

(1988) 11 KL CK 0001
In the High Court Of Kerala
Case No : Criminal A. No. 326 of 1987

M.K. Harshan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Constitution of India, 1950 — Article 166(1)
Penal Code, 1860 (IPC) — Section 161, 165
Prevention of Corruption Act, 1988 — Section 5(1)(d), 5(2), 6

Citation : (1988) 2 KLJ 899

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : K.B. Kurup, Jose K. Kochupappu and T.M. Chandran, for the Appellant; Aysha Yousuff Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S. Padmanabhan, J.—While working as Executive Engineer, public Works Department (B& R), Trichur, the appellant got involved in an offence punishable u/s 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act read with Section 5 (1) (d) thereof He was charge-sheeted by the Vigilance Police and tried before the Special Judge, Trichur in C. No. 38 of 1986 The case ended in conviction for both the offences. Under each count. he was sentenced to undergo rigorous imprisonment for one year. The sentences were permitted to be suffered concurrently. For the offence under the Prevention of Corruption Act, he was also sentenced to pay a fine of Rs 500/- with a default sentence of simple imprisonment for one month. He is challenging the convictions and sentences. PW 5 is the owner of "Dwaraka" theatre at Kodakara. PW s 1 and 7 are his sons PW. 1 is also the Manager of the theatre. Term of the licence for the theatre issued by the Panchayat was due to expire on 25-6-1983. As early as 22-5-1983, PW. 5 submitted Ext. P4 renewal application. Renewal of licence could be had only if fitness certificate for the building is issued by the appellant. Appellant had to do so on the basis of the report from the Assistant

Executive Engineer (DW 1) subordinate to him Report of DW 1 was personally taken by PW 1 to the appellant on 22-6-1983. He wanted the licence to be got renewed on or before 25-6-1983 Appellant did not oblige PW. 1 returned and sent PW. 7 on 25-6-1983. He met the appellant without success twice at 3 and 5 PM. He returned and reported to PW. 1 26-6-1983 was Sunday. PW 1 met the appellant at 12.30 PM on 27-6-1983 at his office. He was told that this sort of meeting will not help and there is a "mamool". When asked what it is, appellant explained that it is, a customary payment of Rs, 300/-. PW 1 went out agreeing to come back with the amount.

2. After an initial hesitation, he decided to inform the Vigilance Police. Information was given to PW 11 at 3 PM. A case was registered. After observing the usual formalities a trap was arranged. PM 2 Sasidharan Nair and one Kumaradas, two Gazetted Officers, were arranged as witnesses for the trap PW 3 was the police constable arranged to go along with PW 1 and wait outside. At about 4.15 PM, PW 1 went inside appellant's office room. He was there PW 1 informed his readiness. As directed by the appellant, he put the two notes of hundred rupee denomination inside the draw of the table. He was asked to wait outside. Appellant called the peon to bring the file. PW 1 came out and gave the arranged signal. PW 3 relayed the same PW 11 and party suddenly came. Appellant was asked by PW 11 to take out the notes received from PW 11 after revealing his identity. He denied having received amount. Acquaintance with PW 1 was even denied. As directed by PW 11, the draw was opened and the two notes taken out by PW 2. That was also after observing the usual formalities and tests. The notes were found the same as those produced by PW 1 and given back to him after smearing with phenolphthalein powder. This is the prosecution version of the incident spoken to by PW s 1, 2, 3, 8 and 11. PW 11 is the Deputy Superintendent of Police, who arranged and conducted the trap and PW 8 is the Circle Inspector, who assisted him.

3. Defence is this On 25-6-1983 itself, appellant accepted the notes of the Junior Superintendent and Senior Superintendent and ordered certificate to be issued. Therefore there was no occasion or need to demand or receive bribe. PW 1 did not meet him at 12.30 or 4.15 PM on 27-6-83. There was no demand or payment. At 2.30 he was in a conference in the Collectorate. He returned to office only after 1 PM. Even then he did not enter the office room. He waited in the car porch and went away for inspection after discussion with subordinates. He returned only at 4 PM. Then also he was outside the office room engaged in official business with subordinates. When he came back to his room with some Subordinates, including DW 2, and was engaged in discussion, PW 11 and party came and took action. His fingers were not positive to phenolphthalein test. It Was so recorded in the mahazar which was read by M/s. P.G. Balan and V. K. Ramakrishnan, two senior Advocates who came there. But the mahazar was dishonestly changed. He is falsely implicated by PW 1 at the instance of his enemies including Panchayat President, Raghavan.

