
(1968) 02 DEL CK 0014

In the Delhi High Court

Case No : Criminal Appeal No. 88D of 1964

Delhi Administration, Delhi

APPELLANT

Vs

S.P. Kohli, Deputy Municipal Engineer

RESPONDENT

Date of Decision : 08-02-1968

Acts Referred:

Citation : (1969) 5 DLT 632

Hon'ble Judges : S.N. Shankar, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : A.S. Vir and R.L. Tandon, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This appeal under S. 47 Cr. P. C. has been filed by the State and is directed against the judgment and order of the Special Judge Delhi acquitting the respondent Shri Sat Pal Kohli of the charge for offences u/s 161 Indian Penal Code and Section 5 (2) read with section 5 (I)(d) of the Prevention of Corruption Act II of 1947.

(2) During the years 1961 and 19 "2 the respondent was employed as Deputy Municipal Engineer in the Municipal Corporation of Delhi. One Shri Satish Kapoor who will hereafter be referred to as the complainant held two contracts with the Municipal Corporation of Delhi, one for providing brick pavement and 6" open surface drain in Mandhari Colony opposite the Naaz Cinema and the other for providing dry bricks on edge flooring and 6" open surface drain in the Bhogal Coolie Camp, Pant Nagar, Delhi The work in Namdhari Colony was to be completed by 20th February, 1962 but it was actually completed on 28th March, 1962. There was thus a delay of one month and 9 days in the completion of the work. The date of completion of the work in Pant Nagar was 30th November, 1961 but it was actually completed on 19th July 1962 a id thus there was a delay of 7 months 19 days. The contracts provided for levy of penalty on the contractor in the event of his failure to complete the work within time. The complainant

applied for extension of time but his request was turned down by the respondent on receipt of adverse reports from the Section Officer and the Assistant Engineer and orders for imposition of penalty at the rate of 1% of the contract amount in respect of Namdhari Colony and 10% in respect of Pant Nagar works were passed by him, the total penalty being Rs. 400.00.

(3) It is alleged by the prosecution that on coming to know about the levy of the penalty the complainant went to the office of the respondent on 22nd December, 1962 and protested against the imposition of penalty. The respondent told him that the Section Officer and the Assistant Engineer had complained that he had not paid them their commission and that the penalty could be remitted on payment of Rs.450.00. The complainant was asked to bring two applications for remission of penalty and Rs. 100.00 as bribe on 24th December, 1962.

(4) The complainant had no intention to pay the bribe and Therefore went to the office of the Special Police Establishment at about 10 a. m. on 24th December, 1962 where he met Shri Ratan Singh (Public Witness 12) who was then working as Deputy Suprintendent of Police. Shri Ratan Singh recorded the statement of the complainant (Ex P-5) and arranged a tiap. In the presence of two gazetted officers from the Rehabilitation Department who were called as panch witnesses, the complainant produced 15 G. C. notes of the value of Rs. 10.00 each and two applications intended to be submitted to the respondent. The G. C. notes were treated with phenolphthalein powder and handed back to the complaint with instructions to pass them on to the respondent

(5) The raiding party consisting of the complainant, the two panch witnesses and four police officers then proceeded to the office of the respondent where at about 2. 00 p.m the complainant gave the respondent two applications for remission of penalty and on Ins demand for money passed on 10 cut of 15G. C. notes of which the numbers had already been noted by the police and which had also been treated with the powder.

(6) It is further alleged that the conversation between the complainant and the respondent was overheard by the panch witnesses and Shri Ratan Singh. It is also alleged that the 10 G. C. notes were recovered from the inner pocket of the respondent's coat and when the hands and the inner lining of the respondent's coat were dipped in the solution of sodium carbonate the solution turned violet and that the respondent did not offer any explanation when the tainted money and the two applications on which he had made certain endorsements in his own hand were recovered from him.

(7) After necessary sanction was obtained for his prosecution, the respondent was placed on trial before the learned Special Judge for having demanded and accepted Rs. 100.00 as gratification other than legal remuneration from the complainant as a motive or reward for showing him favor in the matter of waiving the penalty which had formerly been ordered by him to be levied under the rules.

