and Section 194H thereof. There was no occasion for the Court to consider whether for the purpose of Section 2(c)(i) of the PC Act it could be said that the discount allowed to the stamp vendors could be treated as "commission". It must be noticed that the decision was not followed by this Court in CIT v. Singapore Airlines Limited (supra) and it was said that it was distinguishable in its application for the facts before the Court in the Singapore Airlines Limited case.

28. As far as the present cases are concerned, given the context of the PC Act and the remuneration paid to the stamp vendors licensed and who are performing a public duty, the Court is not persuaded to accept the submission made on behalf of the Appellants that the discount offered to the stamp vendors

does not partake the character of "commission" u/s 2(c)(i) of the PC Act. The Court therefore holds that the licensed stamp vendors of the Government of NCT Delhi, issued licence under the Stamp Act or the Court Fees Act or under any subordinate legislation, would be "public servants" within the meaning of Section 2(c)(i) of the PC Act.

Decision in Crl. A. No. 192 of 2008 on Merits

29. Now turning to the merits of Crl.A.No.192/2008, a perusal of the trial Court record shows that both the complainant and the panch witness fully supported the case of the prosecution that the Appellant Naval Kishore was in the habit of leaving a few serial numbers blank at the bottom of some pages of the register so that he could use them later on in order to sell the stamps on a back date at a premium. This is evident from the blank entries at the bottom of the pages 11, 12 and 15 of the register. The Court finds no merit in the contentions of the Appellant and therefore confirms the order convicting the Appellant Naval Kishore under Sections 7 and 13(1) (b) read with Section 13(2) of the Prevention of Corruption Act, 1988.

30. The sentence awarded by the trial Court to Naval Kishore is the mandatory minimum. So there is no scope for interference with the sentence either.

Decision in Crl. A. No. 348 of 2013 on Merits

31. Turning to the merits of the appeal by the Appellant Aman Bhatia, although it was stated by Mr. Rungta that the panch witness PW-4 had turned hostile, a perusal of the evidence reveals that in his examination by the APP, PW-4 virtually affirmed what was stated by him earlier to the Investigating Officer. He clearly stated "I also recollect that complainant had given the treated GC notes of Rs.10/- and Rs.2/- to the accused present in the Court today after the accused accepted the tainted money, I gave a signal to the raiding party". He added "I cannot recollect nor do I remember whether I informed the Raid Officer that the accused demanded Rs.12/- instead of Rs.10/- for the stamp paper". This does not detract from the earlier statement about the Appellant having accepted the tainted money. If the Appellant had not demanded excess Rs.2/- there was no occasion to accept it in the first place.

32. Mr. Rungta referred to the inconsistency in the depositions of PW- 4 and the Raid Officer (PW-6) regarding where the tainted money was got recovered from when the Raid Officer entered the scene. According to PW-4 the treated GC notes were recovered from the Appellant's possession whereas according to PW-6 they were recovered from the register on his table. The Court is unable to find this inconsistency to be so material as to doubt the veracity of the testimonies of the said two witnesses. The fact remains that the hand wash of the Appellant did turn pink and both GC notes were found, if not on his body, then certainly on the register. Further, a perusal of the testimony of PW-6 reveals that he had entered the scene once the transaction was completed. PW-6 is consistent that it was PW-4 who had earlier pointed out that "money accepted by the accused was

lying on his register. "If one peruses the deposition of PW-4, he was shown his prior statement u/s 161 Cr PC where he had stated that the tainted notes were lying on the stamp register. He denied that he was now deposing falsely and stated. "The accused made the entry in the Stamp Register after accepting the money".

33. The question really is whether there was a conscious demand and acceptance of the extra amount demanded by the Appellant. Even if some doubt has been created by PW-4, the evidence of the Complainant (PW-1) fully corroborated by the evidence of the Raid Officer (PW-6) leaves no room for doubt.

34. Mr. Rungta referred to the decision in State of Kerala and Another Vs. C.P. Rao, to urge that the conviction is liable to be set aside since the panch witness had not supported the case of prosecution. Reference was also made to the decision in Parmanand Vs. C.B.I., to argue that the recovery of the tainted notes was doubtful since the seizure memo and other documentation was completed only later at the office of the ACB. It was pointed out that even the bottle containing the hand wash was sealed only later at the office of the ACB.

35. While there is some merit in the contention of the learned senior counsel for the Appellant regarding the preparation of rukka and the sealing of the hand wash, the evidence of PWs 1 and 6 is cogent and convincing and does not persuade the Court to disagree with the finding of the trial Court that the prosecution had proved its case against the Appellant. As pointed out in B. Noha Vs. State of Kerala and Another, "When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. "It was not necessary for the prosecution to have treated the GC Note of Rs.10/- in addition to the GC note of Rs.2/-. This, however, does not in any manner discredit the testimonies of PWs 1 and 6 that there was voluntary and conscious acceptance of both the treated GC notes by the Appellant which were recovered from the top of his register. The Court therefore affirms the conviction of Appellant Aman Bhatia for the offences under Sections 7 and 13(1)(d) read with Section 13(2) PC Act. The sentences awarded being the statutory minimum do not warrant interference.

36. For the aforementioned reasons, both appeals are dismissed. The Appellants are directed to surrender forthwith and serve out the remainder of their respective sentence. Their bail bonds are cancelled. The trial Court records along with a certified copy of this order be sent to the trial Courts forthwith for further steps.

37. Order dasti.