

(2009) 08 SC CK 0053

In the Supreme Court Of India

Case No : Criminal Appeal No. 1590 of 2009 (Arising out of SLP (Criminal) No. 6209 of 2008)

V. Kannan

APPELLANT

Vs

State represented by The Inspector of Police

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1), 13(2), 7

Citation : (2010) 1 ACR 799 : AIR 2010 SC 166 : (2009) 2 ALD(Cri) 726 :
(2009) 3 ALT(Cri) 464 : (2009) 11 JT 4 : (2009) 11 SCALE 858 : (2009) 9 SCC
87 : (2009) 13 SCR 540

Hon'ble Judges : P. Sathasivam, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Altaf Ahmed and S. Thananjayan, for the Appellant; T.V. Ratnam, M. Chandra Shekhar and B.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—Leave granted.

2. This appeal is directed against the judgment of the High Court of Madras dated 4.7.2008 delivered in Criminal Appeal No. 664 of 2002.

3. The brief facts which are necessary to dispose of this appeal are recapitulated as under.

4. The complainant, A. Alexander, PW1 was the proprietor of M/s. OLOHV Engineering Services and the company was doing contract work for the Railways. The company had completed the contract work for Rs. 1 crore from 1993 to 1997. According to the prevalent rules, the bills could be cleared only after the signature of the 'Site Engineer' in the measurement book. The contract work was completed in the year 1997 and there was a balance of Rs. 9 lacs due to the complainant PW1.

5. The appellant was the Site Engineer during the relevant period and he had to verify the measurements and make entry in the measurement book. The appellant informed that the complainant PW1 had to return the unused materials to the Railway department. The appellant demanded a bribe amount of Rs. 5000/- from the complainant PW1 at 9.30 am on 1.4.1998 to clear the final bill. The appellant also informed that the bribe amount be paid during the lunch hour on that date. The complainant PW1 was not willing to give the bribe amount and consequently at about 10.30 a.m. on 1.4.1998 he filed a report to the Deputy Superintendent of Police, CBI, Chennai. The report was handed over to Prem Anand, Inspector of Police by the Deputy Superintendent of Police and at about 11.30 a.m. the above Inspector introduced the independent witnesses Balachander and Prakash. The complainant PW1 handed over the currency notes of Rs. 5000/- to the Inspector and the Inspector demonstrated the Phenolphthalein test in the presence of the independent witnesses. Subsequently, the Inspector prepared the entrustment mahazar and the tainted currency notes were placed in the shirt pocket of the complainant PW1 and the Inspector informed that the above amount should be given to the appellant on demand. The complainant PW1 was told that after giving the bribe amount on demand he should give a signal by wiping his face with handkerchief.

6. The above witnesses and the trap team were sent to the office of the appellant at about 1.00 pm. The complainant PW1 and Balachander PW2 also went to the room of the appellant and he (the appellant) took them to the room of the Deputy General Manager. The appellant demanded the bribe amount and the complainant handed over the bribe amount to the appellant. The appellant started counting the currency notes and Balachander PW2 went out and gave the pre- arranged signal to the trap team. Immediately thereafter, the Inspector entered into the room and introduced himself.

7. The Sodium Carbonate test was conducted on both the hands of the appellant and there was a colour change in the solution. The above solutions were preserved in separate bottles and sealed. The appellant handed over the bribe amount to the complainant PW1 and the serial numbers were verified with the entrustment mahazar and they tallied.

8. The prosecution has examined seven witnesses. Balachander PW2 is an independent witness and his testimony is fully corroborated by the evidence of the complainant PW1. Prem Anand, Inspector, CBI, PW3 arranged the trap against the appellant in presence of the independent witnesses. Smt. Kasturi Bai PW6 was working as a Scientific Assistant Grade-I at the Forensic Science Department, Chennai. She stated in her report that she had received two solution bottles. On examination, the liquid contained Phenolphthalein and Sodium Carbonate.

9. The appellant in his statement u/s 313 of the Code of Criminal Procedure (for short, the Cr.P.C.) stated that as a Site Engineer, his duties were to supervise the erection of girders at the work site of MRTS Project at Mylapore, to monitor the

safety parameters of both men and materials at the site, to inspect whether the contract works are being carried out according to the specifications and also management of stores under direct supervision of the Project Manager (Deputy General Manager).

10. The appellant in his defence stated that he had purchased a second hand two-wheeler TVS Champ No. TN-21- 6743 in 1997 from A. Alexander PW1 for a sum of Rs. 7000/-. The appellant had already paid a sum of Rs. 5000/- initially and the balance amount of Rs. 2000/- was to be paid after he was satisfied with the vehicle. Since the vehicle had mechanical defects, therefore, the appellant had asked Alexander PW1 to take back the vehicle and return the money (Rs. 5000/-). The appellant further stated that at 1.00 p.m. on 1.4.1998, when he was working at the site at Mylapore, at that time, Alexander PW1 came to return the amount given by him towards the purchase two wheeler scooter and Alexander PW1 told him that his assistant Jayakanthan will handover the money to him. Thereafter, he along with the complainant went into the room of the Deputy General Manager Vaidyanathan to discuss about the bills and at that time Vaidyanathan had gone to the General Manager's room to attend a STD call. He handed over the money by Jayakanthan. The appellant stated that at that time he immediately asked his kalasi Govindan and gave him the table key and asked him to take the vehicle key from the table drawer and handover the vehicle to Jayakanthan. At that time Vaidyanathan came back after attending the telephone call and all of them went back to his room and resumed the discussion. The appellant further stated that when Vaidyanathan asked him what that money was, he told him that it was given to him by Alexander PW1 through Jayakanthan as he was returning the two wheeler TVS Champ purchased from Alexander PW1 and that he had told Govindan to handover the vehicle to Jayakanthan.

