

(2011) 02 KL CK 0160
In the High Court Of Kerala
Case No : Criminal A. No. 1246 of 2002

G.M. Thippanna

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 306, 313

Evidence Act, 1872 — Section 114, 133

Prevention of Corruption Act, 1988 — Section 12, 13(1)(a), 13(2), 2(c), 5(2)

Citation : (2011) 3 KLJ 132

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : C.S. Manu, for the Appellant; S. Sreekumar (SC), M.V.S. Namboothiry (SC), P. Chandrasekharan Pillai (SC) and Radhika Rajasekharan (P.P), for the Respondent

Judgement

P.S. Gopinathan, J.—The appellant is the accused in C.C. 4/2002 on the file of the Special Judge (SPE/CBI)-I, Ernakulam. He was the

Plant Quarantine and Fumigating Instructor/Technical Officer- III/Plant Quarantine Inspector in Plant Quarantine and Fumigation Station,

Wellington Island, Cochin and as such he is a public servant coming under the definition of Section 2(c) of the Prevention of Corruption Act. For

exporting plant products like spices, grains, cashew etc. a Phytosanitary certificate certifying that the consignment is free from pests and diseases is

required. For import goods also such a certificate is required. As soon as the goods are ready for shipment, an application for the certificate

addressed to the Plant Quarantine Officer has to be filed. In pursuance to such application, the goods proposed to be exported would be

inspected by the Plant Quarantine Inspector and only after satisfying that the

goods proposed to be exported are free from pests, the goods should be allowed to be stuffed in containers for export. As soon as the goods are stuffed in the container and shipped, a certificate would be issued by the Plant Quarantine Officer, in the event it is recommended by the Plant Quarantine Inspector that the goods are free from pests and disease. On 27.4.2001 at 9.30 a.m a fax message, which is marked as Ext. P1, was obtained to the office of the Superintendent of Police, CBI, Cochin, who was on leave. PW2, the Deputy Superintendent of Police, who was in charge of the Superintendent of Police, earmarked Ext. P1 to PW1, the Sub Inspector. In Ext. P1, it is stated that the appellant had been habitually demanding and accepting illegal gratification for issuing the Phytosanitary Certificates and that the appellant had been proposing to leave to Bangalore with lakhs of rupees thus collected. PW1, on getting Ext. P1, deputed a Constable by name Somanathan to have a discrete enquiry. In Ext. P1, the official as well as the residential address of the appellant was mentioned along with telephone numbers. The Constable located the house of the appellant and realised that the appellant had been planning to go out in an ambassador taxi car. Message was conveyed to PW1. PW1 along with PW18, another Inspector, and two independent witnesses of whom one was examined as PW9 proceeded to the house of the appellant. The appellant was about to board the taxi car bearing No. KLO-6988. PW1 disclosed his identity and enquired as to whether the appellant was carrying any cash or valuables with him. The appellant answered negatively. Later, he told that he was carrying a few thousands of rupees in the suitcase. The suitcase was offered to PW1. It was opened and examined. In the pockets of the two, out of the three, pants found inside the bag, there were currency notes totally amounting to rupees 82,950/-. There was a jewellery box containing a gold necklace weighing about 2= sovereigns. It was stated by the appellant that the necklace was purchased by him from Alappat Jewellery, M.G. Road. The appellant conceded that the amount carried by him in the briefcase was collected by him as bribe during his discharge of his official duties. The cash and the gold ornaments along with the briefcase were seized after preparing Ext. P2 recovery mahazar. PW1 enquired the matter with Alappat Jewellery and satisfied that the necklace was purchased from Alappat Jewellery.

