

Supreme Court of India

State Of Madras vs A. Kalidoss on 17 February, 1971

Equivalent citations: (1971) 3 SCC 451, 1971 III UJ 426 SC

Author: C Vaidialingam

Bench: A Ray, C Vaidialingam

JUDGMENT C.A. Vaidialingam, J.

1. In this appeal by special leave, the State of Madras challenges the judgment and order dated January 8, 1968, of the High Court of Madras, reversing the conviction of the accused, respondent, by the Special Judge and in term acquitting him of the offences Under Section 161 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

2. The charge against the appellant was that he as Deputy Tehsildar, Perambalur, accepted a sum of Rs. 50/- as illegal gratification from P.W. 1 Chinnasamy Udayar on 6-4-1965 as a motive of reward for counter-signing fifty ownership certificates issued by the Karnams of Periyavadarai and Vembavoor villages.

3. The case for the prosecution in brief was as follows: The accused was at the material time the Deputy Tehsildar, Headquarters at Perambalur. As early as in 1962 P.W. 1 and about 100 other villagers of Perhavadarai had presented application to the Electrical Supervisor, Krishnapuram for permission to install pump-sets in their wells. In or about 1963, P.W. 1 and 49 other villagers, who were amongst those who had already applied for permission to install pumpsets, executed agreements in favour of the Superintending Engineer, Tiruohirapalli Electricity System, by which they agreed to abide by the terms and conditions of supply of electric energy. P.W. 1 and other villagers, who had executed the agreements were required by the Electricity Department to get certificate from the village officers, counter-signed either by the Tehsildar or the Deputy Tehsildar, regarding the ownership of wells by them. For this purpose agreements were returned to those parties. P.W. 1 obtained and collected all the agreements so returned from his co-villagers and obtained, in the first instance the necessary certificate of ownership of wells from the local Karnam. On February 9, 1965 he also obtained the counter-signatures of the Revenue Inspector, Vengalam in those applications. P.W. 1 took the agreements together with the certificates obtained from the local Karnam to the accused for obtaining his counter-signatures in all the applications. The accused desired P.W. 1 to come some other day, week later P.W. 1 again contacted the accused at his house and handed over all agreements with a request to counter-sign them. The accused refused to counter-sign them saying that he could not do anything that day and threw away the papers which were on the table, P.W. 1 took back the agreements and went away.

4. On April 6, 1965 at about 7 a.m., P.W. 1 again went to the house of the accused and reiterated his request to counter-sign the agreements. At that time, P.W. 1 did not have the agreements but promised to bring them later. The accused enquired of P.W. 1 as to how many agreements had to be countersigned, and on being informed that there were 60 agreements, accused informed P.W. 1. that counter-signing will be done only if a sum of rupee one for each agreement is paid. That means the accused demanded a sum of Rs. 50/- to be paid to him as illegal gratification for counter-signing the agreements. P.W. 1 promised to meet the accused at about 1 P.M. that day with the agreements and

the amount of Rs. 50/-and took leave of the accused.

5. P.W. 1 after his return from the room in Perambalur where he was staying drafted the complaint Ex.P. 52 and handed it over to P.W. 6 Ami Corruption Officer P.W. 6 was the Deputy Superintendent of Police Vigilance & Anti Corruption Coimbatore, who was then camping at Tiruchirapalli. In Ex.P. 52 he had referred to the circumstances under which he met the accused & the demand made by him for payment of Rs. 50/-. He has also stated therein that P.W. 1 will be meeting the accused at 1 P.M. and pay the amount of Rs. 50/-as required by him.

