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**(1987) 06 KL CK 0041**  
**In the High Court Of Kerala**

V.S. Abdul Sattar Shah

APPELLANT

Vs

Superintendent of Police, CBI/SPE

RESPONDENT

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**Date of Decision :** 04-06-1987

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 5

**Citation :** (1987) CriLJ 1670

**Hon'ble Judges :** K.T. Thomas, J

**Bench :** Single Bench

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**Judgement**

K.T. Thomas, J.—The appellant was convicted in two cases for the offence u/s 5 of the Prevention of Corruption Act (for short "the Act") on charges that he committed criminal misconduct envisaged in Section 5(1) of the Act. Different sentences have been imposed on him in the two cases. Hence these two appeals.

2. The appellant was a Superintendent of Central Excise in the office of the Collector of Customs and Central Excise, Cochin. He retired from service on 31-3-1983. But the alleged offences were committed by him during the period between Nov. 1980 and February 1981, while he was in active service. The allegations, in both the cases are that the appellant represented to some job-seekers that he would be able to secure jobs for them in industrial establishments (such as Travancore Rayons Ltd., Perumbavoor, Madura Coats Ltd., Koratty and Carborandum Universal Ltd., Kalamassery) situated within the jurisdiction of the Collector of Central Excise, Cochin. The appellant is alleged to have collected a sum of Rs. 10,000/-from P. W. 1, another sum of Rs. 5,000/-was collected from P. W. 2 and a sum of Rs. 6,000/-from P.W. 3 by assuring them that he would secure appointments to the persons in whom those witnesses were interested. Similarly he collected different sums of money from each of the first three witnesses in C.C. 5/84. As the persons concerned did not get the assured appointments, they turned against the appellant and demanded the money back. The appellant did not return the money, but when all the creditors made some show of joint action, the appellant expressed his willingness for a negotiated

settlement. On 22-3-1982 he executed a promissory note in a sum of Rs. 35,000/- in favour of one Sheik Habeeb (P.W. 9), as the affected parties agreed to have the promissory note executed in the name of that person. But the promissory note was not honoured by the executant. Instead he, later, denied having executed the promissory note. On 29-7-1982 a petition was filed by P.W. 1 before the Central Bureau of Investigation (for short "CBI"). After conducting investigation into the matter, the two cases were charge-sheeted against the appellant.

3. P. Ws. 1 to 3 and the first three witnesses in the next case have narrated the details of the transactions in which they happened to pay the amount to the appellant. The learned Sessions Judge placed reliance on their testimonies, although he felt that being partisan witnesses, their evidence required corroboration, P.W. 4 supported the evidence of P.W. 3 and P.W. 5 corroborated the evidence of P.W. 1. It was Sheik Ameer (P.W. 5) who informed those witnesses that appellant would be able to secure employment in the establishments, if appellant was paid the sum demanded by him. The appellant has admitted that there were money transactions between him and P.W. 5. A reading of the evidence indicates that P.W. 5 would have had some special interest in canvassing business for the appellant and so he would have persuaded others to approach the appellant with money. The learned Counsel for the appellant characterised P.W. 5 as the villain of the whole show, and contended that the appellant is an innocent party. He further contended that the victims turned against the appellant only because they felt that no useful purpose would be served by proceeding against P.W. 5, as no amount could be realised from him. On broad probabilities, it is difficult to accept the contention that all the six persons sidelined the real culprit and turned against an innocent person simply because of the difficulty in realising the amount from the person who collected the amount.

4. Ext. PI is a letter signed by the appellant on 21-3-1982. There is no dispute on that aspect. Ext. PI contains the names of three of the victims. The appellant, as per that letter, made an offer to reach a settlement with them. If actually the appellant did not receive any amount from those persons, I do not see any reason why he should have signed Ext.PI letter. I treat Ext. PI as a corroborative piece of evidence.

