

SUPREME COURT OF INDIA

State of Tamil Nadu

Vs.

S. Krishnamurthy

(N S Hegde and D Raju JJ.)

29.01.2002

ORDER

1. The State of Tamil Nadu is in appeal against the judgment and order of the High Court of judicature at Madras made in criminal appeal No. 810 of 1990 whereby the High Court reversed the judgment and conviction dated 27th November, 1990 made by the VI additional special judge, Madras in calender case No.21 of 1989 who found the respondent guilty of offences punishable under Section 13(2) read with 13(1)(d)(ii) of the *Prevention of Corruption Act, 1988* and sentenced him to undergo RI for one year with a fine of Rs. 500/- in default to suffer RI for a further period of two months.

2. Briefly stated, the prosecution case is that the respondent was employed as a special temporary assistant in Mylapore Triplicane taluk office, Madras during the month of September, 1988. It is stated that PW1 and PW2 approached the respondent for changing the patta of Chintadripet property purchased by PW1 for which purpose the respondent demanded a sum of Rs. 300/- as bribe. PW1 was not inclined to pay the said sum and having considered this demand as abhorrent, he and PW2 approached the vigilance and the anti-corruption office on 19th September, 1988. Based on this complaint PW17, the investigating officer laid a trap to which PWs 1, 2, and 3 are witnesses. It is stated after explaining the procedure adopted in the phenolphthalein test, PW17 asked PW1 to approach the respondent and make the payment to him and on 19th of September, 1988 at about 3.15 p.m., PW1 and PW2 approached the respondent and made the payment of Rs. 300/- which the accused received and put in his pocket. At that time, by a pre-arranged signal, PW17 and others came to the scene and conducted the phenolphthalein test in the presence of PWs 1 & 2 which was found to be positive and recovered the money from the respondent, and after further investigation, chargesheeted the respondent, as stated above.

3. The defence of the respondent was that he did receive the money as stated by the prosecution but the same was not as a bribe but as a donation for teachers' day.

4. The learned sessions judge based on the evidence of the prosecution held the respondent guilty and sentenced him, as stated above. The High Court after perusing the evidence de novo, came to the conclusion that the delay in approaching the anti-corruption officer by PWs.1 and 2 throws considerable doubt on the prosecution case. This is because PWs 1 and

2, were not strangers or first time visitors to the taluk office and that it has also come in evidence that PW1 during one of his earlier visits had, on demand, paid a sum of Rs. 100/- towards the donation for teacher's day to PW4 from whom he did not receive any receipt. Therefore, PW1 was in the know of the practice in the said office as to collection of donations for flag day as well as for teacher's day fund. It observed that in the context of the practice followed in the said office and the defence put forward by the accused that he received a sum of Rs. 300/- from PW1 towards collection for flag day fund. The demand by respondent in the ordinary course would not have provoked PW1 to treat his demand as abhorrent. If really PW1 was annoyed with such a demand which if he were to think was not for a public cause, there was no reason why he should have waited for a few days before approaching the anti-corruption authorities. On the said basis, the High Court came to the conclusion that though the prosecution has proved that the respondent did receive a sum of Rs. 300/- from PW1, the same was not towards bribe, as stated by PW1, hence, the offence alleged against him was not established. It also noticed the fact that granting of patta certificate was not the sole responsibility of the respondent and it was a cumulative act of various officials of the taluk office, therefore, the High Court also came to the conclusion that a demand for an individual bribe in the acts and circumstances of the case cannot be accepted.

5. In this appeal, we have heard learned counsel for the parties and perused the evidence. We are unable to come to the conclusion that the finding given by the High Court is either perverse or based on no evidence. The prevalence of the practice in the office in question of collecting the flag day fund and the teacher's day fund seems to have been an authorised practice, though we do not approve of such practice. While considering a criminal appeal, if the existence of such practice is established and the defence taken by the accused is in conformity, with such practice, we are in agreement with the High Court that the mere fact that the respondent received a sum of Rs. 300/- would not ipso facto lead to the conclusion that the money in question was received by him as a bribe for showing an official favour.

6. Having considered the material on record, we find no merit in this appeal and the same is accordingly, dismissed.