Returning to the office, PW1, as instructed by PW2, registered a case as RC 13/A by Ext. P3 FIR. MO1 series are the currency notes and MO2

is the necklace seized as per Ext. P2. As instructed by PW2, PW18 searched the office and residence of the appellant. Ext. P19 is the search list

prepared after the searching of the house. Ext. P20 series are certain documents searched out. Ext. P22 is the search list prepared for searching

the office from where Ext. P23 series documents were seized. The investigation was taken over by PW21, another Inspector. PW21 after

completing the investigation submitted the charge sheet alleging offence u/s 13(2) read with 13(1)(a) of the Prevention of Corruption Act, 1988,

hereinafter referred to as "PC Act". The learned Sessions Judge took cognizance and issued process responding to which the appellant entered

appearance. After furnishing copies of the final report and copies of connected documents, the prosecution and the appellant were heard. On

finding that there are materials to send the appellant for trial, a charge for the above offence was framed. The appellant pleaded not guilty when the

charge was read over and explained. Hence, he was sent for trial. On the side of the prosecution PWs 1 to 21 were examined and Exts. P1 to

P61 were marked. When questioned u/s 313 of the Code of Criminal Procedure, he admitted his official status and denied the incriminating

evidence. Further, he stated that the amount seized was the money that the appellant obtained as loan and that the appellant was innocent and that

he was prosecuted with ulterior motives. A Draftsman attached to the Cochin Shipyard and a Clerk attached to a private company were examined

as DWs 1 and 2. DW1 had deposed that on 18.4.2001, he pledged some ornaments of his wife and obtained a sum of Rs. 22,000/- and that on

26.4.2001, a sum of Rs. 25,000/- was advanced to the appellant, who is a close friend and neighbor. DW2 had deposed that he had given a loan

of Rs. 10,000/- and Rs. 25,000/- on 8.3.2001 and 19.3.2001 respectively after pledging the ornaments of his wife. A Plant Protection Officer

attached to Regional Plant Quarantine Station, Madras was examined as DW3, through whom Ext. D2 Register was marked.

2. The learned Judge, upon hearing the arguments on either side and perusing the evidence on record, arrived at a conclusion that the prosecution

had succeeded to establish that the appellant had been habitually demanding and receiving illegal gratification for the discharge of his official duties.

Consequently, the appellant was found guilty for offence u/s 13(1)(a) read with u/s 13(2) of the Prevention of Corruption Act 1988. MO1 series

currency notes amounting to Rs. 82,950/- were found as the amount of bribe accepted by the appellant. The appellant was sentenced to rigorous

imprisonment for a period of four years and a fine of Rs. 50,000/- with a default sentence of rigorous imprisonment for six months. MO1 series

were ordered to be confiscated. MO2 was ordered to be returned to the appellant. Assailing the above conviction and sentence this appeal was

filed.

3. I heard Sri. C.S. Manu, the learned counsel appearing for the appellant and Smt. Radhika Rajasekharan, the learned counsel appearing for

CBI.

4. The evidence of PWs 1, 2 and 18 would show that PW2 got Ext. P1 anonymous letter stating that the appellant had been receiving illegal

gratification and that he had been proceeding to Bangalore along with cash exceeding rupees one lakh, so obtained. Ext. P1 was forwarded to

PW1. PW1 made arrangements for surveillance and on getting information that the appellant had been proceeding on journey, PW1 along with

PW18 accompanied by PW9, an independent witness apprehended the appellant and the briefcase, which the appellant was carrying was

searched along with an air bag. Ext. P2, the search list attested by PW9 and PW18, would show that in the pockets of two pants kept inside the

briefcase there was a total sum of Rs. 82,950/- (MO1 series). The evidence of PWs 1, 9 and 18 on that aspect was not much assailed in cross

examination. The learned counsel for the appellant fairly conceded that he is not assailing the seizure of MO1 series from the appellant. According

to the learned counsel, MO1 series are the legal earnings of the appellant along with a sum of Rs. 60,000/-, which he had borrowed from DWs 1

and 2. The Trial Judge disbelieved DWs 1 and 2. Whether their evidence is believable or not can be considered later. The prosecution would

allege that the amount carried by the appellant was the money received by the appellant as bribe from the exporters and importers. The learned

Public Prosecutor further submitted that the seizure was on 27.4.2001. In the normal course, it should not have been the salary received by the

appellant in the current month. It was submitted by the learned counsel for the

appellant that the appellant had a gross salary exceeding Rs.

16,000/-. What was his net salary is not at all known to the learned counsel or revealed out by any evidence. It is also submitted by the learned

counsel for the appellant that the wife of the appellant was a self employed lady and had an average monthly income of Rs. 3,500/-. So, according

to the learned counsel, coupled with the evidence of DWs 1 and 2, the amount that was seized by Ext. P2 is accountable.

