

## **M.K. Harshan vs State Of Kerala on 8 March, 1995**

**Equivalent citations:** AIR1995SC2178, 1995CRILJ3978, 1996(1)KLT88(SC), (1996)11SCC720, AIR 1995 SUPREME COURT 2178, AIRONLINE 1995 SC 184, 1995 AIR SCW 3385, 1995 CRI LJ 3978, (1995) 2 APLJ 73.1, 1995 APLJ(CRI) 39.1, 1995 CALCRILR 365, 1996 (11) SCC 720, (1996) 1 CURCRIR 218, (1996) 1 KER LT 88, (1997) 2 RECCRIR 16, 1997 SCC (CRI) 283

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**Bench: M.M. Punchhi**

### **JUDGMENT**

1. The appellant who at the relevant time was working as an Executive Engineer has been tried and found guilty under Section 161 of the I.P.C., and Section 5(2) of the Prevention of Corruption Act read with Section 5(1)(d) thereof. The trial court convicted the appellant for the said offences and sentenced him to undergo imprisonment for one year under each count and the sentences were directed to run concurrently. He was further sentenced to pay a fine of Rs. 500/- in default to suffer simple imprisonment for one month. The convicted accused preferred an appeal before the High Court which was dismissed. However, the sentence of imprisonment has been reduced to six months' R.I. Hence, the present appeal pursuant to the special leave granted.

2. Before the courts below, two main contentions were put forward. Firstly, there was no valid sanction and, secondly, that PW-1 who is the complainant in the case, cannot be relied upon at any rate since there is no other independent evidence which corroborates his version and lends the necessary accuracy. In this appeal, the point regarding the validity of the sanction has not been urged. Mr. Kapil Sibal, learned senior counsel, however, submits that in a case of this nature this Court has held in a number of cases that the evidence of a trap witness i.e. complainant who is in the nature of an accomplice, has to receive some corroboration which is totally lacking in this case and the version regarding the acceptance of the bribe is rather shaky and in such a situation the plea put forward by the accused, namely, that in his absence the money had been planted in the drawer of his office table, appears to be plausible and, consequently, the appellant is entitled to the benefit of doubt. To appreciate the above contention, it becomes necessary to state few basic facts.

3. PW-5 is the owner of a theatre at Kodakara and P.Ws. 1 & 7 are his sons. P.W. 1 was managing the theatre. A licence to run the same was issued by the Panchayat and the same was to expire on 25-6-83. As early as 22-5-83, PW-5 submitted a renewal application and the licence could be renewed only after a fitness certificate regarding the building was issued by the Executive Engineer, namely, the appellant. The appellants, in turn, had to do so on the basis of the report given by an Asstt. Engineer, DW-1, who is subordinate to him. However, there was a report given by DW-1 on 22-6-83 but the fitness certificate was not issued for some reason or the other. DW-1 was personally taken by PW-1 to the appellant on 22-6-83 and told him that the licence has to be renewed on or

before 25-6-83 and therefore the certificate had to be issued, for which the appellant did not oblige. Then, it is alleged, that he met the appellant twice on 25-6-83 but without any success. Then on 27-6-83, P.W-I met the appellant in his office at about 12-30 p.m. when he was told that unless 'mamool' was paid, necessary orders could not be passed and for that he demanded Rs. 200/-. PW-1 was not in a mood to pay the bribe. He went to the Vigilance Police and gave the information to Dr. Superintendent of Police, PW-11, and on the same day a case was registered, observing the usual formalities and a trap was arranged. PW-2 and two other Gazetted Officers were arranged as witnesses for the trap. PW-3, a Police Constable, was asked to go along with P.W -1 and wait outside to give the necessary signal after P.W-1 hands over the money. The tainted money was subjected to Phenolphthalein test and a Mahazar was drawn.

Thereafter a trap party went to the office of accused and stopped at a distance and then P.W. -1 was asked to go with the money into the office of the accused and after handing over the money was asked to give a signal which had to be relayed by PW-3. According to the prosecution, on 27-6-83 at about 4 p.m. the trap party went to the office as per the prearranged plan and P.W-1 went inside and a little later, gave the necessary signal which was relayed, P.Ws. 3,11 and the mediators entered into the office of the appellant and found him seated in his chair and came to know that the sum was in the drawer of his table. The sum was recovered and a usual Phenolphthalein test was carried out, and a Mahazar was prepared incorporating all the proceedings. The accused was arrested and after completing the investigation a charge sheet was laid.

4. The prosecution in support of its case, examined P.Ws. 1 to 3 and 5 & 11. The accused in his defence examined DWs. 1 & 2. Though PW-4, an LDC in the same office, who figured as a prosecution witness, supported the accused but he was treated hostile.

5. The plea of the accused is that on that date he was not in the office either at 12-30 p.m. when the P.W-I claims to have met him and that he was attending to some other work along with his co-officers. In the morning he went to the Collector's office and in the afternoon he went to inspect a site and reported to the office only at 4 p.m. and when he was in the office and talking to DW-2, a trap party entered into the office and then took the currency notes from his drawer. He further pleaded that he did not receive any sum from P.W-1. He further pleaded that he was innocent and the whole case was foisted on him.

