

Union Of India (Uoi) And Anr. vs J.S. Khanna, Etc. on 21 October, 1971

Equivalent citations: 1972CRILJ849, (1972)3SCC873, 1972(4)UJ119(SC)

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Bench: I.D. Dua, J.M. Shelat, S.C. Roy

JUDGMENT

J.M. Shelat, J.

1. Between July and November, 1962, that being the period relevant to this appeal, the respondent, Lt. Col. J.S. Khanna, and Res. Major Lala were staff officers Nos. 1 and 2 respectively attached to the headquarters, Chief Engineer, Tuskur Project at Tezpur. As such officers, one of their duties was to ensure supplies of goods, such as motor spare parts, required for military trucks and other vehicles conveying troops, materials etc. to forward areas in Assam and NEFA.

2. According to the prosecution, these two officers were responsible for manipulations in placing supply orders with a firm called M/s. Manik Motor Works, of obtaining supplies even before orders in relation to them were placed, and in some cases, even before issuing quotations enquiries and obtaining in answer to such enquiries quotations as required by the relevant rules in connection with such supplies. The prosecution case further was that they paid exorbitant prices for these materials, that the quotations obtained by them were opened, contrary to the rules, without then keeping a second officer present, that at the instance of Manik Motor Works Res. Lala introduced the name of M/s. Auto Stores, a non-existent firm, in the list of approved firms with the object of showing that the quotations of Manik Motor Works were lower than those of other suppliers, and lastly, that the two respondents were guilty of, fabricating certain quotations said to have been given by firms such as the United Motor Works and Darrang Transport Co. The principal charge for which these two officers and five others were said to be liable was that they along with those others entered into a criminal conspiracy with the object of cheating and defrauding the Government of India, and with that end, of fabricating documents and of accepting supplies in breach of the rules governing them.

3. The first information report in connection with these alleged offences was lodged on January 18, 1963. It is strange, however, that in that report no mention was made of Res. Khanna, and instead the persons charged therein were Res. Lala and one Capt. Inder Mohan Sharma. Khanna's name, however, appeared in the order of the Government of India, Ministry of Home Affairs, dated May 28, 1963 whereby sanction under Section 197(1)(a) of the CrPC and Section 6(1)(a) of the Prevention of Corruption Act, 1947 was issued.

4. That orders inter alia stated that respondents Khanna and Lala were, during the period between July and November, 1962, acting as staff officers Nos. 1 and 2 respectively and were as such attached to the headquarters of the Chief Engineer, one Brig. Mani, in the Tusker Project at Tezpur that the main function of Project Tusker was to ensure supplies of material such as motor spare parts to vehicles conveying armed forces and supplies to the forward areas; that the duties of these two officers were principally to assist Brig. Mani in receiving and processing quotations received from local merchants and then to place supply orders and thus obtain through such local purchases the required materials. Towards that end, res. Khanna had been given certain financial powers, namely, to place supply orders upto the value of Rs. 1,000/-each, Res. Lala, however, had no such financial powers. The order further stated that during the relevant period these two officers, along with Manik Chand of Manik Motor Works and certain employees of that firm entered into a conspiracy, the object whereof was to commit criminal misconduct in the discharge of their duties and to cheat the account officers attached to Project Tusker by manipulating supply orders and thereby obtaining pecuniary advantage for the said firm, that in doing so res. Lala introduced the name of hi/s Auto Stores, a fictitious firm as one of the approved firm?, that bogus quotations in the names of Auto Stores, United Motor Works, Darrang Transport and Rajasthan Motors were brought on record with a view to show that supply orders were placed with Manik Motor Works after making quotation enquires and obtaining quotations from those firms and after ascertaining that orders were placed with a firm giving the lowest quotations, that the two respondents in pursuance of and as part of the said conspiracy paid exorbitant prices to Manik Moto' Works, that res. Khanna placed orders before quotations were obtained, that he placed those orders beyond the limit of Rs. 1,000/-that both the officers were guilty of placing oral orders without previously obtaining quotations or issuing quotation enquires, of opening quotations without the presence of another officer as required by the rules, of preparing anti-dated quotations etc. There were so allegations of res. Lala having accepted several amounts totalling about Rs. 4,200/-as and by way of bribe and of the employees of Manik Motor Works having forged fictitious quotations in the name of Darrang Transport, Rajasthan Transport and Auto Stores.

