

[2009] 7 S.C.R. 383

SUBBUSINGH

V.

STATE BY PUBLIC PROSECUTOR

Criminal Appeal No. 402 of 2002

MAY 4, 2009

**[DR. ARIJIT PASAYAT, D.K. JAIN AND DR.
MUKUNDAKAM SHARMA, JJ.]**

Prevention of Corruption Act, 1988 — ss.7 r/w 12 and 13(2) r/w 13(1)(d) r/w 12 and 20 — Demand and receipt of bribe — By police officer (A1) through his friend (A2) -- Threatening the complainant to implicate him in criminal case — Trap arranged — Phenolphthalein test positive — Acquittal of both the accused by trial court — High Court convicting A-1 while upholding acquittal of A-2 — On appeal, held: Facts of the case and conduct of A-1 establish his guilt — The occurrence leading to demand of the bribe also established — Once it is proved that money was demanded as bribe and the same was received by the accused, s.20 comes into play — Once there is a presumption u/s 20, it is for the accused to establish that the amount was not received as bribe — Conviction of A-1 by High Court is correct.

**CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 402 of 2002**

From the Judgement and Order dated 20.11.2001. of the Hon'ble High Court of Judicature at Madras in Criminal Appeal No. 316 of 1993

P.P. Rao, K.V. Visanathan, B. Raghunath, Abhishek Kaushik, Vijay Kumar, with him for the Appellant.

S. Thananjayan, for the Respondent.

The Judgement of the Court was delivered by

A **Dr. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a learned Single Judge of Madras High Court setting aside the judgment of acquittal passed by learned Chief Judicial Magistrate cum Special Judge, Erode, Tamil Nadu. Appellant faced trial alongwith one Rajappan. The appellant faced trial for alleged commission of offence punishable under Section 7 read with 12,13(2) read with Section 13(1)(d) read with Section 12 of the Prevention of Corruption Act, 1988 (in short the 'Act'). The trial court directed acquittal of both the accused persons. The High Court upheld the acquittal so far as the co-accused is concerned, but set aside the judgment of acquittal and directed conviction for the appellant for charged offences. The minimum sentence of six months and fine with default stipulation for the offence punishable under Section 7 of the Act and one year's rigorous imprisonment with fine with default stipulation for the offence under Section 13(2) read with Section 13(1)(d) of the Act were awarded.

2. Prosecution version in a nutshell is as follows:

E Subbusingh (A1), the appellant was working as Sub Inspector of Police at Sathiyamangalam Police Station. Rajappan (A2), is the friend of A1. There was a land dispute between Renga Naicker (P. W.4) and Thippa Naicker (P.W.21). Both of them quarreled with each other on 6.7.1991. Nagarajan (P.W.5), relative of P.W.4 came to the Sathiyamangalam Police Station and complained to A1 Sub Inspector of Police orally against P.W.21. A1 directed the Police constables P.W.11 and P.W.12 to go the spot to bring P.W.21. Accordingly, they went to the scene of occurrence and found that P.W.21 was lying down with injuries. The Constables took the injured and others to the Police Station.

H In the meantime, Selvan (P.W.2), brother-in-law of P.W.21 followed them to the Police Station. Since the injured P.W.21 was not taken to the hospital, P.W.2 requested A1 to send him to hospital. As, permitted by A1, the injured was taken in an Auto

SUBBUSINGHV. STATE BY PUBLIC PROSECUTOR 385
[DR. ARIJIT PASAYAT, J.]

to a private hospital run by Dr. Thangavel (P.W. 10). After taking injection from the hospital, PW 21 and others came back to Police Station. P. W.2 was asked to come back in the evening.

Accordingly, P.W.2 went to the Police Station at 5.00 P.M. At that time, the Police obtained Muchalika from both the sides stating that they would settle the matter by approaching the Civil Court. Then, AI directed P.W.21 and others to wait outside the Police Station and act as per the instructions of one A2 who is the friend of A 1.