5. In support of the prosecution case that the appellant had been habitually receiving illegal gratification, the prosecution would rely upon the

testimony of PWs 3 to 8, 10 to 12 and 13 to 17. Supporting the evidence of the above witnesses, the prosecution would rely upon Ext. P20 series

as well as Ext. P23 series. Ext. P20 series were searched out from the house of the appellant by PW18 for which Ext. P22 search list was

prepared. Ext. P23 series were searched out from the office of the appellant. Going by the evidence of PW18, regarding the search, there is no

much challenge. According to the learned Public Prosecutor Ext. P20 series would show that the appellant had been keeping a note of the

establishments engaged in exporting and importing along with the money they paid on each and every date during March and April. Ext. P23

series, according to the learned Public Prosecutor, would contain the list of establishment's who had applied for Phytosanitary certificates and from

whom the appellant had demanded and accepted illegal gratification.

6. PW3 would depose that he was working as an Upper Division Clerk for 18 years in Harison Malayalam Pvt. Ltd. and that the Company had

been exporting plant products like rubber, tea etc. and that the goods sought for export require Phytosanitary certificate from the Plant Quarantine

Station, wherein the appellant was working as a Plant Protection Inspector and that as soon as the goods are ready for export, an application had

to be filed and that after inspecting the goods by the Plant Protection Inspector permission would be accorded for stuffing the goods in the

container and after stuffing the goods the same would be loaded into the ship and Phytosanitary certificate is to be issued from the office and it has

to be sent along with the bill of lading and that in the event there is delay in getting the Phytosanitary certificate they could not export the goods. In

addition to the loss of articles the business also would be lost. The appellant,

who used to inspect the goods, would demand for providing a conveyance and that he had demanded illegal gratification at the rate of Rs. 100/- per application and that the company was compelled to make payment and that the appellant used to collect the payment monthly and that on 9.4.2001 a sum of Rs. 14,400/- was paid. According to PW3, that was the last payment made to the appellant as he was later apprehended by the CBI and that the appellant demanded and acknowledged the amount as "speed money" and that in the event such payments were not made the appellant would not issue the certificate and that the Company had not made any complaint anticipating the consequences. He had further deposed that Ext. P4 is an application made on 19.4.2001 containing the invoice, copy of the bill of lading and the office copy of the Phytosanitary certificate. Ext. P5 and P6 are yet other two applications with connected documents and that the company had been paying the "speed money" for about six years. He has further deposed that there were other Inspectors and irrespective of the fact as to who had inspected the goods, the appellant would bring a monthly statement and would take the money.

7. PW4 would also depose about the procedure regarding the obtaining of Phytosanitary certificate for the shipping of the goods. PW4 is the partner of a firm, Devshi Bhanji Khona, which is also doing the shipping, clearing and forwarding. PW4 also had further deposed that the appellant was the Plant Protection Inspector and that the Company was engaged in the export of spices, coffee, ginger, turmeric etc. and that the appellant had been demanding and accepting money for issuing the Phytosanitary certificate and that the Company had been paying about Rs. 6000/- - 8,000/- per month and that on 19.4.2001 they had paid Rs. 6000/-. It was also deposed that no other Officer in the Station had demanded any money.

8. PW5 is the Clerk in the Ealton and Sons. He would depose that he had been working in the Company for about 12 years and that the Company was engaged in the export of coffee, tea etc. and that the appellant was the Plant Protection Inspector and the appellant would demand a hired vehicle for his conveyance and had been demanding and accepting Rs. 100/- per application for the certificate and that the average monthly

amount payable to the appellant was Rs. 8000/- -10,000/- and that no other Inspector had been demanding any amount for the certificate. Exts.

P9, P10 and P11 are the copies of the applications along with the connected documents.

9. PW6 is the partner of M/s. Abdul Azeez and Associates, who was involved in the export of coffee, tea, cashew, atta, maida, rice etc. PW6

would also depose about the process of shipping and that in the event there is delay to get certificate the business would be lost. According to him,

the appellant, who was the Plant Protection Inspector had been receiving amount towards taxi charges and it would be paid by cheque or cash.

Exts. P12, P13 and P14 are some of the copies of the applications along with the connected documents.