5. Ext. P2 is the promissory note. As the genuineness of that document has been challenged by the appellant, the prosecution has to prove that the same was executed by the appellant. It is true that the signature of the appellant in Ext. PI differs from the signature purported to have been put by the appellant in Ext.P2, although there is resemblance in the general shape as between the two. I agree with the leaded counsel that the signatures in the two documents are apparently dissimilar with each other. But I am not disposed to brush aside Ext. P2 as a forged document merely on account of those dissimilarities. It is axiomatic that dissimilarity is not a sure test for forgery in the same way as similarity is not a

guarantee for genuineness of questioned signatures.

6. Ext. P2 was forwarded questioned signatures.

6. Ext. P2 was forwarded to the handwriting expert (P.W. 13) and he made a study and comparison with the admitted signatures of the appellant. In the opinion of the handwriting expert, the person who signed Ext.P2 had affixed the signature in Ext. PI also. However, it is wise to be slow in acting on the opinion of the handwriting expert. If there are other materials to prove that the "signature in Ext. P2 was put by the appellant himself, the opinion evidence can be sidelined, even though it is an expert opinion. It does not mean that I reject the opinion evidence of the handwriting expert.

7. I shall now turn to the broad circumstances. At the first instance, I do not think that all the six victims in this case would have lacked common sense when they made out an apparently dissimilar signature in Ext. PI if they had the intention to forge the signature of the appellant in Ext. P2. It must be remembered that the genuine signature of the appellant was available with them in Ext. PI and hence a forgery, if made, would be in such a way as to make it appear to be similar to the signature in Ext. PI. That apart, P.W. 9 in whose favour the document stands has given evidence that it was the appellant who signed Ext. P2. He has no interest in the matter, and if at all he had any interest, that would have been only to save the appellant from the wrath of the victims. When the appellant offered that the money would be paid to P.W. 9, the other persons who are the victims also agreed as they had no reason to suspect that person. P.W. 9 proved that the confidence reposed in him was not misplaced. The neutral stance adopted by P.W. 9 in the controversy between the appellant and the others persuades me to place credence on his testimony. Another circumstance is that when P.W. 1 sent up a petition to the CBI on 29-7-1982 (Ext.P3), he made specific mention of the promissory note executed by the appellant. It is difficult to conceive that P.W. 1 would have first concocted a promissory note and then sent up the petition to the CBI. It must be remembered that Ext. P2 was taken into custody by the appellant only long after the date on which Ext. P3 petition was forwarded. As against all these broad aspects, the dissimilarities between the signatures lose their importance because it is easy for the appellant to put a different type of signature especially when he anticipated some legal action against him. In all probabilities the appellant would have put a different type of signature in Ext.P2 as a strategy in advance to resist the litigations which might be initiated against him. It is important to notice that in Ext. P2 the names of five of the six victims have been mentioned and direction is given to the payee that the amount when paid should be disbursed to those five persons. The above circumstance corroborates the oral testimony adverted to earlier. I have therefore no hesitation to believe that Ext. P2 had been signed by the appellant.

8. The evidence of the prosecution therefore proves that the appellant asked for and received different sums from six different persons examined in these cases,

assuring them that he would get appointments for their nominees in one of the three industrial establishments mentioned above.

9. The main contention of the learned Counsel was that as the appellant did not have jurisdiction over any one of the three industrial establishments during the relevant period it cannot be said that he had abused his position as a public servant. In support of the aforesaid contention the learned Counsel referred me to the evidence of P.W. 14, Asst. Collector of Central Excise who proved Exts. D3, D4 and D5. The sum total of the said evidence is to the effect that the appellant was transferred to a range called Udyogamandal Range-II with effect from 1-9-1980 and the names of the industrial establishments falling within the limits of the said range do not include either Travancore Rayons Ltd., Madura Coats Ltd., or Carborandum Universal Ltd.