(8) The prosecution case is supported, by the evidence of the complainant Shri Satish Kapoor (Public Witness 2) Shri D.P. Bhalla (Public Witness 3), Shri S.P. Kapil (Public Witness 4), Shri G.P. Mathur (Public Witness 6), Shri N.N. Tuli (Public Witness 11) and Shri Ratan Singh (Public Witness 12) and a few other witnesses who were examined on subsidiary aspects of the case.

(9) The respondent in his statement u/s 342 Cr. P.C. admitted the receipt of Rs. 100.00 from the complainant. He also admitted that the complainant had seen him on 22nd December, 1962 and had a talk with him regarding penalty. He however stated that the complainant was greatly provoked by imposition of penalty and that he had Therefore asked the complainant to put two applications for remission of the penalty on which he would call for the report of his subordinates. He further stated that he had asked the complainant to bring Rs. 150.00 on 24th December 1962, but the amount demanded was not on account of bribe; it was a demand for return of the respondent's own money which he had given to the complainant in March 1962 as advance for the e construction of a mtoor garage in his house. He went on to say that the complainant had failed to carry out the work and he had Therefore got the garage constructed through his brother-in- law in May 1962. The complainant had however not returned the advance paid to him and Therefore when he saw him on 22nd December, 1962 he asked him to pay the amount on 24th December, 1962.

(10) He also admitted that the complainant saw him again on 24th December, 1962 and presented two applications (Exhibits P6 and P7) on which he made the endorsements (Exhibits P6 and P7/A). He stated that he had then questioned the complainant if he had brought Rs. 150.00 to which the complainant replied that he had brought Rs 100.00 only which he gave to the respondent and promised to pay the balance of Rs 50.00 later on. He further stated that after the complainant had left his room the Deputy S P. entered and challenged him to produce Rs 150.00 which he had accepted as bribe from the complainant, that he produced Rs. 100.00 from the pocket of his coat and told the Dy, S. P. that the money had not been paid to him as bribe but was his own money which had been given by him to the complainant as advance for construction of a garage and had been returned to bin". The respondent admitted the recovery of the amount from him but denied all other allegations made against him in the prosecution story. He also produced in defense two witnesses, Mohinder Singh (DW1) and Roop Ram (DW2) to prove that certain building materials had been purchased and labour was employed for building a garage in May 1962 in house No. 1/9 E, Patel Nagar, occupied by the respondent and his wife Smt. Satya wati. The respondent also produced in defense a stamped receipt for Rs. 150.00 (Exhibit D. 11) executed in his favor by the complainant.

(11) After examining the evidence the learned Special Judge con- concluded :-

"from the aforesaid oral and documentary evidence, it is proved that the accused had given Rs. 150.00 to Satish Kapoor as advance for constructing a garage in his house, but he did not construct the garage and the accused got the garage

constructed himself. He demanded money from him on several occasions but he did not pay the same. On 22nd December, 1962 he came to meet him in connection with the remission of the penalty imposed on him and then the accused asked him to bring the money, on 24th December, 1962. The defense version is proved." and ended by saying :-

"AFTER giving my careful consideration to the facts of this case, I am of the considered view that the charges have not been brought home to the accused beyond any shadow of reasonable doubt and he is entitled to be acquitted. Giving him the benefit of doubt, I acquit Sat Pal Kohli accused of the charges leveled against him." At the hearing of the appeal before us the order of the learned Judge has been attacked by the learned counsel for the State on various grounds. The first ground of attack is that the learned Judge was Himself in two minds because in the earlier part of his finding, he has held that the defense version had been proved while in the latter part of his finding he has held that the respondent was being given the benefit of doubt.

(12) The second ground of attack is that the learned Judge had not correctly appreciated and applied the presumption arising u/s 4 of the Prevention of Corruption Act II of 1947 in the light of the decision of the Supreme Court in *Dhanvantraai Balwantraai Desai v. State of Maharashtra*.

(13) The third ground of attack is that the learned Judge had not considered the testimony of two independent witnesses who had overheard the talk between the respondent and the complainant at the time of passing of money by the complainant to the respondent nor had due weight been given to the testimony of Shri Ratan Singh (Public Witness 12) who was a responsible police officer and had no motive in implicating the respondent in a false case.