5. By his order dated September 16, 1964, the Special Judge held that from a perusal of the documents brought on record, of which copies were furnished to the accused before him under Section 173 if the CrPC, and after hearing the parties, a prima facie case had been made out and, thereupon framed 13 charges against respdts. Khanna and Lala and five others under Section 120B of the Penal Code, Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act 1947 and sees 420, 468 and 109 of the Penal Code. Having done this he fixed November 12, 1964 as the date for the trial.

6. The two respondents thereupon filed two revision applications, Nos. 108 of 1967 and 4 of 1968 before the High Court of Assam and Nagaland for quashing the said proceedings. The Court was of the opinion that the allegations made against the two officers, assuming them to be true, amounted to administrative irregularities only, that such irregularities occurred as a result of emergency, namely, the Chinese aggression, when it was not possible to follow the procedure of peace time conditions, that the Tusker Project was itself an emergency operation, that it was not as if supplies were not received or that monies in respect of them were misappropriated, that even according to the prosecution, supplies in respect of the orders in question had in fact been received through it

might be that those orders had not been placed in compliance with the procedure said down therefore, and that it could not find any criminality in the actions of the two officers. The High Court further found that the two officers were working as subordinates of Brig. Mani, that it was he "who controlled the imprest of the project and it was he who issued the order for payment Such being the case until it is established that these petitioners acted independently and in derogation of the order of the superior officer, no question of misconduct would arise" As regards the charge of bribery against res. Lala, the only evidence was in the nature of some entries in an exercise book seized from the residence of accused Manik Chand, The High Court was of the view that in the absence of proof as to the authorship of those entries no prima facie case could be said to have been made out in regard to that allegation. The High Court finally concluded that there was no prima facie case made out against the two officers and in that view quashed the order of the Special Judge.

7. This appeal, at the instance of the Union of India, is by special leave against the said order of the High Court.

8. There is no doubt that between July 30, 1962 and November 18, 1962 as many as 13 supply orders of the total value of Rs. 40,000/-and odd were placed with Manik Motor Works. But the summary of these orders, produced before the High Court as Annexure 'F' to Revision Petition 108 of 1967, shows that of these thirteen orders, four orders of the value of Rs 32,129/-were placed by Brig. Mani himself, and the rest for the balance of about Rs. 8,900/-only were placed by res. Khanna Of these, three orders dated October 15, 1962, November 13, 1962 and November 18, 1962 were each over Rs. 1,000/-i.e., apparently beyond the financial authority delegated to res. Khanna. But that summary also shows that these three orders were in respect of dissimilar articles which for that reason could be ordered by Khanna even though they were in excess of Rs 1,000/-. The summary further shows that Khanna had given a certificate to that effect in respect of each of those three orders. Prima facie, therefore, there does not seem to be anything criminal about those orders. In any event, the larger part of the orders, namely, for Rs. 32,129/-out of Rs. 40,000/-and odd were placed by Brig. Mani and not by Khanna, The summary also shows that except in the case of an order for Rs 420J-, dated July 30, 1962, the rest of the orders issued by both Brig. Mani and Khanna were placed after quotation enquiries had been made by Major Lala & quotations obtained. Prima facie therefore, no fault could be attached in regard to the placing of these orders by Khanna as that had been done after Lala had obtained quotations from the firms mentioned in the summary, namely, United Motors, Rajasthan Motors, Manik Motor Works, Oarrang Transport Co. and Auto Stores and processed them.

9. But then it was said that the firm of Auto Stores was a non-existent firm and its name was inserted as one of the approved firms at the instance of Lala, so that a quotation in its name with a higher quotation price could be introduced and orders could be placed with Manik Motor Works whose quotations could be show as lower than those of the others. Assuming that to have been done, the quotation enquiries in the case of all the 13 orders, except one where verbal enquiry was made, were made and processed by Lala. There was nothing to show that Khanna had any hand in it. It was also no part of Khanna's duty to make quotation enquiries or to receive and process quotations received in response to such enquiries. That clearly was Lala's duty. Khanna, therefore, could not be blamed for quotation enquiries unless there was material to show that he had acted in concert with

Lala in doing so. There was, however, no such material on record and obviously, therefore, Khanna Could not be blamed therefore.

10. Regarding Auto Stores being a non-existent firm, the principal evidence in that respect was the police statement of Havaladar Clerk Gupta. That statement was that when a list of approved firms was first dictated to him by Lala, he had included in the list the name of Auto Ways, but that later on he changed that name into Auto Stores. That fact, however, would not necessarily mean that there was, to the knowledge of Lala, no firm in Tezpur by the name of Auto Ways or Auto Stores. It may have been Lala's mistake in dictating at first the name of Auto Ways, which, on finding out the mistake later on, he changed into Auto Stores, The statement of Gupta might create a suspicion that the name of a fictitious firm was introduced by Lala for some sinister purpose. But that would be evidence from which a court of law would draw any Conclusion adverse to either of the two officers, unless there was some evidence that they knew that there did not exit any such firm.