10. PW7 is a clerk attached to the M/s. Nava Kerala Agencies which is also doing the clearing and forwarding work. PW7 would depose that the

Company had been exporting coir products, coconut shells etc. and that the appellant was the Plant Protection Inspector and that he had

demanding illegal gratification and that on 27.3.2001 a sum Rs. 250/- was paid.

11. PW8 is the Executive of the M/s. Varuna Priya Clearing and Forwarding Agency which has been exporting cashew kernels. PW8 would

depose that the appellant was the Plant Protection Inspector and that the appellant had been demanding conveyance charges as well as illegal

gratification for issuing the certificate and that on 18.4.2001 a sum of Rs. 2,000/- was paid and the average payment made to the appellant was

between Rs. 3000/- and Rs. 7000/- per month and that since there were various payments he was not remembering the dates. Exts. P16 to P18

are the copies of the applications along with the connected documents. According to the prosecution, this witness has stated that on 18.4.2001 a

sum of Rs. 2000/- was paid and on 27.3.2001 another sum of Rs. 7000/- was paid. But in the box, PW8 would depose that he didn't exactly

remember as he had been paying on occasions.

12. PW10 is the Executive of M/s. Chakiat Agencies which was also involved in the export of pepper, tyre, garments etc. PW10 would depose

that he was constrained to give illegal gratification to the appellant who was the Plant Quarantine Inspector for issuing certificate and that he had to

pay at the rate of Rs. 250/- per consignment and that in March 2001, on four

occasions it was paid and in April 2001, Rs. 1,000 or Rs. 2000/-

were paid and that the payments were made as if it is for speedy clearance. Exts. P24 to P28 are the copies of the applications along with the

connected documents. It was further stated that the payments were made by his cashier.

13. PW11 is a partner of the M/s. Azad Business Combines, which firm was also involved in the export of food stuffs, rice, garments etc. PW11

would depose that the appellant was the Plant Quarantine Inspector and that the appellant had been demanding Rs. 250/- per certificate and that

the payment was for three or four certificates together and that on 12.4.2001 and on 27.3.2001, Rs. 750/- and Rs. 1250/- respectively were paid

and on 17th or 18th March another sum of Rs. 1250/- was paid and that the payment made on 12.4.2001 was the amount for three bills and that

the payment made on 27.3.2001 was for five bills and that the payment made on 17th or 18th March was for another five bills and that the

payment made to the appellant would be recorded as P&Q expenses and would be levied from the parties concerned. PW11 had further deposed

that Ext. P29 is a statement of accounts pertaining to the bill of M/s. Nenmani Agro Mills, Aluva, as per which, one container was shipped and a

sum of Rs. 526/- was shown as P&Q expenses of which Rs. 250/- were the amount paid to the appellant and the rest is towards taxi fare. It was

further deposed that Ext. P31 is the statement of account dated 30.3.2001 pertaining to M/s. Nenmani Agro Mills, Aluva. In that a sum of Rs.

669/- was shown as P&Q expenses and that Rs. 250/- were the money paid to the appellant and that the balance was taxi fare and other fees.

Ext. P32 was proved as the statement of accounts relating to M/s. Naz Rice, Aluva dated 23.3.2001 and that a sum of Rs. 775/- were shown as

P&Q expenses of which Rs. 500/- were paid for two Phytosanitary certificates and the rest amount was for taxi fare and the legal fees. Ext. P33

was proved as the statement of accounts given to M/s. Seven Seas Imports on 16.3.2001 and a sum of Rs. 692/- was shown as P&Q expenses

of which Rs. 250/- were towards the certificate and the balance amount was towards taxi fare and legal fees. Ext. P34 was proved as the

statement of accounts dated 16.3.2001 regarding M/s. Nenmani Agro Mills and that Rs. 284/- were shown as P&Q expenses of which Rs. 250/-

were towards the Phytosanitary certificate and the balance was towards legal fees. Ext. P35 was proved as the statement of accounts given to the

above firm on 16.3.2001 and in that, a sum of Rs. 284/- was shown as P&Q expenses of which Rs. 250/- were towards the Phytosanitary

certificate and the balance was towards the legal fees. Ext. P36 was proved as the statement of accounts given to M/s. Naz Rice, Aluva on

26.2.2001. In Ext. P36, a sum of Rs. 619/- was shown as P&Q expenses of which Rs. 250/- were towards the Phytosanitary certificate and the

rest was towards the taxi fare and legal fees. Ext. P37 was proved as if it is the statement of accounts given to the same firm on 24.2.2001 and in

that, a sum of Rs. 440/- was shown as P&Q expenses of which Rs. 250/- were towards the Phytosanitary certificate and the rest was towards the

taxi fare and legal fees.

