

Union Of India Thr. Inspector, Cbi vs Purnandu Biswas on 7 October, 2005

Equivalent citations: AIRONLINE 2005 SC 1089

Author: S.B. Sinha

Bench: S.B. Sinha, R.V. Raveendran

CASE NO.:

Appeal (crl.) 471 of 2004

PETITIONER:

Union of India Thr. Inspector, CBI

RESPONDENT:

Purnandu Biswas

DATE OF JUDGMENT: 07/10/2005

BENCH:

S.B. Sinha & R.V. Raveendran

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

Union of India is in appeal before us from a judgment and order dated 14.1.2003 passed by a Division Bench of the Madras High Court whereby and whereunder an appeal from a judgment of conviction and sentence dated 12th April, 1996 passed by the Special Court for Central Bureau of Investigation in O.P. No. 7 of 1995 was allowed.

The Respondent herein was working as a Surveyor in the Mercantile Marine Department of Government of India at Tuticorin Port. While on duty on 15.7.1992, he allegedly demanded a sum of Rs. 50,000/- by way of illegal gratification from one D.G. Rajan (PW 3) of M/s. Raja Agencies for giving clearance certificate in respect of the vessel M.V. Lilly. It is not in dispute that an inspection of the said vessel was made by the Respondent herein and certain defects were found which having been rectified by the Master thereof, it was released. It is alleged that the demand of gratification continued purported to be on the premise that unless the amount was paid, other vessels of which the said M/s. Raja Agencies was acting as sub-agent would be detained.

Hunter Shipping and Trading Company was an agent for loading and unloading the goods carried out from the ships. M/s. Raja Agencies of Tuticorin was sub-agent of the said company. It is alleged that normally the ships are anchored in sea upon entering into the harbour. However, for loading

and unloading of the goods, ships are permitted to be berthed at the place allotted in harbour for two hours only. If goods are not loaded or unloaded within that period, penalty can be imposed.

The vessel M.V. Lilly came from Bombay. It was brought to VOC 2 berth at 5 p.m. on 13.7.1992. The Respondent by a letter addressed to the Deputy Conservator asked him not to release the said vessel without his permission. An inspection of the said vessel was taken and some defects were found which were intimated to the Master thereof. It is alleged that PW3 was asked by the Appellant herein to see him at 7.30 p.m. on 15.7.1992. He requested the Respondent to release the ship whereupon he demanded a sum of Rs. 50,000/- therefor. Allegedly, PW3 asked the Respondent to reduce the amount and upon refusal on his part so to do, allegedly he expressed his inability to pay the amount stating that as he is a sub-agent and he would ask the agent therefor and he would inform him the next day. PW3 allegedly informed Chandramohan (PW2) on the same night that the notice had been issued for the defects found in the ship and the ship was not being permitted to leave the harbour wherefor an amount of Rs. 50,000/- was demanded by the Respondent. PW2 allegedly told PW3 that the owner of the ship would be informed. On 16.7.1992, PW3 met the Respondent herein and told that the loading would be completed in the ship and, thus, the ship may be permitted to leave the harbour. It was further alleged that PW3 promised to arrange the money from the main agent or otherwise another ship "Villa Ali" belonging to their agency anchored outside the harbour may be retained.