4. The first point argued was that the prosecution must fail for want of proper sanction. Ext. P22 is the order sanctioning prosecution as enjoined by Section 6 of the Prevention of Corruption Act. On behalf of the Government, it was signed by the Commissioner and Secretary (Vigilance Department) by order of the Governor. PW 9 Deputy Secretary, who was examined to prove Ext. P22, said that the files were not forwarded to Governor, but himself and the sanctioning authority (Government) perused all the relevant papers and the sanctioning authority passed the order after due satisfaction. But the appellant would say that personal satisfaction of the Governor is required. So also, according to him, the P. W. D Secretary alone is competent to sign the sanction by orders of the Governor. That is because he is an officer of the Public Works Department and the authority competent to remove him is the Government of Kerala. It was also pointed out on his behalf that Ext. P22 does not disclose proper satisfaction on the basis of materials and the materials on which satisfaction was entered for ordering sanction, were not produced and proved before court.

5. Section 6 of the Prevention of Corruption Act bars cognizance without a valid sanction. It is a matter undoubtedly affecting jurisdiction At first I shall consider the question whether Ext. P 22 is invalid on account of the incompetence of the person who signed it and want of persona satisfaction of the Governor.

6. Under Article 166(1) of the Constitution, all executive actions of the Government shall be expressed to be taken in the name of the Governor. Clause (2) says that any order or other instrument made and executed in the name of the Governor shall be authenticated in such manner as may be prescribed in the Rules made by the Governor. The validity of an order or instrument so authenticated shall not be liable to be called in question on the ground that it is not an order or instrument made or executed by the Governor. All orders issued by the Governor on behalf of the State are usually signed by the Secretary or other officer authorised by the Governor in that behalf. I was told by the prosecution that by a general order passed by the Governor in respect of cases coming under the Prevention of Corruption Act, the Commissioner and Secretary to Government, Vigilance Department is specifically authorised to sign the sanction order on behalf of the State representing the Governor. Ext. P22 was so signed by him slating that it is on behalf of the State and as per orders of the Governor. Therefore, I do not think that the challenge against Ext. P22 on that ground is competent.

7. An identical question came up for consideration before a Division Bench of this Court in *G. V. Nair v. Government of India* (1962 KLT 690) In that decision, I find ample support for the above view Rule 12 of the Rules of Business of the Government of Kerala as quoted there reads:

Every order or instrument of the Government of the State shall be signed by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary or by such other officer as may be specifically empowered in that behalf and such signature shall be deemed to be

the proper authentication of such order or instrument.

That decision also quoted *State of Bombay v. Hainam Singh Ram Singh Koehhar* (A.I.R. 1961 Supreme Court 1762), in which His Lordship Justice Subba Rao observed:

If an order is issued in the name of the Governor and is duly authenticated in the manner prescribed in Rule 2 of the said Article, there is an irrebuttable presumption that the order or instrument is made or executed by the Governor.

8. The contention that the Governor himself should see the papers and personally satisfy himself of the need for sanctioning prosecution is based on the decision in *Rajendran v. Governor of Kerala* (1986 KLT 796). In that case, the sanction for prosecution was of the Chief Minister. It was, therefore held that in such a case, the Governor would, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers. It was so held only because in the case of a Chief Minister nobody other than the Governor could take a decision of the merits by application of the mind. That principle cannot be extended to the sanction for prosecuting an officer like the appellant.

9. Ext. P22 order itself shows that the Government examined the records in Crime No. 3 of 1983 of the Vigilance Police Station placed before it and was satisfied that it is a case fit for sanctioning prosecution. Application of the mind is further evidenced by the detailed facts relating to the offence mentioned in Ext. P22. So also, it is stated that on perusal of the papers, Government of Kerala was satisfied that the appellant committed the offences alleged. Sanction was, therefore, ordered by the Government and it was signed by the Commissioner and Secretary, Vigilance Department by order of the Governor. That is sufficient compliance of the provisions of Section 6 of the Prevention of Corruption Act.