(14) The fourth contention of the learned counsel is that the learned Judge had erred in accepting the defense of the respondent which was false and concocted and had failed to attach due weight to the fact that the respondent had not come forward with the Explanation given by him at the trial when tainted money was recovered from him by the police nor was the receipt Exhibit D.11 produced by him till the last day of the cross examination of Shri Satish Kapoor on 31st December, 1963.

(15) We will first take up the contention regarding the scope and effect of the presumption arising u/s 4 of the Prevention of Corruption Act, 1947. This question has been considered by their Lordships of the Supreme Court in (1) *State of Madras v. Avidyanthan Iyer* (2) *C. I Emden v. State of Uttar Pradesh* (3) *Dhanvantraai Balwantraai v. State of Maharashtra* and (4) *V. D. Jhingan v. State of Uttar Pradesh*. The rule of law that emerges from these decisions is that in a trial for an offence punishable u/s 161 Indian Penal Code the initial burden of proving that the accused had received a certain sum of money which was not his legal remuneration lies on the prosecution. It is however not necessary for the prosecution to prove that the accused has received "gratification other than legal

remuneration." The mere receipt of money is sufficient to raise the presumption u/s 4 (I) of the Prevention of Corruption Act, 1947. The presumption raised by the Section is however a rebuttable presumption ; but it is a presumption which the Court is bound to raise. It is of course open to the accused to show that although that money was not due to him as legal remuneration ; it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden of proving those facts however lies on the accused and that burden cannot be discharged by a mere plausible explanation. Nevertheless the burden of proof lying upon the accused u/s 4(1) of the Prevention of Corruption Act is not as heavy as on the prosecution and the accused will have succeeded in establishing his plea by the evidence led by him if he succeeds in proving a preponderance of probability in favor of his case. He is not required to establish his case by the test of proof beyond reasonable doubt as the prosecution is required to do.

(16) There is neither any thing new nor startling about the presumption arising under this section. It is not unusual in certain classes of case or in certain circumstances to throw the onus. of proof of a defense on the accused person. Sections 105 and 106 of the Evidence Act are instances in point. The law is however well-settled that it is not incumbent upon the accused to establish his plea in defense with the same rigidity and exactitude as the prosecution and even where an accused fails to prove the same beyond reasonable doubt the decision of the Court has still to be given upon and as a result of the whole of the case including evidence adduced by the defense and if upon such a review a reasonable doubt is created in the mind of the court the accused is entitled to acquittal.

(17 to 31) Paras relate to discussion of evidence-Editor]

(32) Learned counsel for the State argued that Shri S P. Kapil was subordinate to the respondent and had come forward to help him in his defense. It may be so or may not be so. The fact remains that this view of the evidence of Shri Kapil has not found favor with the learned trial Judge, and although under Sections 417, 418 and 423 Criminal Procedure Code we have full power to review the evidence upon which the order of acquittal is founded and to reach the conclusion that upon the evidence in the case the order of acquittal should be reversed, we are conscious of our limitations in exercising that power as laid down in *Sheo Swarup and others v. King Emperor* ", -

"BUT in exercising the power conferred by the Code and before reaching its conclusions upon fact. the High Court should and will always give proper weight and consideration to such -matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favor of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness." This decision of

the Privy Council has" been approved by the Supreme Court in Noor Khan v. State of Rajasthan.

(33) Learned trial Judge also appears to have been impressed by the fact that although the complainant had eight or nine other contracts with the Municipal Corporation of Delhi under the supervision and control of the respondent prior to the two contracts in which penalty was imposed on him, no demand for bribe had even been made on him. The complainant had also admitted that he was greatly provoked and pained by the levy of penalty on him. He had Therefore as strong a motive in implicating the respondent in a false case as in a true case.

(34) Taking an over-all view of the evidence led by the respondent the preponderance of probability is in favor of the defense version being true. No interference is Therefore, called for with the conclusion reached by the learned trial Judge that the respondent is entitled to benefit of doubt as the prosecution has not succeeded in establishing its case against him beyond reasonable doubt. The result is that the appeal fails and is dismissed.