Within a few minutes, A2 came and informed P.W.2 that AI had asked him to get Rs.500/- from them. Natarajan (P.W.22), son of P. W.21 told that he was having only Rs.100/-. A2 after getting instruction from AI asked them to give Rs.100/-. P.W.22 told A2 that Rs.100/- was required to buy medicine. Then, A2 told them that he would give Rs.100/- from his pocket and handed over the same on behalf of P.W.21 at nearby bangle shop where P.W.8 was doing business. A2 directed him to bring Rs.100/- and another Rs.400/- being the balance to be paid to AI. Then, they were allowed to go.

On 7.7 1991 AI visited the land and gave the message that both PWs. 2 & 4 should meet him in the evening. PW2 met AI at about 5.00 P.M. in the Police Station. At that time, AI asked him whether he had brought the amount and PW2 told him that the money was not ready. AI told him that already the amount of Rs.100/- was received through shop owner and balance amount of Rs.400/- should be paid, or otherwise he would put up a case against P.W.21 on the complaint of PW5 PW 2 told him that he would bring on 12.7.1991. Then PW2 informed this to PW21.

Since PW2 did not want to give bribe he gave a complaint Ex.P2 to the Inspector of Police, Vigilance (PW26) on 11.7.1991 at about 4.30 PM. P.W.2 was asked to come to the Vigilance Office next day. In the meantime, P.W.26 requested the assistance from Manokaran (P.W.3) and one Jagadeesan, working in the Tamil Nadu Electricity Board.

A Next day morning, the pre-trap mahazar was prepared by observing required formalities. The test was demonstrated by applying phenolphthalein powder on the currency notes of Rs.400/- handed over by PW.2. Then all of them went to the Police Station in the early morning of 12.7. 1991 Since A1 was not available, they went to his house which is situated in the police quarters. Then, PWs. 2 & 3 alone were asked to go inside. P.W.2 gave the balance amount of Rs.400/- to A1, who in turn received it by his left hand. Then, he promised that he would take care of the case against P. W.21. Both P.Ws.2 and 3 came out and gave a signal.

Thereafter, P.W.26 and his men entered into the house. At that time, A1 was having M 0.1 series currency notes in his left hand. The phenolphthalein test on both the hands was conducted which proved positive.

The further investigation was taken up by, Vivekanandan (P.W.27), another Inspector of Police. After examining the witnesses and obtaining sanction, he filed a charge sheet against both the accused 1 and 2.

During the trial, the prosecution examined P.Ws. 1 to 27, filed Exs. P1 to P.21 and marked M.Os. 1 to 6.

During the questioning under Section 313 Cr.P.C., A1 stated that he was innocent and the currency notes were planted under his chair without his knowledge. A2 stated that a false case was foisted against both A1 and A2 at the instance of one Lawrence under whom PW 2 was working.

The trial court after considering the evidence on record acquitted both the accused in respect of the above charges.

In the appeal before the High Court the stand of the State was that the trial court acquitted the accused overlooking the material evidence without appreciation of evidence on record in the proper perspective and the finding recorded are totally perverse and against the material and evidence. The accused

SUBBUSINGHV. STATE BY PUBLIC PROSECUTOR 387
[DR. ARIJIT PASAYAT, J.]

persons supported the judgment of the trial court. The reasonings for the acquittal were as follows: A

(1) PWs. 7 & 8 the shop owners had turned hostile. In Ex.P.7 The Credit Account Book, there is no mention that the second accused had been given the amount of Rs.100/- and that the said amount had been given to the first accused. Since the Muchalika was entered both parties in the police Station and the same was signed by them on 6.7.1991, there was no necessity for the first accused to ask the bribe amount through the second accused. B

(2) P.W. 21 alone is the aggrieved person, as the amount was demanded from him only for the purpose of not putting up a case against him. So, P. W.2 need not have agreed to pay the bribe amount to A1 and he need not lodge a complaint before the Vigilance without the knowledge of P.W. 21. P.W. 2 must have been instigated by some unknown person. C D