10. Sanction for prosecution is undoubtedly not an idle formality. It is a valid protection afforded to public servants as a check against frivolous or vexatious prosecutions. Grant of sanction is a solemn and sacrosanct act which has to be by due application of mind after satisfaction by perusal of the relevant materials. Sanction could be ordered only on proof of certain circumstances which will have to be proved by evidence placed before the sanctioning authority. Satisfaction of the sanctioning authority on the basis of sufficient materials is a fact that has essentially to be proved before court. It is for the court to draw a conclusion in that respect on the basis of materials placed before it. Except on a valid sanction, Court cannot assume jurisdiction to try a case under the Prevention of Corruption Act. Once it is found that there is no valid sanction, the assumption of jurisdiction is illegal because it is a matter affecting jurisdiction of the Court on account of the prohibition contained in Section 6 against taking cognizance without sanction. *Har Bharosey Lal Vs. State of U.P.*, .

11. The satisfaction that has to be entertained by the Court regarding the existence of a valid sanction must be on the basis of the materials placed before it by the prosecution. That can be had in two ways. First is by production and

proof of the original sanction which itself contains the facts constituting the offence as well as the grounds of satisfaction. Second is by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it (Mohammed Iqbal Ahmed v. State of Andhra Pradesh AIR 1979 Supreme Court 677) In this case, Ext. P22 itself shows that the sanction was accorded after considering the materials records and being satisfied" of the facts constituting the offence Application of the mind is clear from the order itself. Further evidence in that respect is therefore not necessary, Such evidence is necessary only in cases where the order of sanction is not self evident. Further, we are having the evidence of PW 9 which also shows that all the material papers were considered by the sanctioning authority and sanction was accorded after due satisfaction I agree with the trial Judge that the prosecution is not bad on that count. Want of sanction is not intended as a technical defence to the accused.

12. It appears that the plea of the appellant that he was falsely implicated by PW 1 at the instance of his enemies was not seriously meant by him. He has no case that PW 1 has anything personal against him. He only says that one Mr. Raghavan, Panchayath President and some other unidentified enemies of his instigated PW 1. Apart from the absence of materials probalising such an instigation, he did not even allege what their motive was. He was not able to specify the name of any other enemy. If actually he has get a definite case of false implication, that would have been one of the grounds stated by him in Ext. P12 application filed after the trap. Ext. P12 is silent in that respect. In Ext. P13 application, which was there filed a few days later, he was only able to make a generalised statement that was false implication at the instance of persons who are inimical towards him. He was not even able to give any hint as to who they are. Even the Panchayat President came in only at a very late stage. Motive of the Panchayat President is also not clarified. That only shows that he wanted to assign some reason, that is all Much importance need not be assigned to that part of his plea, which is evidently not supported by bona fides.

13. I do not think that the appellant is entitled to succeed on any of his contentions PW s 1, 2, 3, 8 and 11 are the witnesses relevant for the prosecution. DWs 1 and 2 and PW 4 are the witnesses relevant for the defence. PW 4 is a Lower Division Clerk who has working under the appellant. DW 1 is the Assistant Executive Engineer and of DW 2 is the Technical Assistant. These three persons were subordinates of the appellant." Their evidence show the extent to which they were prepared to go for the purpose of helping the appellant in wriggling out of the difficult situation to which he put himself by his actions The evidence of PW 2 is not in any way better.

14. PW 1 was evidently actuated only by the desire to vindicate justice and he has nothing else against the appellant. He could, therefore, be accepted as an otherwise disinterested witness. At the same time after the introduction of Section 165-A.I.P.C, he could be technically turned an accomplice. But what we

are concerned is not an illegitimate trap, but only a legitimate trap. PW 1 was only assisting the officers concerned for the purpose of eradicating a social evil and bringing an offender to justice. Further, we are having ample corroboration to his evidence.