6. P.W. 6 on receipt of this complaint, sent for P.W. 2, Commercial Tax Officer & one Elango, Section Officer, Highways, Tiruchirappalli, to act as panch witnesses. After the arrival of those witnesses, P.W. 6 received from P.W. 1, five ten rupee notes, which were intended to be given to the accused as bribe. All the notes were marked P.W. 6 along with P.W. 2 Elango and P.W. 1, went to the place where the accused was staying. The police party stopped a little away from the house of the accused and P.W. 1 was required to go and give the amount to the accused and he was also further desired to give the necessary signal as soon as the amount was paid. P.W. 1 went to the house of the accused with the marked currency notes and with 50 agreements between 1.45 and 2 P.M. P.W. 1 was received by the accused, who made inquiries whether the amount has been brought. On getting a reply in the affirmative, the accused received the amount from P.W. 1 and put it in his pocket on the left side of his shirt. The accused also received the agreements and kept them on his table. The accused informed P.W. 1 that he has to go to the Post Office nearby to answer a telephone call and desired P.W. 1 to go and meet him in the evening so that he could take back the agreements, which would be kept ready after counter-signature. The accused left his house and proceeded to the Post Office followed by P.W. 1. P.W. 1 gave the necessary signal and informed P.Ws. 2 and 6 about the accused going to the Post Office after having taken the marked notes. P.Ws. 2 and 6 followed the accused to the Post Office. P.W. 6 required the accused to produce the bribe amount of Rs. 50/-received from P.W. 1. The accused took out from his shirt pocket, the currency notes and produced them and handed them over to P.W. 6 in the presence of P.W. 2 and the Post Master. The number of the currency notes tallied with the numbers, which had already been noted. Over and above these five ten rupee notes, the accused also handed over a cash amount of Rs. 23.80 which was in his pocket.

7. On being questioned by P.W. 6 as to where the agreements received from P.W. 1 had been kept, the accused took P.W. 6 to his house and produced the agreements before him.

8. The plea of the accused was one of denial. According to him, P. W. 1 was inimical towards him; and that he never met P.W. 1 on April 6, 1965 either in the morning or in the afternoon. He also denied that P.W. 1 had given any papers for being counter-signed by him & that he had not made any demand for payment of bribe. He his further pleaded that the amount recovered from him must have been thrust in his shirt pocket which was kept in the central hall of his house without his knowledge and during his absence. The agreements also must have been surreptitiously kept on his table in his house. He had given reasons as to why P.W. 1 was inimical towards him. He has further stated that P.W. 1 was a close associate of one Thangavelu Udayar, Ex. Chairman of Panchayat Union, whose request to post some persons of his choice as polling staff for the panchayat election

had been refused. This refusal by the accused had led to a very heated exchange between them.

9. The Special Judge accepted the prosecution evidence and rejected the plea of the accused. Accordingly he found the accused guilty of the offences alleged against him and sentenced him to undergo rigorous imprisonment for one year.

10. On appeal, the learned Single Judge of the High Court, has set aside the conviction and sentence and acquitted the accused.

11. On behalf of the State, learned Advocate-General stressed before us that the High Court has not given due consideration to the evidence adduced by the prosecution and erred in acquitting the accused. The learned Advocate-General pointed out that the plea put forth by the accused is totally false. He pointed out that P.W. 1 had contacted P.W. 6 at the earliest occasion and immediately after the demand for payment of bribe has been made by the accused. The recovery of the marked currency notes from the pocket of the accused has not been disbelieved by the High Court. The plea of the accused that the amount must have been planted in his shirt pocket in his house without his knowledge should not have been accepted by the High Court.

12. The learned Advocate-General further pointed out that both P.Ws. 2 and 6 have given evidence to the effect that when the accused was asked to produce the amount received as bribe from P.W.1, the accused without expressing any surprise or astonishment immediately produced the currency notes from his pocket. Similarly, when he was asked by P.W. 6 to produce the agreements that had been given to him by P.W. 1, instead of expressing any surprise, he again took the witnesses to his house and produced them. When he was examined Under Section 342 Cr.P.C. the accused has stated that when he was asked to produce the amount he had replied that he has not received any amount from anybody and that he further stated that he had not received any agreements from any body. The fact that he replied as above, has not been suggested to any of the witnesses. In view of all these circumstances, the learned Advocate-General urged that the order of acquittal passed by the High Court is not justice.