14. PW12 had deposed that he was the Plant Protection Officer under whom the appellant was working as Technical Officer-III. The appellant

was also called as Plant Quarantine Inspector and that for export and import, Phytosanitary certificate is required and that it is for the Inspectors to

inspect the goods and to calculate the fees. Ext. P39 was proved as the guidelines for issuing the certificate. It was further deposed that the

certificate is to be signed by the Plant Protection Officer and the seal is to be affixed by the Inspectors and the file would be retained by the

Inspectors. From 11.4.2001 to 26.4.2001 he was on earned leave and during that period he had given signed blank Phytosanitary certificates to

the appellant and it was to enable the appellant to issue certificates even in his absence. PW12 had further deposed that he was acquainted with

the handwriting of the appellant and that Ext. P23 series are in the handwriting of the appellant. PW12 had also deposed that Exts. P4(e), P5(e),

P6(e), P7(e), P9, P11, P12, P13, P14, P15 and P16 would contain his signatures. Exts. P25, P26, P27 and P28 bills of lading were signed by the

appellant and he had sealed it. Exts. P4 to P18 would contain the initials of the appellant. Ext. P28 was signed by PW12 and marked to the

appellant. Exts. P24, P26 and P27 were signed by the appellant. Exts. P41 and P42 were identified as the applications submitted by two other

firms, wherein PW12 had signed. Ext. P43 was identified as an application submitted by M/s. Synthetic Indus Trial and Chemicals Ltd. and that it

was signed by the appellant. Ext. P44 was identified as the application submitted by M/s. Seetharam Warehousing Corporation, in which the bill of lading was written by the appellant. Ext. P45 was identified as the application submitted by M/s. P.K. Muhammed Pvt. Ltd. and it contains the signature of the appellant. Ext. P46 was identified as another application submitted by M/s. Seetharam Warehousing Corporation, which was signed by PW12. According to PW12, the seals were affixed by the appellant and he had signed it. Ext. P47 was identified as an application submitted by M/s. Seetharam Warehousing, Cochin. It was signed by PW12. The certificate was filled up and signed by the appellant. Ext. P48 was identified as an application for import submitted by M/s. Synthetic Industrials and Chemicals Ltd. The bill of lading was filled up and signed by the appellant.

15. PW13 would depose that he was the Assistant Manager attached to P.K. Muhammed Pvt. Ltd. which is a clearing and forwarding agent engaged in exporting pepper. He would also depose that the firm was involved in import also and that the appellant was the Plant Quarantine Inspector and that the appellant had been demanding Rs. 500/- for import and Rs. 250/- for export and that on 12.4.2001 a sum of Rs. 500/- was paid and Exts. P49 and P50 are the applications given by PW13.

16. PW 14 is the partner of M/s. Nav Kerala Agencies in which PW7 was working as Clerk. PW14 had identified Ext. P51 letter and P52 bill.

Ext. P52 was issued after the shipment and that Rs. 250/- were spent towards certificate. PW15 is the officer in charge of the M/s. Abdul Azeez

and Associates of which PW6 is the partner and as per the copy of the accounts on 21.3.2001 a sum of Rs. 10,000/- was shown as expenditure

towards the Plant Quarantine Certificate. PW16 is the Clerk employed in M/s. Varuna Priya clearing and forwarding agent in which PW8 was

working as an Executive. He had deposed that the appellant was known to him and that the appellant used to come to his office for about three

years and that Ext. P53 series are the office copy of the three bills issued from the firm and that a sum of Rs. 1,600/- was shown towards

Phytosanitary expenses and that the amount was spent for obtaining the certificate and it is in addition to the fees and other expenditures. PW17

was the Cashier attached to M/s. D.B. Khona, Willington Island in which PW4 was

the partner. He had deposed that the appellant was known as employed in the office of the Plant Quarantine Office and that the appellant used to come to his office to meet PW4, Dillep D. Khona and that as asked by PW4 he had paid a sum of Rs. 6,000/- on 19.4.2001 to the appellant as "speed money".