(3) Instead of lodging a complaint before Erode Vigilance Office which has got jurisdiction over the area, P.W. 2 had chosen to lodge a complaint before Coimbatore Vigilance. There is no explanation for this. E

(4) When P.W. 2 entered into the house of A1, he questioned him, "Who are you?" If really, the occurrence had taken place on 6.7.1991 and 7.7.1991 in which P.W. 2 met A1 and A2 on both these occasions, there was no necessity for A1 to put that question. Therefore, the occurrence took place on 6.7.1991 and 7.7.1991 as spoken to by P.W. 2 and P. W. 21 to P. W. 23 cannot be true. F

(5) No complaint was produced before the trial court to show that P.W. 4 to P.W.6 on the one side and P.W. 21 and P.W. 23 on the other side lodged complaint against each other. Therefore, the evidence of P. W. 2 and P. Ws. 21 to 23 cannot be believed. G

(6) The evidence of P.W. 12, P.W. 13, P.W. 15 and P.W. 16 H

A the Constables attached to Sathiyamangalam Police Station, over the enquiry in regard to the complaint by both parties in the Police Station, cannot be believed, since there is no entry in the General Diary, The evidence of P.W. 14, another Constable also has to be disbelieved, since the Muchalika obtained from both parties was not produced. Moreover, Exs. P.12 and P13, the Trip Sheets of the Taxi contained the signature of P. W. 27 Vigilance Inspector and as such they are fabricated documents.

B
C (7) The phenolphthalein test was not conducted properly. The pre-trap test was not properly explained to the witnesses P. Ws. 2 and 3. After the trap, the signature of the first accused had not been obtained on the bottles M.Os. 5 and 6. This shows that the test could not have been conducted at the house of A1.

D (8) A1 received the money by his left hand. When P.Ws. 2 and 3 entered into the house, A1 kept the money in his left hand only, but the test conducted on both the right and left hands proved positive. There is no explanation as to how the test on right hand proved positive.

E (9) Out of total amount of Rs.500/-, according to the prosecution, Rs. 100/- was paid by A2 through P. Ws. 7 and 8 who had turned hostile. P. W. 2 admitted that he never paid Rs.100/- to A2 to be given to A1. When the receipt of a portion of the demanded amount of Rs.500/- i.e. 100/- had not been proved, the trap incident for the receipt of the balance amount of bribe could not be believed.

F
G (10) Since the evidence available on record through P.Ws. 2, 3 and 26 would not prove that the accused has committed the offence under Section 7, presumption under Section 20 cannot be drawn.

H The High Court found that the conclusions are erroneous and on misreading of the evidence. Accordingly the judgment of the trial court was set aside.

SUBBUSINGHV. STATE BY PUBLIC PROSECUTOR 389
[DR. ARIJIT PASAYAT, J.]

4. Learned counsel for the appellant submitted that considering the limited scope for interference with the judgment of acquittal the High Court ought not to have interfered in the matter as the view taken by the trial court was a possible view and therefore the High Court should not have interfered. The following submissions inter alia were made in support of appeal:

1. Foundation for the demand has been disbelieved;

2. Demand by A2 was disbelieved and was part of the prosecution version regarding demand has been disbelieved so the whole thing should have been discarded.

5. PW2 should have gone to Erode where there was a Vigilance Officer. The evidence of PW2 is unreliable and there is no corroboration to his evidence. It is unnatural that demand would be made from a person who was injured after settlement of the dispute. The High Court erroneously held that PW2 called the witnesses which is not correct. PW21 did not make any complaint though he is supposed to be the affected person. There is no signature as alleged. It is pointed out that PW2 is not directly involved, he is brother in law of PW 21.

6. Learned counsel for the respondent State on the other hand supported the judgment.

7. It needs to be pointed out that the recovery was not disputed. The accused stated that with oblique purpose he was trapped. The money was kept in the pocket of the accused.