11. The appellant also stated that when the CBI people came and told him to raise his hands, he told Prem Anand PW3 that the money in his hand was for the vehicle transaction money and not the bribe money. The appellant further stated that he did not receive any bribe amount. He stated that it was not within his power to prepare the bills for the complainant PW1 as the matter was being dealt with at the Deputy General Manager level. The appellant also submitted that the complainant PW1 had deliberately filed this false complaint against him to forestall any action by the Indian Railway Construction Company (IRCON) as more than Rs. 16 lakhs could be deducted from his bills.

12. The Trial Court, after a detailed discussion, rejected the defence version of the appellant. The Trial Court held the appellant guilty of the offences u/s 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1998 (for short, the Act) and sentenced the appellant to undergo one year rigorous imprisonment for the charge u/s 7 of the Act and fine of Rs. 1000/- and in default to undergo further six months rigorous imprisonment. Two years" sentence was given along with a fine of Rs. 2000/- for the charge u/s 13(1)(d) read with Section 13(2) of the Act and in default of payment of fine, one year

rigorous imprisonment was given. Both the sentences were ordered to run concurrently and any period of imprisonment already undergone was ordered to be set off u/s 428 of the Cr.P.C.

13. On appeal, the High Court re-examined the matter and confirmed the findings of the trial court, but reduced the sentence of two years into one year for the offence u/s 13(1)(d) read with Section 13(2) of the Act.

14. The appellant aggrieved by the said judgment has preferred this appeal.

15. We have heard learned Counsel for the parties. Mr. Altaf Ahmed, learned senior counsel appearing for the appellant, submitted that in corruption cases demand and acceptance are two most important aspects and both, the demand as well as the acceptance, must be proved by the prosecution. In absence of clear evidence of demand and acceptance, the conviction in corruption cases cannot be sustained.

16. Reliance was placed on the case of Subash Parbat Sonvane v. State of Gujarat (2002) 5 SCC 86 . In this case there was no statement of any prosecution witness by which the demand of any amount from the complainant could be proved. In this case when the appellant asked the complainant to come in the evening and while the accused was going towards the toilet, the complainant followed him and gave him something from his pocket which the appellant put in his pocket. The Court took the view that it could not be inferred that the appellant had demanded any amount from the complainant or that he had obtained the same.

17. There is no quarrel with the proposition of law that in corruption cases, the prosecution must prove both the demand and acceptance of the bribe amount, but the facts of the present case are altogether different and the aforementioned judgment is of no assistance to the appellant in the present case.

18. In the instant case, the appellant had clearly demanded the amount from PW1. The relevant portion of the statement of the complainant reads as under:

...He is the Proprietor of OLOHV Engineering Services and the above company was doing contract work for the Railways. From the year 1993 to 1997, he has completed the contract work for Rs. 1 Crore. The Site Engineer will sign in the measurement book. The payment will be made by cheque. The contract work was completed in the year 1997 and there was a balance of Rs. 9 lacs due to P.W.1. During that period, the accused was the Site Engineer and he has to verify the measurement and entry to be made in the measurement book. The accused informed that P.W.1 has to return the unused materials to the Railway Department. On 1.4.98, at about 9.30 a.m. the accused demanded a bribe amount of Rs. 5000/- to be paid to clear the final bill....

19. According to Balachander PW2, the money was handed over to the appellant in his presence. Immediately after the bribe amount was handed over to the appellant, he started counting the currency notes. At that time Balachander PW2

came out and gave the pre-arranged signal. Soon thereafter the Inspector and the trap team entered into the above room and the appellant was arrested. The Sodium Carbonate solution was prepared and Phenolphthalein test was conducted on both the hands of the appellant separately. There was colour change in the solution and they were preserved in separate bottles.

20. Balachander PW2 is an independent witness and he has corroborated the evidence of the complainant PW1. Therefore, in the facts and circumstances of this case, it is difficult to accept the submission of the appellant that there was no demand and acceptance of the bribe amount. Both the Trial Court and the High Court rejected the defence version of the appellant.

21. This Court in *State of U.P. v. Dr. G. K. Ghosh* (1984) 1 SCC 254 has aptly observed that by and large a citizen is somewhat reluctant, rather than anxious, to complain to the Vigilance Department to have a trap arranged even if illegal gratification is demanded by a Government official. The relevant para 9 at page 261 of the judgment reads as under:

9. By and large a citizen is somewhat reluctant, rather than anxious, to complain to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of Vigilance Department and to wait for a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and play the main role. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the court, he has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-bye to the rules, the official refuses to yield.

22. We have heard the learned Counsel for the parties at length and carefully

perused the impugned judgment of the High Court as well as the judgment of the Principal Special Judge for the CBI Cases. We have also carefully examined the evidence and documents on record. The view which has been taken by the courts below seems to be the correct view. In the facts and circumstances of the case, no interference is called for. The appeal being devoid of any merit is accordingly dismissed.