On 16.7.1992, PW2 informed PW3 that the owner of the ship refused to pay the amount whereupon PW3 suggested that the same may be reported to CBI. PW2 as per the said suggestion gave a complaint to the Superintendent of Chennai Central Bureau of Investigation. A trap was arranged on 17.7.1992. The Superintendent of Chennai Central Bureau of Investigation having received the said report called the Inspector Ramasamy (PW8) to register a case whereupon a First Information Report was prepared and sent to Special Judge of Madurai. A committee was formed under the control of the Deputy Superintendent Jones, Inspector Vijaykumar, R.S.O. Raju who came to Tuticorin in a hired taxi bearing registration No. TSE 2828. A room in a hotel known as Sugam International was booked. PW3 was asked by PW8 to meet him in the said room. PW3 issued a cheque for the company's account drawn on the Federal Bank of India Branch of Tuticorin (marked as Ex. P.7) for a sum of Rs. 50,000/- and the same was withdrawn. Azhagan Muthazhagan (PW7) and Shanmugam (not examined) were brought as witnesses. In the bundles having currency notes of Rs. 50,000/- upon having been obtained from PW3, Phenolphthalene powder was applied therein. Sodium Carbonate solution was also prepared in a glass tumbler and PW8 dipped the hands of Shanmugam therein resulting in no change in the solution. Then the bundles filled in the Phenolphthalene powder were given to Shanmugam whereafter his hands were dipped in the same solution and the colour thereof changed into light red. This experiment was explained to all of them. The said powder was thereafter applied on all the bundles of the currency notes and were kept in a bag brought by PW2. The serial numbers printed in the currency bundles were also noted. Four-five visiting cards of PW2 were taken and handed over to PW4 who was asked to introduce himself as Chandramohan (PW2). They were told to use a signal specified to them. When PW3 and PW4 went to the house of the accused, he was found absent. The wife of the Respondent allegedly informed that he would return after 7 p.m. As the pre-arranged signal of the decoy witness might not have been feasible in the night, it was changed to lighting of a cigarette. Vijaykumar and Rajan were

waiting at some distance from the house of the Respondent whereas PW8 and others were waiting 60 ft. away therefrom. Upon noticing the Respondent entering his house, PW3 and PW4 entered the premises and pressed the door bell.

The Respondent came out and permitted them to come inside. PW3 introduced PW4 as Chandramohan. PW4 allegedly told the Respondent that he had brought the amount as per request and also gave his visiting card and requested for his cooperation. PW3 allegedly then brought the bundles of the currency notes and handed over the same to the Respondent. The visiting card and the money were taken by him by both hands and the currency notes were allegedly kept by him in a suit case. Upon noticing the signal given by PW4, Inspector Vijaykumar and Rajan came inside the house of the Respondent and introduced themselves. A glass of water was brought and sodium carbonate solution was prepared. Allegedly when the right hand was put in the glass, the colour of solution became red and when the left hand was put, it changed into a light red colour. The Respondent having been asked by PW8 as to where he had kept the amount, handed over the suitcase containing the amount. He allegedly compared the number of notes and seized the same. His house thereafter was searched and a sum of Rs. 1,65,600/- in cash was seized.

The Respondent was put to trial on the aforementioned allegations. The learned Special Judge relying on the testimonies of the prosecution witnesses found him guilty of commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act and imposed a punishment of rigorous imprisonment for five years and a fine of Rs. 50,000/- in default whereof he was to undergo a sentence of one year more.

It does not appear to be in dispute that some documents seized from the Respondent on 17.7.1992 were kept in a sealed box. An application for return of the said documents was filed after the arguments were closed and the judgment was reserved. Although the same could not be exhibited before the Trial Judge, it appears, the High Court relied thereupon. At this stage, we may notice that in paragraph 35 of its judgment, the Trial Judge adversely commented upon the conduct of the Respondent herein stating that there was no evidence in writing that he had found defects in the ship and after rectification thereof it was allowed to leave the harbour. A further comment was made by the learned Judge that if those defects were found the same should have been mentioned in P6 and P18.

The High Court, however, took notice of the said documents keeping in view of the fact that the same should have been made a part of the chargesheet stating:

"But, however, the court cannot completely close its eyes to the fact that the defects point out by the accused were noted down by the Master of the vessel and the defects were rectified and thereafter, the accused had given no objection certificate for the sailing of the vessel."

In its judgment, the High Court found the following improbabilities as regard involvement of the Respondent in commission of the offence:

(i) PW2 nowhere in his complaint disclosed that he had received any information from PW3.

(ii) PW3 admittedly bore a grudge against the Respondent and he might have been involved by him in order to wreck vengeance for actions taken against him Mr. A. Sharan, learned Additional Solicitor General in support of the appeal would submit that the High Court committed a manifest error in rejecting the evidence of PW3 on the ground of enmity, which is irrelevant in case of this nature as despite the same, his evidence is admissible in evidence.

Taking us through the evidences of PW3, PW4 and PW8, it was urged that the explanation of the Respondent to the effect that he had kept the amount in his hand and wanted to give the same back to PW3 and PW4 cannot be accepted in view of the fact that the money was recovered from a suit case.