6. Regarding the earlier meeting at about 12-30 p.m. as well as handing over the money to the accused at 4-00 p.m. we have the evidence of solitary witness namely P.W-1. He deposed that he was going to the office of the accused on the earlier dates with regard to the fitness certificate for renewal of the licence of the theatre. Then ultimately on 27-6-83 he went to the office of the appellant at about 12-30 p.m. and the appellant told him that he must give the necessary 'mamool' i.e. Rs. 200/-. P.W. 1 promised to bring the money after lunch. Thereafter he went to the Dr. S.P. and gave the report and the Dr. S.P., P.W-11, called two witnesses and in their presence the two currency notes of Rs. 100/-denomination each were subjected to Phenolphthalein test and a Mahazar was drawn up. He was instructed by the Dr. S.P. to go along with PW-3 and after handing over the money give the necessary signal. P.W-1 proceeded to state that at about 4 p.m. he went to the room of the accused and told him that he has brought the money as per his request and he put the two currency notes of

Rs. 100/- denomination in the left drawer of the table of the accused, as told. Then he went out and gave the necessary signal relayed by PW-3. Immediately thereafter the Dr. S.P. and the other members of the trap party entered into the office. PW-11 asked the accused to give the money which he denied and he also told the Dr S.P. that he has not seen PW-1 in person at any time. Then the Dr. S.P. asked Sasidharan Nair, PW-2, to open the drawer of his table upon which they found two currency notes. PW-2 was asked to dip his fingers in the lime water but there was no change of colour. The numbers of the two currency notes found tallied with the numbers noted in the earlier Mahazar. Sridharan Nair handled the notes where after he dipped his fingers and the liquid became pink. These tests were carried mainly to show that the currency notes were treated with Phenolphthalein and whosoever touched the same and dipped his fingers in the water, the test would be positive. It is at this stage we notice an infirmity which is of some importance. According to PW-1, the Dr S.P. asked the accused to touch the currency notes and then made him to dip his fingers in the lime water which became pink in colour. We will refer to this infirmity when we consider the question of the evidentiary value of the version of PW-1.

7. PW-3 did not say anything as to what happened inside the office of the accused. PW-1 categorically stated in his evidence that the accused did not touch the currency notes but told him to put in the drawer. So far as this circumstance is concerned, it is contended by learned senior counsel that there is no other evidence to support the same and that in view of the certain infirmities, it is highly unsafe to rely on the evidence of PW-1 for basing the conviction. We find considerable force in this contention.

8. The plea of the accused is that he was not in the office prior to 4 p.m. and he only entered the office at about 4 p.m. and when he was in his seat, the trap party entered his office and which plea is fairly suggestive that without his knowledge the tainted money must have been put in the drawer of his table. We find some anxiety and an attempt was there on the part of the Dr. S.P. as well as the other trap witnesses to show that the accused had handled the notes either before they were put into the drawer or thereafter thereby trying to connect him directly with the receipt of the tainted money. Whereas the plea of the accused is that the same has been put in his drawer without his knowledge. PW-1, as mentioned above, deposed that PW-11 asked the accused to touch the currency notes and thereafter his fingers were dipped into the liquid which turned pink. It is significant that PW-8, another Vigilance Officer, who was in the company of PW-11 throughout, deposed that after the necessary signals were given, the trap party proceeded. PW-1 came out, met them and told that the accused had accepted the money and that he had put it in the left top drawer of the table and hearing this the trap party entered the room of the accused. His evidence suggests that PW-1 told him that the accused accepted the money and he himself put the money in the left top drawer of the table. PW-11 also deposed that PW-1 came out and told them that he has given the currency notes to the accused as bribery and it was kept in the left drawer and thereafter the trap party entered the office. These two witnesses also deposed that the accused was asked to dip his right hand in the liquid in the glass and when he did so it became pink in colour. Therefore, according to their versions, as informed by PW-1, the accused himself received the amount and put the same in the drawer and consequently when he dipped his fingers the solution became pink. But the positive case of the prosecution on the other hand as narrated by PW-1 is that the accused never touched the currency notes and it was he who put them in the table drawer. It may be noted that PW-3, a

Constable, was sent along with PW-1. He was asked to wait outside and relay the signal. PW-11 admitted in the cross-examination that PW-3 could see what was happening in the office of the accused, but PW-3 does not say anything about having seen anything happening in the office of the accused. He does not even say that when PW-1 went inside with the money, he saw the accused in his seat. In the light of these conflicting versions and suspicious features on this crucial aspect, the plea of the accused that the notes were put in the drawer without his knowledge, does not appear to be improbable. In any event, P.W. -1's evidence for the above said reasons, does not appear to be wholly reliable. It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all this type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of P.W. -1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable.

9. It may be mentioned here that within two days i.e. on 29-6-83, the appellant addressed a letter to the Superintendent of Police, Cochin, giving out all the details of the work he had been attending to on 27-6-83 right from the morning to evening. In support of his plea he has also relied upon on the evidence of PWs. 1 & 2 as well as the admissions made by PW-4 who is no other than an Assistant in the Office. The Dr. S.P. , PW-11 as well as PW-1 admitted in their depositions that the accused immediately, when the trap party confronted him, came forward with the plea that he did not receive any bribe and also denied of having any knowledge of any such bribe as well as the knowledge of PW-1. PW-11 also admitted in cross-examination that any person who had access to the room of accused could put anything in the drawer of the table. In these circumstances, we find it difficult to place implicit reliance on the evidence of PW-1 to hold that the accused obtained illegal gratification in the manner spoken to by him and that at his instance PW-1 placed the money in the drawer of the table. By preponderance of probabilities, the accused has sufficiently shown that the plea put forward by him, namely, that in his absence somebody else might have put the tainted money in his drawer, is plausible. Further, we are at a loss to understand as to why the Dr. S.P. asked the accused to touch the currency notes and then made him dip his fingers in the solution. This also creates some suspicion so far as the version of PW-1 is concerned, namely, that at the instance of the accused he put the currency notes in the drawer, which circumstance is vital and decisive in this case.

10. For the foregoing reasons, we are constrained to give the benefit of doubt to the appellant and/accordingly, acquit him. The appeal is, therefore, allowed.