13. Mr. K.R. Nambiar, learned Counsel for the accused has quite naturally relied on the reasons given by the High Court for acquitting the accused. He also pointed out that the evidence of P.W. 1 is totally unreliable. Even according to P.W. 1 he had met the accused as early as February 9, 1965 and also a week later for getting counter-signatures in the agreements and the accused is alleged to have thrown away the agreements P.W. 1 had not made any complaint to the superior officers about the conduct of the accused nor has he mentioned this incident to any body else. P.W. 1 even according to his own evidence did not move in the matter again till April 6, 1965. The conduct of P.W. 1 clearly shows that he was bent upon hoisting a false case on the accused.

14. We have given due consideration to the contentions urged before us by the learned Advocate-General on behalf of the State of Madras and by Mr. Nambiar, learned Counsel for the accused. We have also been taken through the material evidence and also the reasons given by the High Court for acquitting the accused. We are of the opinion that there is no reason to interfere with the order of acquittal passed by the High Court.

15. The recovery of the currency notes from the accused as spoken to by P. Ws. 2 and 6 is, no doubt, a very strong circumstance against him. Further the accused has also not suggested either to P.W. 2 or P.W. 6 that when he was asked to produce the bribe amount he had replied that he had not received any amount from any body. The High Court, no doubt, has not adverted to this omission on the part of the accused to put to the witnesses about the answers given by him when he was examined Under Section 342 Cr.P.C. regarding his not having received either the amount or the documents. But the most important point to be considered was whether the evidence of P.W. 1 is acceptable and the plea put forth by the accused probable. It is here that the High Court has, in our opinion, rightly disbelieved the evidence of P.W. 1. Even according to P.W. 1 he met the accused as early as February 9, 1965 and also a week later for the purpose of getting counter-signatures. The accused is alleged to have very rudely behaved to P.W. 1 by refusing to counter-sign the agreements and in throwing them away. It is rather surprising that P.W. 1 never reported this conduct of the accused to any higher authority nor did he mention about this incident to anybody else. Apart from that his total inaction from the middle of February 1965 till April 6, 1965 is inexplicable. His explanation that he was busy with the agricultural operations during this time has not been believed. Further the enmity of P.W. 1 to the accused as well as his being a close associate of Thangavelu, who was also an enemy of the accused has not been controverted by P.W. 1. As pointed out by the High Court it is not as if a counter signature has to be obtained only from the accused. On the other hand, they could have been obtained also from the Tahsildar. No explanation has been given by P.W. 1 as to why even after the rude behavior of the accused in the middle of February, 1965, he did not contact the Tahsildar for obtaining counter-signatures on the agreements. Except the interested testimony of P.W. 1, there is no independent evidence to show that he went to the house of the accused either in the morning or in the afternoon of April 6, 1965. Even on the former occasion, that is, in February, 1965, when P.W. 1 claims to have met the accused, no other villager had accompanied him. Even P. Ws. 2 and 6 admit that they did not see P.W. 1 entering or coming out of the house of the accused on the afternoon of April 6, 1965. It is also surprising that P.W. 1 was not present along with P.W. 2 and 6 in the Post Office at the time when seizure of the currency notes was effected. As to how the currency notes got into the shirt pocket of the accused or as to how the agreements were found on the table in the hall of the house of the accused still continue to be a mystery. The plea of the accused is that it being summer, he had removed his shirt after returning from the office and put it on in the hall before going for food. As he received intimation that he had to go to the Post Office to receive a telephone message, he immediately put on the shirt and went to the Post Office, where he was confronted by the police patty. He had made a suggestion to P.W. 1 that the currency notes and the agreements must have been planted in his house either by him or at his instance. This defence of the accused has been considered highly probable by the High Court. In view of the suspicious conduct of P.W. 1 and the other circumstances, the High Court was quite justified in characterising the evidence of P.W. 1 as totally unreliable. If that is so, it follows that the prosecution has not been able to establish that P.W. 1 met the accused on the afternoon of April 6, 1965 and paid the amount of Rs. 50/- as bribe. In the circumstances, the order of acquittal passed by the High Court was justified.

16. The appeal fails and is dismissed.