

Vishnu Kondaji Jadhav

Vs

State of Maharashtra

Criminal Appeal No. 129 of 1980

(P.B. Sawant, R.M. Sahai JJ)

24.11.1992

JUDGMENT

1. The conviction of the appellant is for offence under S. 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act, 1947 ('the Act) read with S. 161 of the Indian Penal Code. The allegation against the appellant was that he was a lineman in the Maharashtra State Electricity Board and also did the work of meter readings of the electricity consumed. The complainant had installed an electric motor and a pumpset in his field. The appellant used to visit the complainant. The complainant, in March 1975, received an electricity bill from the Electricity Board for a sum of Rs.651.91 for the consumption of 1129 units. This bill appeared to be excessive to the complainant. On 13-5-1975, the appellant approached the complainant and at that time the complainant asked him as to why the bill for the month of March was so excessive. The appellant accused then demanded from the complainant a sum of Rs. 200/- and promised that in future he would not get excessive bills. The complainant told the appellant that he did not have money at that time; however, he would pay the same afterwards. The accused then told the complainant that he was going out of town to Bhusawal for a marriage on 18-5-1975 and that the complainant should meet him in Bhusawal at the Mahajan Cloth Stores at about 11.00 a.m. on that day.

2. On 15-5-1975, the complainant approached the Anti-Corruption Office at Jalgaon and met Inspector Kasture there. The complainant apprised the Inspector of the demand made by the appellant and the Inspector recorded the complainant's statement. The complainant then handed over Rs. 200/- to Kasture for the purpose of being paid to the accused as bribe. The Inspector asked him to contact him again on 17-5-1975. The complainant approached the Inspector in his office and the Inspector in turn took the complainant to the Judicial Magistrate, 1st Class, Jalgaon. The complainant's complaint was handed over to the learned magistrate. The Magistrate granted permission to Inspector Kasture to investigate the offence under S. 5A of the Act. The trap was arranged at the Mahajan Cloth Stores, the next day. However, on that day, the appellant did not turn up.

3. The appellant again visited the complainant on 20-6-1975 making the same demand of Rs. 200. Again the complainant approached the Inspector of Police - this time Inspector Mukim. Permission from the Judicial Magistrate was taken on 24-6-1975 and the trap was arranged on the same day. This time also the appellant did not turn up and the trap failed. On the third occasion, i.e., on 6-7-1975, the complainant met the appellant and the appellant made the same demand of Rs. 200/- as bribe. This time the complainant approached Inspector Mukim on 7-7-1975 and apprised him of the demand made by the appellant. On this occasion, however, Inspector Mukim only recorded the statement of the complainant and proceeded to arrange for the trap which was arranged on 9-7-1975 at the same place, viz. Mahajan Cloth Stores. Admittedly, on this occasion, Inspector Mukim did not

obtain the permission from the Magistrate. However, on this occasion, the appellant turned up and accepted the sum of Rs. 200/- pursuant to which he was trapped and after usual formalities, he was booked for the offence in question.

4. A short question that arises in this case is whether the trap laid by Inspector Mukim on this occasion without the permission of the Judicial Magistrate was in accordance with the provisions of S. 5A of the Act. S. 5A of the Act reads as follows: "5A. Investigation into cases under this Act - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank, -

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the Presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;
- (c) in the Presidency-town of Bombay, of a Superintendent of Police, and
- (d) elsewhere, of a Deputy Superintendent of Police,

shall investigate any offence punishable under S. 161, S. 165 or S. 165A of the Indian Penal Code or under S. 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant.

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in Cl. (e) of sub-sec. (1) of S. 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(2) If, from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section :

Provided that no power under this subsection in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police."

5. It is clear from the provisions of the section that for investigation into every offence under the Act, it was necessary for the Inspector of Police who was admittedly not authorised by the State Government either by general or special order, to take the prior permission of the Magistrate. The High Court has rejected this contention on the ground that the permission was taken by the Inspector of Police on earlier two occasions and the second permission taken on 20-6-1975 accrued for the benefit of the investigation into the demand for bribe made by the appellant on 6-7-1975. For the purpose, the High Court relied upon a decision of this Court in State of Uttar Pradesh v. Bhagwant Kishore Joshi, (1964) 3 SCR 71: (AIR 1964 SC 221). We are afraid that the High Court has misled itself by relying upon the said decision. In that case, the accused had committed a criminal breach of trust in respect of a certain sum of money and he was booked for the said breach of trust and the investigation was made in respect of the same offence although the permission to investigate under the present Act was taken at a later stage. It is on these facts that the Court held that the investigation being indivisible as it was related to the very same act of the breach of trust, the permission taken once accrued for the entire investigation, whatever the stages in the investigation.

6. In the present case, admittedly on three different occasions, the demand for money was made. The first was on 13-5-1975, the second on 20-6-1975 and the third on 5-7-1975. Each demand constituted an offence by itself to investigate which permission for investigation was necessary under S. 5A of the Act. Each investigation in the circumstances constituted an independent investigation into an independent offence. Hence, for investigating the offence for the demand of bribe made on the third occasion, i.e., on 5-7-1975, it was necessary to take a separate and independent permission from the Magistrate which was admittedly not done. Since the provisions of S. 5A relating to the obtaining of the permission from the Magistrate are mandatory before investigation is launched into the offence, the appellant is entitled to succeed.

7. We, therefore, set aside the impugned order of the High Court and quash the conviction as well as the sentence of the appellant. The bail bonds of the appellant are discharged. The appeal is allowed accordingly. Appeal allowed.

</html