10. In order to appreciate the said contention a reference can usefully be made to S. 5(1) of the Act. It is extracted below :

A public servant is said to commit the offence of criminal misconduct if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for another person any valuable thing or pecuniary advantage.

11. It is not contended that if the appellant had jurisdiction over the industrial establishments during the relevant time the act of receiving money from other persons on the assurance of securing jobs would not amount to abuse of his position as public servant. Here the contention is that as the appellant could not have exercised jurisdiction over the industrial establishments, there was no scope for him to abuse his position as public servant at all. The contention, according to me, is far too wide for acceptance. It is admitted that the appellant was the Superintendent of the Central Excise working under the Collector of Central Excise, Cochin. It is also admitted that the three industrial establishments mentioned above fell within the limits of the jurisdiction of the Collector of Central Excise, Cochin. There is evidence in this case to show that the appellant visited P.W. 12 (Industrial Relations Officer of Travancore Rayons, Perumbavoor) and ascertained from him about the employment potentialities in that establishment. Even if, on some working arrangements the appellant was asked to confine his supervision work to a particular range during a particular period, that does not mean that the appellant had ceased to be a public servant who could have exercised supervision over the three industrial establishments mentioned above. If the appellant had gone to supervise those industrial establishments in his official capacity during the said period, I do not think that the appellant could have been prevented from discharging his functions merely on the ground that as per the working arrangements he had to attend to some other establishments. He continued to be the Superintendent of Central Excise under the same collectorate division during the period. Therefore, his acts could only be termed as those in his capacity as a public servant, and not in his individual capacity.

12. The learned Counsel cited the decision in *J. Ramakrishna Rao v. State* (1981) 2 SLR 687 (Andh Pra) and also in *The State of Gujarat Vs. Manshankar Prabhashankar Dwivedi and Vallabhdas Gordhandas Thakkar*, . A Judge of the Andhra Pradesh High Court in the first mentioned decision found that the accused therein, who accepted money from another person on a promise to secure jobs for them, did not commit criminal misconduct within the purview of Section 5(1) of the Act. The facts narrated in the decision show that the accused in that case was working as a Superintendent (Accounts) in the office of the Financial Adviser attached to the Port Trust, Visakhapatnam and that he collected money from persons to secure jobs, not in Port Trust but in other places. That decision is clearly distinguishable on facts and therefore the finding is not of any advantage in this case. In the Supreme Court decision cited above a lecturer who was appointed as Examiner by the University was found to be not a public servant, although he was a lecturer in a Government college. The dictum in that decision has no application to the facts of this case. The learned Public Prosecutor contended that the interpretation to be placed on the scope of Section 5(1) of the Act must be such as to attain the measure conceived by the Parliament. in enacting the said provision. Reference was made to *M. Narayanan Nambiar Vs. State of Kerala*, . "As the Act is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object, i.e., to prevent corruption among public servants. The Act was brought in to purify public administration. When the Legislature used comprehensive terminology in Section 5(1) to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the Statute is in accord with the words used therein". In this context references can be made to *Gurbax Singh Vs. State of Himachal Pradesh*, and *State of U.P. v1. Kanhaiya Lai* 976 Cri LJ 1230 (All). The dictum followed in the decisions emphasises the principle that the action of a public servant gaining pecuniary advantage need not necessarily be connected with the performance of his official duty. Even if the public servant obtains some pecuniary advantage for himself by abusing his position as public servant, he would come within the clutches of law. Held, the acts of the appellant in this case in receiving the sums from the witnesses on the assurance that he would get appointments for them in the industrial establishments mentioned above were clearly in abuse of his position as a Superintendent of the Central Excise. Had he not been the Superintendent of the Central Excise or an officer with supervisory powers, it is difficult to believe that the witnesses (who became victims) could have been persuaded to pay the money to him. I hold that the acts of the accused would amount to criminal misconduct as defined in Section 5(1) of the Act.

13. In the result, I confirm the conviction and sentence and dismiss the appeals.