SUPREME COURT OF INDIA

A.Abdul Kaffar

Vs.

State of Kerala

(N.Santosh Hegde and B.P.Singh JJ.)

18.12.2003

JUDGEMENT

Santosh Hegde, J.

1. The appellant herein was charged of offences punishable under sections 7, 13(1)(d) read with 13(2) of the *Prevention of Corruption Act, 1988* (the Act) and sections 201 and 477-A of the IPC. The Enquiry Commissioner and the Special Judge, Thrissur, found the appellant guilty of offence punishable under section 7 of the Act and sentenced him to undergo RI for 6 months on that count.

2. He also found him guilty under section 13(1)(d) read with section 13(2) and sentenced him to undergo 2 years' RI. He also found the appellant guilty under section 201 IPC and sentenced him to undergo 6 months' RI, while he found the appellant not guilty of offence punishable under section 477-A IPC and acquitted him of the said charge.

3. In an appeal filed before the High Court of Kerala at Ernakulam, the High Court agreed with the finding of the trial court on all counts and affirmed the judgment of the trial court by dismissing the said appeal. It is against the said judgment of the courts below the appellant has preferred this appeal.

4. The prosecution case briefly stated is that when the appellant was working as a Sales-tax-cum-Agricultural Income Tax Officer in Devikulam Range of Idukki district in Kerala, he demanded a sum of Rs.50,000 from the appellant sometime in the month of February, 1989 for showing official favour to PW-1 in regard to proposed assessment of his turnover which according to the prosecution would in the normal course be about Rs.8 lacs. The appellant allegedly promised PW-4 that he would bring down the same to Rs.2 lacs if he was paid the said sum of money. The appellant allegedly told PW-1 that he could pay the amount on a day convenient to him preferably in March, 1989 when he was to visit Munnar. It is the case of PW-1 that on such demand being made by the appellant, he contacted PW- 13 who was then working as a Deputy Superintendent of Police at Idukki who, on receipt of said complaint of PW-1, registered a case under section 7 of the Act and laid a trap according to which PW-1 was to carry Rs.10,000 in currency notes of Rs.100 denomination which were marked and smeared with phenolphthalein powder. PW- 1 was then directed to approach the appellant

with instructions to hand over the said money to the appellant who was then staying in S.N. Tourist Home at Munnar. It is the prosecution case that on the money being paid by PW-1 to the appellant, PW-13 and other witnesses to the trap approached the appellant who on being questioned admitted having received the said money but told the I.O. and others that the said money was received by him not as bribe but as advance payment from PW-1 towards his sales-tax dues. Being not satisfied with the explanation given by the appellant and after further investigation, he was charged for offences punishable as stated above and after trial was found guilty by the trial court as well as the High Court.

5. Mr. Sushil Kumar, learned senior counsel appearing for the appellant, contended that since it is the defence of the appellant that the amount in question was paid by PW-1 to him on 6.4.1989 at the Tourist Home where he was staying, the sole question that arises for the consideration of this Court is whether the said amount was received as a bribe or advance payment towards the sales-tax dues of PW-1's firm. He submitted that from the evidence of prosecution witnesses themselves, it is clear that the sales-tax department had evolved a scheme for an effective and quick collection of sales-tax dues by which the Officers were directed to collect sales-tax dues even in cash wherever so offered and remit the same to the local treasury and it is in this process that PW-1 had paid Rs.10,000 to the appellant. He also submitted that there was a raid earlier in the premises of the firm belonging to the appellant who was running a liquor shop and the firm was an unregistered firm and assessment and other penalty proceedings were going on against PW-1's firm because of which raid and assessment proceedings the appellant was aggrieved, therefore, with a view to take revenge and harm the appellant, PW-1 with the help of a senior Police Officer who was known to him made a false complaint against the appellant and organised a trap with the help of PW-13 the I.O. in this case.

6. Learned counsel also pointed out the fact that the amount in question was received by the appellant from PW-1 towards advance payment of tax which is established by the receipt given by the appellant to PW-1. The counterfoil of which was found in the official receipt book recovered by the investigating agency itself later. He submitted that the contents of the said receipt and the endorsement made at the back of the said receipt clearly showed that the amount in question was received as advance-tax payment and since on the same day the said amount could not be deposited in the treasury he had retained the same with him. Therefore, according to the learned counsel, it is clear that the appellant is being harassed at the instance of PW-1 and the prosecution has failed to establish its case against the appellant. He also contended that both the courts below did not properly appreciate the significance of the receipt, copy whereof was found in the receipt book seized by the Police. Learned counsel also pointed out that the appellant was arrested on 6.4.1989 and was questioned till early morning of 7.4.1989 after that he was released on bail and immediately thereafter on the first available opportunity, the appellant had sent his report to his superior Officers in which he had mentioned about the receipt of the money from PW-1 as also having given a valid receipt therefor. In such circumstances the courts below ought not to have accepted the prosecution case.