It was urged that in this case the fact that the amount of Rs. 50,000/- was given to the Respondent is not denied and furthermore the recovery of the amount also stood accepted, the prosecution must be held to have established its case. If the Respondent was correct in his statement that he kept the money in his hands and intended to give the same back to the witnesses, there is no reason, it was urged, as to why the same would be found in a suitcase. It was furthermore submitted that the Respondent in view of the aforementioned admitted position failed to rebut the presumption in terms of Section 20 of the Act.

Mr. S. Balakrishnan, learned senior counsel appearing on behalf of the Respondent, on the other hand, would submit that it is a case where over- jealousy on the part of the PW8 is writ large as the Respondent's house was illegally searched. There was no reason, the learned counsel would contend, as to why a complaint was made at Chennai and not at Tuticorin.

Mr. Balakrishnan would urge that admittedly no demand was made from PW2. It is also accepted that PW3 bore a grudge against the Respondent and as such there was every possibility of foisting a false case against him. As regards the punch witnesses, the learned counsel would submit that the prosecution has not disclosed as to how their presence was secured. PW4 who was a bank manager allegedly was contacted through his superior whose identity was not disclosed and another punch witness Shanmugam was not examined at all.

The learned counsel had pointed out the discrepancies in the statements of PWs-3 and 4 and further submitted that the entire incident, viz., from entering into the house of Respondent by PWs 3 and 4 till the signal was given, could not have been completed within a couple of minutes as stated by the witnesses. It was pointed out that the bag wherein the money was carried although was directed by PW-8 not to be opened till the Respondent accepts the amount neither the same was seized nor put to the chemical test. The learned counsel would contend that PWs 3 and 4 did not take any prior appointment and they just barged into the house of the Respondent which cannot be accepted. No demand of illegal gratification by the Respondent at any stage, it was submitted, has been established.

The suit case, although seized and marked as exhibit, was not put to chemical test. The learned counsel would submit that in view of the fact that the ship was released on 16.7.1992 itself, the prosecution story must be disbelieved.

Mr. Balakrishnan would point out that whereas, according to PW-3, the Respondent received the entire money in both hands, PW-4 alleged that he accepted the same with his right hand and accepted the visiting card given by him with his left hand which apparently is improbable. The witnesses, thus, contradicted themselves in material particulars. The prosecution has further not disclosed as to how the suitcase was brought at the place where the witnesses were sitting. Suppression of a vital document by the prosecution and, particularly, in a case of this nature, it was argued, must be deprecated by this Court.

Our attention was also drawn to the fact that prior to joining of the Respondent, the average income of the Board was Rs. 62/- which within a period of four months was raised to Rs. 47,642/-.

It was further submitted that in a case where two views are possible, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India may not interfere with a judgment of acquittal.

The charge framed against the Respondent in terms of Section 211 of the Code of Criminal Procedure was that while on duty on 15.7.1992, he demanded a sum of Rs.50,000/- as illegal gratification from PW-3 of M/s Raja Agencies for giving clearance certificate for the vessel M.V. Lilly and pursuant to the said demand, he was offered the said amount which he accepted on 17.7.1992 as a motive or reward for issuing clearance certificate for the said vessel. No charge was framed against the Respondent that he continued with his demand despite releasing vessel M.V. Lilly stating that if the said amount is not paid, he would detain another vessel of which PW3 was the sub-agent. It is not disputed that the Respondent had the authority to make inspection of the said vessel at the Port of Tutucorin. It is further not in dispute that when defects in the vessel were pointed out, the master thereof was required to remove the same. The surveyor is merely concerned with inspection of the vessel whereupon he may point out certain defects. Only when such defects are rectified, the vessel is released. All the materials on records including the documents which were seized on 17.7.1992 disclose that the defects were pointed out to the master of the vessel M.V. Lilly and the same having been rectified, it was allowed to leave the harbour on 16.7.1992. The prosecution case, as disclosed by PW- 3, was that on his request the same was done, as he had stated that a sum of Rs.50,000/- would be paid by him failing which he may retain another vessel (M.V. Villa Ali) of which he was the agent, was not the subject matter of charge. It appears that the suggestion was made by PW-3 himself. There was no demand to that effect by the Respondent. PW-3, further disclosed that the said vessel was already anchored outside the port. In the complaint to the CBI made by PW-2 on 16.7.1992, it is stated that PW-3 himself suggested on 15.7.1992 that another vessel may be retained by the Respondent if the aforementioned sum of Rs.50,000/- was not paid.