15 In support of the two meetings of PW 1 with the appellant on 27-6-1983 and the demand and actual payment, the main evidence is only that of PW 1. In order to improbabilise the evidence of PW 1 that he met him at 12.30, appellant went to the extent of saying that on the pre-lunch period, he did not attend the office at all. He would say that he was engaged in a conference in the office of the District Collector. He claims to have returned to his office only after 1 PM. Even then his case is that he only waited in his car at the car porch and went away after discussion with his subordinates without entering his room. But in this respect, he is belied by his own admissions in two documents signed by him and accepted to be true. They are Exts P11 and P12. Ext. P11 is the progress report of the appellant signed by him. It shows that on 27-6-1983 he attended the drought relief works conference in the Collector's chamber only from 10.30 AM to 12 Noon and then returned to his office. Thereafter, he proceeded to Chalakkudi and Vellikulangara only at 1 PM. He then returned at 4 PM to the office. Ext. P12 is the petition filed by the appellant himself before the Superintendent of police, Vigilance on 29-6-1983. To quote his own words, he stated therein:

On 27-6-1983 I attended the drought relief works conference presided by the District Collector in Collector's Chamber, Civil Lines, Trichur and the meeting was over by 12. Noon and from there I returned to my office at Chembukkavu and attended some urgent papers brought to me. After lunch I proceeded to Chalakkudi and then to Vellikulangara inspected the Vellikulangara Andukai road with the Assistant Executive Engineer, Irinjalakuda and test checked the measurements of metal supplied. Since the Assembly is in session urgent interpellations are likely to come I rushed back to my office at Chembukavu and reached there by about 4 PM.

These documents unmistakably show that the appellant was in his office on both the occasions when PW 1 claimed to have met him. Contention to the contrary is evidently mala fide and is the reflection of a guilty conscience. That only adds to the credence of PW. 1.

16. The measurement book summoned and brought at the instance of the appellant is of no help to him. Even if that is correct, he was at his office on the two relevant occasions. The evidence of PW 1 that he met the appellant at 12.30 when the demand was made is further probalised by the payment at 4.15 followed by the trap. He said that his intimation of bringing money was welcomed by a direction to put it in the table's draw and he obeyed. His further version is that appellant immediately called his Peon to bring the file and he was asked to wait outside. He went out and gave the arranged signal which was relayed by PW 3. Within moments, the trap party headed by PW 11 came in. This is the

combined effect of the evidence of PW 1 to 3, 8 and 11. Their evidence completely belied the appellant's contention that he came to the room along with his subordinates after the notes were placed in his draw and before the trap party came in and he was unaware of the notes being in his draw. Appellant alone was in his room when PW 1 entered and made the payment. He continued to be alone there when the trap party entered the room immediately. That is what the evidence of these witnesses unmistakably indicate. The evidence further indicate that the open draw was closed by the appellant after the notes were put inside by PW 1 as directed by him.

17. PW 4 and DWs 1 and 2 are the subordinates of the appellant. They were examined mainly to prove that the appellant was not in his office room as claimed by PW I. DW 1 even manipulated records to show that appellant was with him till about 8 PM. Even the appellant had no such case. He admits to have come back to the office by 4 PM. The records further show that DW 1 and appellant were not at all together. The depositions of PW 4 and DW 2 are also equally unreliable and against the weight of the acceptable evidence in the case. No reliance could be placed by anybody on their testimonies. I do not think that adding volume to this judgment by discussing their evidence is necessary.

18. It is not possible for anybody to believe that the office room of a responsible Executive Engineer and the draw of his office table will be available for any wayfarer to enter and place currency notes without being noticed or prevented by anybody. Such a course is further improbable for the added reason that PW 1 had no motive for it. Further PW I was in the company of PW s 2, 3, 8 and 11 till just before entering the room and immediately thereafter the trap party also entered. The notes could have found the place inside the draw only in the presence of the appellant. Closure of the draw thereafter is an added indication. In these circumstances, especially in view of the sufficient corroboration, there is absolutely no reason to disbelieve PW 1 regarding the demand and acceptance.