7. Mr. Ramesh Babu, learned counsel representing the State of Kerala, contended that a perusal of the receipt allegedly given by the appellant to PW-1 assuming it to be true, itself shows that this could not have been a receipt for having received advance sales-tax payment. Learned counsel pointed out that as per the contents of the said receipt it is seen that the tax was being paid for the assessment year 1987-88 in the month of March, 1989 whereas the Circular relied upon by the appellant himself, shows that the Officers were empowered to collect advance-tax only for the months of March and April of that year during which the tax has become payable.

8. According to learned counsel the tax for the months of March and April, 1989 had not become payable on 6.3.1989 therefore the defence set up by the accused is based on a non-genuine document.

9. From the arguments of learned counsel appearing for the parties it is clear that the only point for our consideration in this case is whether the appellant received the money in question from PW-1 as advance payment of sales-tax. If so, did the appellant issue a receipt as contended on behalf of the appellant? For deciding this question, the facts necessary as brought out on record are as follows:

10. According to the prosecution on 6.4.1989 at about 5 p.m. the accused received Rs.10,000 as an illegal gratification for showing official favour to PW-1 in the Tourist Home where the appellant was staying. According to the appellant, he received the said sum of money as advance payment of sales-tax due from the appellant. In support of this contention the appellant relies upon the copy of the receipt found in the receipt register giving the particulars of the receipt of the money and the endorsement made at the back to the effect that the money in question could not be deposited in the treasury for want of time. There is no dispute that such a receipt book was produced by the appellant during the course of investigation but the question is: is the receipt contained in the said book pertaining to the payment of money by the appellant a genuine receipt or not ? PW-1 denies the fact that the appellant had ever given him an official receipt for payment of advance tax. He also denies that the said amount was paid to the appellant as advance-tax.

11. In this process if we examine the conduct of the appellant, we notice that when the appellant was arrested at about 6.30 p.m. on 6.3.1989 or 9 p.m.(as the case may be) on the same day, he did not tell the I.O. that he had received the money as part payment of tax due from PW-1 and had issued a receipt for the same. If really the appellant had on receipt of the money from PW-1 given him any official receipt as now contended by the appellant then he would not have forgotten to tell the I.O. as to the issuance of an official receipt to PW-1 or as to the existence of a receipt book in which a duplicate copy of the receipt was maintained because that would have been a clinching defence for the appellant to prove that the money in question was not received as an illegal gratification. The very fact that he failed to mention this to the I.O. at the first available opportunity, shows that this defence is not genuine. Learned counsel appearing for the appellant however submitted that due to the mental state of the appellant at the time of arrest it is possible that the appellant forgot to mention that part of his defence that he had issued a receipt and a copy of the receipt book was available with

him. We do not think this is an acceptable excuse. If really the appellant had given a receipt to PW-1 immediately on receipt of Rs.10,000 in the Tourist Home where he was staying then the receipt book must have been there when the raiding party entered his room.

12. There could be no reason for him to either forget to tell the I.O. about the receipt having been given to PW-1 or in offering the receipt book to the I.O. From the sequence of events it can be seen that if really the appellant had issued a receipt to PW-1 on receiving the money, then the raiding party would have noticed the same because they came immediately after the money was received.

13. Therefore, the only conclusion available on this point is that the receipt was prepared by the appellant after he was released on bail and the same is now sought to be utilised as a defence for the money received which we think is unacceptable. Since this is the only question for our consideration, this finding of ours should be sufficient to dismiss this appeal.

14. Before concluding, we must note that the facts as proved by the prosecution and as accepted by the two courts below including us in this appeal, clearly prove that the appellant has committed the offence punishable under section 477-A IPC also but for some unacceptable reasons, the trial court came to the conclusion that the said offence is not established. Be that as it may, the State has not preferred any appeal, therefore, we need not go into that question in this appeal.

15. For the reasons stated above, this appeal fails and the same is hereby dismissed. The appellant who is on bail shall surrender to the bail and serve out the balance of sentence.

The appeal is dismissed.