We have noticed hereinbefore that such charge was not framed. Furthermore, the harbour master in his deposition stated that MV Villa Ali was anchored on 16.7.1992 at 1 p.m. and brought inside the harbour on 19.7.1992 at 5.30 p.m. M.V. Villa Ali left the Port on 19.7.1992 at 6.45 p.m. Thus,

evidently the statements of PW3 were not correct. A trap was laid by the CBI on 17.7.1992 i.e. much prior to bringing of the said vessel M.V. Villa Ali in the harbour on 19.7.1992. Furthermore, having regard to the fact that the said vessel M.V. Villa Ali was anchored only at 1.p.m. on 16.7.1992, it cannot be believed that PW-3 could have said on the evening of 15.7.1992 or even in the morning of 16.7.1992 that the vessel was already anchored outside the port.

PW-3 did not say that the accused threatened that he would retain another vessel of which he was the agent, if the said sum of Rs.50,000/- was not paid.

It has furthermore not been disputed that whereas average income of the harbour was only Rs.62/- , after joining of the Respondent herein, within a period of four months, the income of the Port gone up to Rs.47,642/-. The fact that PW3 was hostile to the Respondent is not in dispute. In this view of the matter, the purported demand made by the Respondent cannot be said to have been established.

It is furthermore not in dispute that PW-3 had been asked by PW-8 to carry the money in a bag. On a conjoint reading of the deposition of PWs-3, 4 and 8, it would appear that the money was kept in a handbag with a zip in a room in the hotel. The same was to be delivered by PW-3 only when the accused would demand the same. PWs-3 and 4 did not say that there any demand was made by the Respondent at that stage. The evidence brought on record shows that PW-3 took the handbag with the money inside the house of the accused and handed over the same, but the same was retained by PW-

3. The said handbag was not seized. PW-3 categorically stated that he kept the handbag in his car. Why the said handbag was not seized or subjected to phenolphthalein test is beyond one's comprehension. PWs-3 and 4 furthermore do not suggest that even any demand was made by the Respondent when they went inside his house on 17.7.1992 . PW-4 allegedly told the accused "not to stop the vessel" and that "we will abide by your conditions", to which the accused replied "yes I will look after everything". If PW-3 is to be believed, he either on the evening of 15.7.1992 or on the morning of 16.7.1992 told the Respondent that his demand would be met. But when such demand would be met was not disclosed. No appointment was taken from the Respondent. PW-8 in his evidence categorically stated that when the accused was not found twice in his house, he had entertained a doubt that the claim of PW-3 that the accused had demanded Rs.50,000/- may not be true.

In the aforementioned context the prosecution ought to have proved as to why the handbag was not seized or it and the suit case were not subjected to the phenolphthalein test. According to PWs-3 and 4, the entire transaction was over in a couple of minutes whereafter PWs-2 and 8 entered the room. PWs-3 and PW-4 alleged that there had been some amount of conversation between them and the Respondent; PW-4 introduced himself as the agent of the ship, meaning thereby PW-2; and he gave his card. Thereafter, only the amount was offered, accepted and kept in a suit case. It is doubtful that within such short time, the entire happenings could take place. PW-3 says that the accused accepted the amount with both hands after the bag was opened and sum of Rs. 50,000/- was taken out and given to the accused, who apart from accepting the same also accepted the visiting card from PW-4 and put the amount in a suitcase and then closed the same. It is wholly unlikely having regard to the

fact that admittedly PWs-3 and 4 came to the Respondent's house, he would keep a suitcase ready for keeping the said amount particularly when PWs - 3 and 4 did not come at an appointed time. PW-3 stated that the accused accepted the amount with both hands, whereas PW-4 states that he accepted the amount in his right hand and took the card in his left. It appears improbable that a sum of Rs.50,000/- offered at one go could be accepted by one hand by the Respondent.