19. Naturally when the trap party entered, the appellant had no other go but to deny everything and he even pleaded that PW 1 was not known to him. But that plea is evidently false and it could be seen from a combined reading of the evidence of PW s 1 to 3, 8 and 11. The identical notes marked and given to PW 11 were the ones found in the draw. It is true that in the matter of fixing criminality in trap cases the place from where the recovery is effected may have some bearing. If recovery is shortly after the payment from the pocket of a dress worn by or from the loins of the cloth of the culprit, nothing more may be required in proof of the fact that he consciously received the amount especially when no exculpatory factor is in evidence. If it is from the pocket of the shirt or pants of the culprit found hanging in one portion of the room or from the draw of his table, something more may be required in proof of receipt. That is because of the possibility of the amount appearing there by some other means without the knowledge and consent of the accused. When such possibility is ruled out by the evidence which clearly indicate the manner and method of demand and receipt,

that distinction will lose its significance. That is the position in this case. I do not think that there is any reason to disbelieve the evidence of PW 1 in the circumstances already discussed.

20. Even though an attempt was made to argue on the basis of the trap mahazar and the depositions of PWs 2, 3, 8 and 11 that the case of PW 1 was that he paid the amount to the appellant who received it with his hand and placed inside the draw, I do not think that such an inference is possible. It is true that the mode of payment and receipt could have been mentioned with more clarity in the mahazar. But the evidence of PW 1 does not give room for any doubt in the matter. It clearly indicates that the appellant did not receive the amount with his hand. He only directed the notes to be put in the draw and PW 1 obeyed. The mahazar and the evidence of the above witnesses do not in any way militate against that version. When the open draw was found closed when PW 11 and others entered, the only possibility is that it was closed by the appellant, who alone was inside.

21. PW 1 said that after the trap party entered and before the hand of the appellant was dipped in the solution he was made to touch the notes. This part of the evidence is not corroborated by any other witness. Appellant attempted to make much out of this. That can be a mistake on the part of PW 1 while narrating that process undergone with some other persons. It can be correct also. Anyhow, nothing serious is going to turn on that because the definite case of PW 11 from the inception was that the appellant did not receive the amount with his hand.

22. From the evidence of PWs 2, 3 and 8 it may appear that while the fingers of the appellant were dipped, the solution slightly turned pink but his fingers did not turn pink. This aspect was put to PW 11 in chief examination itself and he explained that it may be due to the fact that subsequently the appellant handled files. These two items of discrepancies were magnified by the appellant to contend that everything is a manipulation. Probably PW 11 and the other members of the trap party who did not actually witness the payment might have understood that the payment was received by the appellant with his hand. In order to avoid a contingency of their versions, truthful in all other respects,

being disbelieved on this score there is the possibility of these witnesses having given a little twist to that limited extent. Anyway that is not an important aspect at all. When it is evident that he did not receive the amount with his hand the question whether his fingers turned pink or not is absolutely irrelevant. It is relevant only to the limited extent of considering whether for that reason these witnesses are to be disbelieved in toto or not. It is a rule of appreciation of evidence that in the process of analysis the Court has to separate the chaff from the grain and accept the grain while rejecting the chaff if that is possible. The entire evidence could be rejected only if what is false or exaggerated or unacceptable is so intermingled with the rest which is true that they cannot be separated. Such a contingency has not arisen.

23. One of the contentions of the appellant is that the mahazar originally prepared at the time of trap disclosed that his fingers did not turn pink to the test and the mahazar was substituted. That appears to be an ingenuity. It is admitted by both sides that while the mahazar was under progress and about to be completed, Advocate M/s. P. C. Balan and V. K. Ramakrishnan came and Mr. Balan, at his request, was even allowed to read that portion of the mahazar which was completed. That means PW 11 was doing things in open and not in secret. If there was such a substitution, I fail to understand what prevented the accused from examining these two respectable witnesses to prove it. It is also admitted that though PW 11 was not prepared to oblige the request of Mr. Balan to give an immediate copy of the mahazar, he was inclined to consider the request for bail favourably and he obliged also. These facts indicate how fairly and without prejudice PW 11 was discharging his functions.

24. There is no rule of law that even if a witness is otherwise reliable and independent, his association in a pre-arranged raid, about which he had become acquainted, makes him an accomplice or a partisan witness. In the absence of anything to, warrant a contrary conclusion, conviction is not untenable merely because it is based on the testimony of such a witness. Every witness of a raiding party cannot be dubbed as an accomplice per se or even as an interested witness in total absence of materials justifying such an inference *Madurai Coats Ltd. Vs. The Workmen of Madurai Coats Ltd.* represented by the Secretary and Others, .