17. The evidences of the above witnesses would show that the appellant was working as the Plant Quarantine Inspector and he had been demanding money for issuing each and every Phytosanitary Certificate. The payments made to the appellant deposed by PW7 was not even challenged in cross examination. The evidence of PWs 5 and 6 regarding the reasons for paying the amount was also not challenged in cross examination.

18. The evidence of PW20 would show that he was working as Deputy Government Examiner for questioned documents at Hyderabad and that

Exts. P20 and P23 series were forwarded for examination of the handwriting along with the specimen handwriting of the appellant and that Ext.

P56 is the certificate of opinion given by him and that Ext. P57 is the reasoning and that on examining Ext. P20 and P23 series along with the

specimen handwritings of the appellant it was found that the appellant is the author of the writings in Exts. P20 and P23 series. Though the

evidence of PW20 was assailed in cross examination, no material was disclosed to disbelieve the evidence of PW20 or to reject Ext. P57.

Evidence of PW12 would show that he had identified the handwriting in Ext. P23 series as that of the appellant. That evidence could not be

impeached in cross examination. Of course, the handwriting in Ext. P20 also could have been got identified by PW12. According to the learned

Public Prosecutor, it was an omission committed by her counterpart in the trial court. Going by the specimen handwriting of the appellant and Exts.

P20, P23 series, P56 and P57, I find little reason to reject Ext. P56 report of PW20. I find that it can be safely concluded that the writings in Exts.

P20 and P23 series are that of the appellant.

19. According to the learned Public Prosecutor, Ext. P23 series seized from the office of the appellant in the presence of PW12 would show that

the appellant had in abbreviation recorded the name of the firms along with the number of certificates in circle issued to each firm on various dates.

The learned Public Prosecutor further submitted that Ext. P20 series would contain the amount received from each and every firm who had applied for Phytosanitary certificate. The payment relates to various dates in March and April, 2001. Though the name of some of the firms are not identifiable, the learned Public Prosecutor identified certain firms with the abbreviations. In Ext. P20 series, from the Forensic Laboratory identification marks were given as Q1 to Q6. Referring to last item in Q2, the learned Public Prosecutor would submit that there is acceptance of Rs. 6,000/- from the firm in which PW4 is the partner. According to the learned Public Prosecutor that amount was paid by PW4 on 19.4.2001 touching which PW4 had given evidence. In Q5 writings, it is recorded that a sum of Rs. 14,400/- was received. The name of the payee was shown as "HMN" of which PW3 is the Upper Division Clerk. PW3 had deposed that the said amount was paid on 9.4.2001. In Q6 series, there is record of acceptance of a sum of Rs. 250/-. According to the learned Public Prosecutor, it was the amount said to have been paid by PW7 on 27.3.2001. In Q4, the learned Public Prosecutor had identified payments of Rs. 7,000/- on 27.3.2001 against letters "VP". According to the learned Public Prosecutor that pertains to the amount paid by the firm in which PW8 was the Executive. In Q2, the learned Public Prosecutor had identified the payment of Rs. 3,000/- on 18.4.2001 against the letters "VP" According to the learned Public Prosecutor, "VP" is the abbreviation of Varuna Priya Clearing and Forwarding Agent. In Q3, there is an acceptance of a sum of Rs. 1,250/- on 27.3.2001. In Q2 there is another payment of Rs. 750/- on 12.4.2001 said to have been made by the firm in which PW11 is the partner. A sum of Rs. 20,000/- was recorded received on 19.4.2001 as the payment made by the Ealton and Sons of which PW5 is the Clerk. According to the learned Public Prosecutor, Ext. P20 series in general support the case of the prosecution that the appellant was habitually receiving illegal gratification. The payments identified above was argued as specific items of payment touching the evidence of the witnesses mentioned earlier. According to the learned Public Prosecutor, there is sufficient corroboration by Ext. P20 series in support of the evidence of PWs 3 to 8 and 10 to 17. The learned counsel for the appellant on the other hand would argue that the writings-in Ext. P20 series are not at all sufficient to identify the firms and so Ext. P20 series can

no way be accepted as evidence corroborated with the testimony of the witnesses. Going by Ext. P20 series, though I find it difficult to identify all

the names mentioned there, it can be seen that some of the firms can be identified by the abbreviations noted in Ext. P20 series. It is pertinent to

note that the appellant has no good explanation at all I regarding Ext. P20 series. Why the appellant has been keeping a record regarding these

amounts from the various firms, involved in the export and import of goods for which Phytosanitary certificates are required is not at all disclosed.