The conduct of PW-8 is also not above board. A complaint was made for a specific purpose. He did not have any warrant with him to search the house. He did so to show his over-zealousness. It has also not been explained by the prosecution as to why the complaint had to be lodged by PW-2 at Madras. Admittedly, the CBI Court is situated at Madurai. It is expected that when a demand was made by the Respondent to PW-3, he would go and lodge a complaint at the nearest place particularly when the complaint was lodged at his instance. The complaint of PW-2 was not only entertained. All the officers also came with him in a hired taxi. They stayed in a hotel. PW-3 evidently had a bank account at Tuticorin. The company was carrying on a business through its sub-agent. Thus, even he could come over to Tuticorin and lodge a complaint. He did choose to do so, the reason wherefor is not explained. The natural conduct of PW-2 would have been to verify the fact from the Respondent particularly when to his knowledge, the vessel M.V. Lilly had already been released.

Evidence on record does not disclose in clear terms as to how PW-4 and Shanmugham were contacted. According to PW-2 he was asked by his officer to comply with the request of the prosecution.

It has not been disputed that PW-3 had been bearing a grudge against the Respondent. It may be true, as has been submitted by the learned Additional Solicitor General that previous enmity alone may not be the ground for rejecting the testimony; but each case has to be considered on its own merits and no hard and fast rule can be laid down therefor.

In State of U.P. vs. Zakaullah [(1998) 1 SCC 557], whereupon Mr. Sharan placed reliance, Thomas, J. clearly stated that evidence of such a witness would require the court to scrutinize it with a greater care, but it does not call for outright rejection of his evidence at the threshold.

The test laid by this Court in the said decision if applied together with other circumstances, it would appear that the prosecution story may not be correct.

In B. Hanumantha Rao vs. State of U.P. [(1993) Supp. 1 SCC 323], the conviction was based on concurrent findings of fact and appreciation of evidence. No legal principle was laid down in the said decision except stating that the circumstances pointed out therein had been considered by the High Court and the same did not improbably the demand and acceptance.

It has not been disputed that a material document which was in favour of the Respondent was not annexed with the charge-sheet. Had the said document was disclosed by the prosecution, the learned Special Judge would not have arrived at a finding that had the vessel M.V. Lilly been inspected, and defects pointed out in the report been rectified, the same would have been mentioned

in the document. Had the said document been brought on record, the learned Special Judge would not have commented against the Respondent. The learned Special Judge, thus, committed an error of records. Such a statement had been made by the prosecution witnesses before PW-8 that the Respondent had inspected the vessel M.V. Lilly and went on dictating the defects and the master noted them, would by itself a pointer to show that the said defects were pointed out to the master of the vessel who had to rectify them before release of the vessel.

This Court in *Habeeb Mohammad vs. State of Hyderabad* [AIR 1954 SC 51], noted a long series of decisions that "the view taken in India was that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly with a full sense of the responsibility attaching to his position and that he should in a capital case place before the court the testimony of all the available eye-witnesses, though they give different accounts, and that the rule is not a technical one, but found on common sense and humanity".

The learned Additional Solicitor General submitted that onus of proof was upon the Respondent to explain as to how he came in possession of the amount. Section 20 the Prevention of Corruption Act, 1988 reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration. (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

In this case demand of illegal gratification by the Respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the Respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act.

M. Narsinga Rao vs. State of A.P. [(2001) 1 SCC 691], relied upon by Mr. Sharan, was rendered having regard to the contention raised therein that it was not enough that some currency notes were handed over to the public servant to make it as acceptance of gratification; prosecution has a further duty to prove that what was paid amounted to gratification. Such a question does not arise for consideration in this case.

Moreover, the High Court has recorded a judgment of acquittal. It for reasons assigned therein opined :

"Taking into consideration overall aspects of the case, I am unable to completely disagree with the case of the accused that the trap was a stage managed affair, for the reasons already indicated supra.

We, albeit for other reasons also agree with the conclusion of the High Court. The Appeal, therefore, being devoid of any merit is dismissed.