11. The statement of the accounts officer, M.E.B. Raj shows that an accounting procedure had to be and was in fact followed in this organisation before payment of any bill could be ordered or made The duty to pay the bills was neither the function of Khanna nor of Lala, Lala's duty ended as soon as he made quotation enquiries and obtained processed quotations. When that was done, Khanna within his financial, powers, and if the order was above Rs. 1,000/- Brig. Mani, would place the, supply orders. The papers relating to such orders would have to go before the accounting or auditing section and it would be there that the bills, after scrutiny would be passed and ultimately paid. Since such was the procedures it is some what difficult to see how these two officers could be held responsible in relation to payment of bills to the firms from whom supplies were ordered and in fact accepted. Since the bills and all the papers connected with them, such as quotation enquiries and quotations obtained from the firms, had to be submitted according to the procedure laid down therefore, to the account section where those papers would be duly scrutinized and audited, there was nothing which these two officers could be said have done surreptitiously. If they had done any thing contrary to the rules and procedure that would presumably have been found out and any sinister object, such as a showing favour to Manik Motor Works, which they could have, entertained, would have at once been discovered.

12. There were nevertheless statements of the representatives of United Motor Works and Darrang Transport Co., according to which neither of the two firms had tendered any quotations. According to those statements, the quotations in the names of their firms were on their letter heads but were forged as the signatures thereon were neither theirs nor those any of their employees. Those statements also showed that there was no firm of the name of Auto Stores in Tezpur. These statements undoubtedly formed a prima facie case of the quotations received by res. Lala being false quotations and of someone having played mischief with the object of showing higher quotations by those firms and thereby securing Orders for Manik Motor Works.

13. Assuming that those statement were to be accepted, the question still would be whether was any material which connect either Khanna or Lala with such a fraud. It was admitted by the representatives of United Motor Works and Darrang Transport Co. that the quotations shown to them by the police were on their letter heads though the signatures thereon were not genuine and

were forged. Their case was that their firms had never furnished any quotations. The question then is, if anyone either from their firms or from outside were to obtain their letter heads & send on false quotations to Lala in their names was it possible for either of the two respondents to discover that those quotations were forged ones? In this connection it may be observed that these quotations had gone, according to the procedure, before the accounts section and were there accepted without any objection or without their having been discovered as forged quotations. If that was possible in the accounts section, was that not possible also before the two respondents ?

14. There are on record the statements of the manager and composer of the Assam Sevak Press that an employee of Manik Motor Works had placed an order for printing letter heads in the name of Auto Stores. Obviously, someone had sent quotations in the name of Auto Stores and these were received by Lila. It might well be that Lila inserted the name of Auto Stores in the list of approved firms in consequence of his having received those quotations on those fabricated letter-heads. Likewise, the possibility of a person sending forged quotations in the name of United Motor Works and Darrang Transport could not be eliminated. Khanna, of course, had nothing to do with calling for quotations or receiving them and processing them. His duty was to place supply orders with that firm whose quotations were either the lowest or the most reasonable. Prima facie he could not be saddled with the forgery of those quotations or with their acceptance, except upon a conjecture, in the absence of any concrete material, that he had joined with res. Lala and both of them in their turn had joined in a conspiracy with the person who had sent the forged quotations. Such material was lacking. In any event, it could not be said that Khanna was responsible in the matter of the fraud relating to those quotations even if res. Lala could be said to be responsible. Res. Lala may not have been as circumspect as he might be expected to be or was even neglectful. But he could not, in the absence of other materials, be held liable for any criminality in regard to the said quotations.

15. As already pointed out, out of thirteen orders in question, four of the value of Rs. 32,000/- and odd were placed by Brig. Mani. Annexure 'F' to Khanna's revision application shows that those four orders were placed after quotations were received and presumably scrutinized by him. These quotations were from Manik Motor Works, United Motor Works Rajasthan Motor Works, Auto Stores and Darrang Transport Go. If Brig. Mani acted on them presumably because he could not discover them to be forged, was it possible to say that Khanna was responsible for the forged quotations or of having acted on them knowing them to be forged. Perhaps the case of res. Lila would be different from that of Brig. Mani or Khanna as it was his duty to call for the quotations and process them on receiving them. But once he called for them and received them, his duty ended except that he had to place them before Brig. Mani or, if the order was upto Rs. 1,000/-, before Khanna. It may be that Lala might not have been careful or was even grossly negligent. But his action could not be said to have been actuated with criminal intent if he was deceived by someone sending to him forged quotations in the names of United Motor Works, Darrang Transport Go. etc.