25. In the case of an offence of demanding and accepting illegal gratification depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence there is circumstantial evidence, which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case *State of U.P. Vs. Dr. G.K. Ghosh*, .

26. Where the evidence of the police officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystallised into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration but, equally, in the facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance *Hazari Lal Vs. State (Delhi Administration)*,

27. Judged by the principles laid down in the said decisions, in spite of a small item of discrepancy mentioned above, I was not able to find anything to discredit

the testimonies of anyone among PW s 1 to 3, 8 and 11. All of them appeared to me to be impartial and disinterested witnesses giving out a true version of the facts within their knowledge.

28. The plea of alibi, put forward by the appellant is evidently a relevant aspect under the provisions of the Evidence Act. That is relevant because if alibi is successfully established that will be an item of evidence inconsistent with the prosecution case and its evidence. But the plea of alibi will have to be proved by the accused with absolute certainty. It is not sufficient that the plea is established with preponderance of probability as in the case of proving general exceptions or other circumstances. That is because the prosecution case is failing only on account of satisfactory proof of alibi by which alone the prosecution evidence is being shattered. The discussions already had show that the plea of alibi was put forward without the support of any bona fides. "

29. One other circumstance relied on by the appellant to shatter the prosecution case is Ext. P7 file, which contains the notes of the Junior Superintendent, Senior Superintendent and orders of the appellant. It is seen that the Junior Superintendent recorded a favourable note on 22-6-1983. The note of the Senior Superintendent, as it now stands, is dated 24-6-1983. The orders of the appellant under his initial is dated 25-6-1983. If the note of the Senior Superintendent and the orders of the appellant are genuine, that may operate as an item of evidence which may sometimes create a suspicion in the mind of the Court, whether there is the possibility of the appellant having demanded the illegal gratification on 27-6-1983. But when we go deep into the matter, it could be seen that the note and the orders of the appellant are manipulations which came into being during the period of three hours from 4 p. m. to 7 p. m. on 27-6-1983. The trap started at 4 p.m. and seizure of Ext. P7 file was at 7 p.m. Even from the evidence of PW. 4, who was acting all out to help the appellant, the file was with the office during this period. The original date under the initial of the Senior Superintendent was consciously corrected by changing the date. This is by over writing in two places. The over writing is noted in the mahazar. At present the date in that initial is 24-6-1983. Only if there is such a change the appellant could have passed an order to issue fitness certificate on 25-6-1983. I have gone through the date under the initial of the Senior Superintendent with the help of a magnifying lens. I was able to find sufficient indications that, at any rate, the date originally written could only be after the 25th and it was corrected to make it 24. If that be so, it must necessarily be a manipulation after the Vigilance Party entered the office. So also, the subsequent order with the date 25-6-1983 put by the appellant also could only be a manipulation. I am not inclined to attach any weight at all to these papers.

30. If actually the order was passed by the appellant on 25-6-1983 itself, it is not known what prevented the certificate itself being issued on that day especially when PW 1 was in urgent need of it on that day. The licence for the theatre was expiring on that day and for the working of the theatre from the next day

onwards, a renewed licence was needed. The fitness certificate was issued only after the trap on 28-6-1983.

31 Even if it is taken for granted that the order was passed by the appellant on 25-6-1983 itself he could have very well kept it as a secret from PW 1 who had no possibility of having access to the file. That secrecy must have been maintained for the purpose of making an attempt to elicit illicit gratification from PW 1. Otherwise the certificate could have been issued on the 25th itself. Viewed in any angle, Ext. P7 file and the entries therein will not in any way militate against the veracity of the prosecution case and its evidence. I am satisfied from the evidence and circumstances discussed above that the prosecution succeeded in establishing the guilt of the appellant beyond all reasonable doubt. Learned counsel for the appellant argued that the amount involved is only Rs. 200/- and the harassment of a trial was being suffered by the appellant for the last more than five years I was also told that the appellant was under suspension during all these periods. Taking these aspects into account, I think that the ends of justice is not going to suffer by reducing the substantive terms of imprisonment under both the counts by six months.

While confirming the convictions and dismissing the appeal to that extent, the substantive terms of imprisonment are reduced from one year to six months under each count.