In the absence of any explanation from the appellant, it is legitimate to conclude that the appellant had been keeping those records only for

demanding and collecting illegal gratification without any missing or omission. On a careful reading of the evidence on record, I find that Ext. P20

series would corroborate with the evidence of PWs 3 to 5,7,8 and 11.

20. The learned counsel for the appellant would submit that the witnesses who had deposed about the payment of the illegal gratification are

accomplices and they are not even allowed to be examined as a witness in court to gave evidence in support of the prosecution. The learned

counsel would submit that in view of the illustration (b) to Section 114 it is to be presumed that the evidence of the accomplice is unworthy of

credit. On the other hand, the learned Public Prosecutor would submit that the evidences of the witnesses mentioned above would show that they

were constrained to make illegal gratification under compelling circumstances and unless the payments are made they could not do the business of

export and import. It was even submitted that such payment made can be called as extortion and it cannot be said that they are bribe givers to

bring them under the term accomplice. The learned Public Prosecutor in support of her argument relied upon the decision reported in Dalpat Singh

and Another Vs. State of Rajasthan, which was also relied upon by the Trial Judge. In paragraph 5, referring to the Constitution Bench decision

reported in State of Bihar v Basawan Singh, 1958 SC 500 it was held: ""all the proved facts even those who have illegal gratification to the

appellant cannot be considered as accomplice as the same was extorted from them"". In that case, along with the witness who offered bribe certain

other witness were examined as if those persons had given bribe. Referring to the facts disclosed in that case, it was found by the Apex Court that

those witnesses were extorted to give the amount so they cannot be called as bribe givers so as to bring them u/s 12 of the Prevention of

Corruption Act as if persons abetting the public servant in accepting illegal gratification. Having due regard to the evidence on record, I find that the case on hand is an identical one.

21. According to the learned counsel for the appellant, the persons who had given illegal gratification are also liable to be prosecuted and in the

event the prosecution wanted their evidence in support of the case against the appellant they had to be given pardon u/s 306 of the Code of

Criminal Procedure or u/s 5(2) of the Prevention of Corruption Act, 1988 and so long as they were not given pardon they cannot be examined as

a witness. The learned counsel had in support of the arguments relied upon the decision reported in *Abubacker v. Alexander*, 1999(3) KLT 738

and *Prabhu Vs. Union of India (UOI)*,

22. Going by the evidence on record and the decision referred earlier, especially, in *Dalpat Singh's* case, I find that the witnesses who had given

evidence regarding the demand and payment of illegal gratification to the appellant were not at all voluntary bribe givers and they were constrained

to make payment as demanded by the appellant only to sustain their business and in the event they refused to heed to the demand of the appellant,

the appellant would delay the issuance of Phytosanitary certificate. Consequently, they could not forward the bill of lading with the Phytosanitary

certificate without which the consignee could not take delivery of goods. Obviously, there would be loss of business as well as the goods. It is to

avoid this the exporters are constrained to heed to the demand of the appellant. The learned counsel for the appellant submitted that the appellant

in *Dalpat Singh's* case was a police personnel and he had been collecting the illegal gratification under threat from illiterate persons residing in the

border and it can no way be compared with the case on hand. Though there is no such threat causing fear, the case on hand is more or less similar.