16. It is true that it was res. Lala who had to issue enquiries for quotations to the approved firms only. It would appear at first sight that he would know whether a firm by the name of Auto Stores existed or not. But once it was possible for someone to have the letter-heads in the name of Auto Stores fabricated, it would also be possible for such a person to send quotations in that firm's name and unless res. Lala was mixed up with that person, he could possibly be taken in and misled into a

belief that there was in existence such a firm and that firm had sent its quotations. Such a fraud can similarly be played on him by one who had fabricated quotations in the names of the other firms on whose letter-heads quotations were sent to him.

17. There were next the statements of some witnesses suggesting that in respect of certain item) prices higher than those quoted by other firms had been paid to Manik Motor Works. According to the calculations made by counsel, the difference came to Rs. 1,400/-and odd only in respect of all the thirteen orders in question. But goods of the value of Rs. 32,000/ and odd out of Rs. 40,000/-and odd worth of goods were, as aforesaid, ordered by Brig. Mani in respect of which neither Khanna nor Lala could be held responsible. Out of the difference of Rs. 1,400/-only, a small portion of it could be attributed to the supply orders placed by Khanna. In that connection Lala obviously could not be said to be responsible as it was not his duty to place the orders. Besides, the mere fact that in some cases prices higher than those quoted by the other firms were paid cannot, without anything more, lead to the conclusion of any fraudulent intent or conspiracy. Prices depend upon diverse factors such as quality, suitability immediate availability etc. If, therefore, prices in respect of some items happened to be on the higher side, that fact is not capable of spelling out a conspiracy or fraud.

18. But it was said that these goods were purchased after making spot enquiries and without following the usual procedure of calling for quotations, receiving them, opening them in the presence of two officers and then selecting the firm from whom the article should be purchased. It was, however, possible that the goods might have been required immediately especially in an emergency like the one which was then prevailing and an officer might find it difficult, if not impossible, to go through the routine, possible & desirable in peace time. Spot enquiries and purchases following them might have been considered expedient depending upon the degree of urgency with which particular spare parts were needed. No inference of fraud could, therefore, be drawn from the fact of spot enquiries as suggested by Mr. Mukherjee.

19. There were next the statements suggesting that in some cases supplies were made even before (a) the date of orders, or, (b) the date when delivery had to be made. This fact might again excite suspicion. But a closer scrutiny dispels such a suspicion. What appears to have happened was that if an article was needed urgently, a spot inquiry of its availability could be made and an oral order placed. The dealer would send a credit voucher and the article in question. We saw a few of such vouchers & found that none of them mentioned the price as the price was not at that stage fixed. The price it appears, was fixed later on and it was then that a written supply order was issued to the dealer. That was why in some cases the dates in the vouchers were earlier than those of the supply orders. Such a procedure might not be in accord with the rules prescribed for purchases. But a breach of that procedure does not surely mean fraud or any other criminality.

20. Finally, there was the allegation of res. Lala having been given by Manik Motor Works various amounts aggregation Rs. 4,200/-and odd by way of commission. The prosecution case in this connection was that when the investigating officer together with two punch witnesses went to search the residential part of the premises occupied by Mumk Motor Works, accused Manik Chand was found coming from the rear balcony. Three exercise books were recovered from a drum kept in that

balcony. The search party seized them as also three rough cash books maintained in Hindi. In one of the exercise books, there were entries showing payment of various amounts, namely, Rs. 1,500/-on August 2, 1962, Rs. 15/-on August 12, 1962, Rs. 500/-on September 11, 1962, Rs. 100/-on September 28, 1962, Rs. 250/-on October 11, 1962, Rs. 1,000/-on October 23, 1962, Rs. 800/-on November 6, 1962 and Rs. 50/-on November 16, 1962 as commission to res. Lala. There was no evidence as regards the actual payment of these amounts except in respect of the last amount of Rs. 50/-. For that, Havaladar Gupta gave a statement to the effect that on November 16, 1962 Lala was to go to Calcutta on temporary duty, that Lala sent him to Manik Motor Works to obtain Rs. 50/-from accused Para Chand and that accordingly he went and obtained that amount and handed it over to Lala.

21. Assuming that these entries in the exercise books were genuine and the statement of Gupta was accepted, the question is, could this amount said to have been paid to Lala be commission as alleged? Two questions at once arise.