8. The case of prosecution with reference to the enquiry over the incident on 6.7.1991 is clearly spoken to by P.W. 2, P.W. 21, P.W. 22, son of PW 21 and P.W. 23 another relative. Though the other party namely P.Ws. 4 and 5 turned hostile, they would admit that the incident took place on 6.7.1991 and that they were called to Police Station by A1, who after enquiry directed them to settle the dispute and warned them That apart, P.W.13, P.W.14, P.W.15 and P.W.16 the Constables attached to the said Police Station, would also specifically state that the enquiry was conducted on the basis of the oral complaint of

A P.W. 5 against P.W. 21 by A1 and Muchalika, was obtained from them after giving warning on his instruction. Under these circumstances, there is no reason to reject the evidence of P.W.2, P.W.13 to P.W.16 and P.W.21 to P.W.23.

B 9. When these acceptable materials are available through these witnesses, their deposition cannot be rejected merely on the ground that the complaints given by P. W. 4 and P. W. 21 were not marked and Muchalika obtained from both parties were not produced. As a matter of fact, Arumugham (PW 25), the Inspector of Police, Sathiyamangalam under whom A1 Sub-Inspector of Police was working specifically stated that the complaints of PW 4 and PW 21 were not registered in the Police Station. This shows that even without receipt of the written complaint and registration of the same, a mock enquiry was conducted by A1 and on the pretext of enquiry, a Muchalika was obtained from both the parties.

D 10. In such a situation, it cannot be contended that the entire enquiry was over on 6.7.1991 itself after obtaining Muchalika. The fact that he went to the field on 7.7,1991 at about 11.00 A.M. and directed P.W. 2 to come and meet him in the Police Station in the evening itself would show that the parties were made to think that he had not finished the enquiry. Only on the said direction, P.W. 2 went and met A1 in the Police Station on 7.7.1991 evening. In that context, A1 demanded money from P.W. 2 and threatened that if he failed to bring the balance amount, namely Rs. 400/-, he would initiate action against P.W. 21 on the complaint given by P.W. 5. Only thereafter P.W. 2 undertook to pay that amount on Friday at the police station .

E 11. This is a case where P.W. 21 was attacked by P.Ws. 4 and 5, as a result of which P.W. 21 sustained injuries and fell down on the field and became unconscious. Instead of taking action against the persons concerned, who attacked P.W. 21, A1 detained P.W. 21 from the morning till evening. Though A1 was requested by P.W.21 to send him to the Government Hospital, A1 did not choose to send him to the Government

H

SUBBUSINGHV. STATE BY PUBLIC PROSECUTOR 391
[DR. ARIJIT PASAYAT, J.]

Hospital: on the other hand, he was beaten by AI himself for having requested to send him to the Government Hospital. This shows that AI did not allow P.W. 2 and P.W. 21 to get the medical records regarding the injuries sustained by P. W. 21. He was sent only to Private Doctor P.W. 10. Though P.W. 10 turned hostile, Ex. P.8 marked through him would show, in the light of the evidence of P.W. 2 and P.W. 21, that P.W. 10 gave prescription to P.W. 21 for the injuries sustained by him.

12. So far as the stand that money was kept for the purpose of false implicating, the same is without substance. The accused was a police officer who knew the consequences of the bribe. He had not explained as to why he took up the money in his examination under Section 313 of the Code. The accused stated that the PW2 took the money because the Inspector asked him to do so. The normal conduct would have been to take action against PW2 for offering bribe. Additionally, if matter was closed there was no need for going to the field. It is to be noted that the appellant was alone in his room for sometime holding the currency notes before PW 26 and other officer entered into the house. Therefore, as rightly observed by the High Court, the possibility of appellant counting the money with the help of right hand cannot be ruled out. Once it is proved by the prosecution that the money was demanded as bribe and the same was received from PW2, Section 20 of the Act comes into play. Once there is a presumption as contemplated under Section 20, it is for the accused to establish that the amount was not received as bribe.

13. Since minimum sentence has been imposed there is no scope for interference with the same.

14. Above being the position there is no merit in this appeal which is dismissed. The appellant shall surrender to custody forthwith to serve the remainder of sentence, if any.

K.K.T.

Appeal dismissed.