Unless the exporters and importers heed to the demand of the appellant, they couldn't do the business. When the volume of business is reckoned

the demand made by the appellant is negligible. If they thought of heeding the demand of the appellant, it is only because of the fear of loosing the

business. It is nothing but extortion. The exporters and importers were under the

threat of loosing the business, if they refused to pay. In the above circumstance, I find that the argument advanced by the learned counsel for the appellant deserves no consideration. Having due regard to the entire facts and circumstances, I find that this is a case more or less identical to the one in Dalpat Singh's case (supra). On a critical analysis of the evidence of PWs 3 to 8 and 10 to 17, I find that they were coerced by the appellant to give illegal gratification. They were constrained to heed to the demand for illegal gratification on apprehension that unless they pay, they would lose business. Therefore, they cannot be styled as abettors.

Neither it could be said that they voluntarily gave illegal gratification. Demand of illegal gratification on threat of loss of business is also extortion.

Therefore, PWs 3 to 8 and 10 to 17 cannot be called as accomplices so as to reject their evidence as contended by the learned counsel for the appellant. Even if it is assumed that PWs 3 to 8 and 10 to 17 are accomplices coming under illustration (b) to Section 114 of the Evidence Act, it is not a reason to reject their evidence as their evidence was corroborated by Ext. P20 and 23 series and the seizure of cash which the appellant could not account. In the juncture it would be appropriate to read Section 133 of the Evidence Act which reads as follows:

133. Accomplice:- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

On reading Section 133 with illustration (b) to Section 114, I find that it is no way illegal to act upon the evidence of the accomplices even if it is not corroborated. It is well settled that corroboration is not a rule of law but a rule of prudence. What is significant is the credibility of the witnesses. The evidence of PWs 3 to 8 and 10 to 17 instill confidence. Further, their evidence is corroborated by Ext. P20 series and P23 series which would show that as alleged by them the appellant had been not only demanding and accepting illegal gratification but also maintaining a statement regarding the name of the exporters and the number of applications given by them and had been collecting the amount in a systematic manner. The above evidence is further corroborated by the seizure of cash on the strength of Ext. P2. I have carefully gone through the evidence of DWs 1 and 2, who had deposed that they had pledged the ornaments of their

wives and lent the amount to the appellant. According to DW1, the ornaments were pledged on 18.4.2001 and a sum of Rs. 22,000/- was obtained and lent Rs. 25,000/- to the appellant. According to Dw2 a sum of Rs. 25,000/- was obtained on 19.3.2001 by pledging the ornament and a sum of Rs. 10,000/- on 8.3.2001 also by pledging the ornaments of his wife and lent it to the appellant by the last week of April. Admittedly, those persons are much below in rank to the appellant. They had to admit in cross examination that though they had advanced the amount to the appellant they were not maintaining any account or document. The amount was not repaid by the appellant, There is no claim or demand for return. In the event, the appellant was so badly in need of money, PWs 1 and 2 would have paid the amount on the date on which they had obtained the same after pledging the ornaments and the appellant would have taken home that amount much earlier. It is too difficult to believe that DWs 1 and 2, who were very low paid employees had pledged their ornaments to make fund for lending long before the need of the appellant and had been retaining the same though they had the liability to pay the interest to the mortgagee, that too without obtaining any document from the appellant or even undertaking to pay interest. It is also pertinent to note that the appellant has no case that before taking Rs. 60,000/- as loan from DWs 1 and 2, he had obtained sanction from the competent authority. The story of loan is not at all convincing. It didn't appear probable. In the above circumstance, I find that the trial court was right in rejecting the evidence of DWs 1 and 2. The appellant had failed to account the cash that he had been carrying on 27.4.2001. That is a strong circumstance in favour of the prosecution and against the appellant. Therefore, this is a case in which the oral evidence is corroborated by the documents maintained by the appellant and by unaccounted cash in the possession of the appellant justifying the allegation of the prosecution that the appellant had been habitually accepting illegal gratification. The evidence of PW11 regarding the payment of illegal gratification was corroborated by the Statement of Accounts which were marked as Exts. P29 and 31 to 37. Ext. P29 and 31 to 37 are documents maintained in the ordinary course of business. There is no case that those statements of accounts are subsequently cooked up. The evidence of PWs 8 and 16 regarding the payment of

illegal gratification is proved by Ext. P53, the office copy of the bills. As against Ext. P53 also there is no much challenge. Therefore, the evidence

of PWs 8,11 and 16 were further corroborated by Exts. P29, 31 to 37 and 53. It didn't appear that the evidence on record is anyway artificial.