

SAURASHTRA HIGH COURT

Lohana Kantilal

Vs

State (Saurashtra)

Criminal Appeal No. 27 of 1953

(Shah, C.J. and Baxi, J.)

30.09.1953

JUDGMENT

Shah, C.J.

1. The appellant Kantilal Tribhovan has been convicted by the Special Judge, Central Saurashtra Division, of offences under Section 161, Indian Penal Code and Section 5(2), Prevention of Corruption Act, 1947, and sentenced to six months rigorous imprisonment and a fine of Rs. 200/- for each offence, the substantive sentences being ordered to run concurrently. The appellant was at the material time a senior clerk in the office of the District Superintendent of Industries and Commerce, later styled as the Industry and Supply Officer, and was in charge of the permit branch for cement and iron goods, and in that capacity he was to receive applications and maintain a register of the same. The complainant Popatlal Keshavji required some corrugated iron sheets and as he knew the appellant he approached him with a request to help him in securing a permit for fifty sheets. The appellant agreed though he said that it will not be possible to get all the sheets at once and that they will have to be secured by applications in different names. Then two forms Exs. 4 and 5 were filled in, one signed by Popatlal himself and the other by his servant Valji Jivan, and the prosecution case is that this was done at the suggestion of the appellant and that the appellant himself had filled in the forms at the house of Popatlal on 5.9.1952. The form Ex. 5 was dated 3.9.1952 and the form Ex. 4 was dated 5.9.1952, and the appellant took these forms with him and entered them in the register the next day and in doing so he changed the date on form Ex. 4, from 5.9.1952 to 6.9.1952. After about a fortnight or so, Popatlal made enquiries of the appellant and the appellant reassured him saying the permit would be obtained in a few days. Popatlal waited for some days more and then on 5.10.1952 when he met the appellant, the appellant told him that he will bring the permit at his house that night and that he, Popatlal, may keep ready Rs. 150/- to be paid to him. Popatlal informed Mr. Oza, Superintendent of Police, Special Branch, about it and Mr. Oza said that he would come to Popatlal's house that evening. Accordingly Mr. Oza went to Popatlal's house taking with him a

Sub-Inspector and a Constable and recorded his complaint at about 6-30 p.m. Panchas were called and marked currency notes were handed to Popatlal in their presence and it was arranged that soon after Popatlal gave the currency notes to the appellant he was to shout "bring tea", and on hearing it the police and the panchas were to rush into the room.

2. Popatlal's house consists of two rooms in front of both of which there is a common lobby, and while the first room is used as a living room and the second one is used as small factory. The living room is partitioned and the rear portion serves as a kitchen. The appellant came that night to Popatlal's house at about 8-30 p.m. and Popatlal then sat down for taking his meal in the outer part of the room and the two started chatting. After he finished the meal Popatlal handed the marked currency notes to the appellant which the appellant placed in his outer shirt pocket. Popatlal then gave the signal saying "bring tea" on hearing which Mr. Oza and the policemen and the pan chas rushed into the room, and Mr. Oza arrested the accused and recovered from his shirt pocket Rs. 150/- in marked currency notes. The prosecution story is that Mr. Oza and the panchas were standing a little away from the window of the first room and they could distinctly hear the talk between the appellant and Popatlal and could also see the passing of the money. The accused was thereafter prosecuted for the abovesaid offences.

3. The accused denied having filled in the forms of the application Exs. 4 and 5, though he admitted having changed the date on the application form Ex. 4 from 5th to 6th September and having entered the applications in the register kept for the purpose. He denied having demanded any bribe from Popatlal for securing the permits or having himself gone to Popatlal's house that night for the purpose of receiving it, and he alleged that on the contrary Popatlal had sent his brother Chunilal to call him, and it was therefore that he went to Popatlal's house along with Chunilal. He further alleged that Popatlal thrust the currency notes into his shirt pocket and shouted "bring tea" and that he was thereafter seized by Mr. Oza. The whole case, according to him, was a frame-up and was concocted by Mr. Oza because the supply office had refused a permit for iron bars which had been applied for by Mr. Oza.

4. That Popatlal required iron sheets and was anxious to get a permit for the same is clear from the evidence, and it also appears that he had approached the appellant for the purpose. In fact, the appellant admits that Popatlal had requested him to help to secure a permit though he says that he had told Popatlal that a permit could not be secured easily and straightway without an enquiry by an inspector from the office. Popatlal's evidence is that the application forms Exs. 4 and 5 were filled in at his house by the appellant him self and that it was at the appellant's suggestion that they were filled in in different names, one in his own name and the other in the name of his servant Valji. The learned Judge has held that these forms were filled in by the appellant him self and this finding has been disputed by Mr. Mehta for the appellant. The learned Judge has believed the evidence of Popatlal as also of Mulchand Chhotalal, the head clerk of the office in which the appellant was serving, which, in his opinion, is supported by the fact that the handwriting of the particulars entered in the forms is of the appellant. Now one thing is clear that the

forms are not in the handwriting of Popatlal himself. His signature at the bottom of the form Ex. 4 makes this abundantly clear. His name was originally written as Popatlal Parshottam, and as the name Parshottam was incorrect, Keshavji was written over it, and this was done by Popatlal. It is im probable that if Popatlal had himself filled in the form, he would make a mistake in writing his father's name and his evidence that the appellant had made a mistake and he (Popatlal) therefore corrected it is thus borne out. Mulchand Ex. 10 identified the handwriting in the form Ex. 4 as definitely that of the appellant excepting for the word Keshavji. The learned Judge has exercised all the necessary caution required in acting on the similarity of handwriting, and after a perusal of the evidence bearing on this question, we are satisfied that he was right in believing the evidence of Popatlal and of Mulchand on the point, and in holding that the forms Exs. 4 and 5 had been filled in by the appellant and had been taken by him to his office.

If this is so, it obviously means that the appellant was interested in these applications and it is not at all improbable that he would ask for payment of illegal gratification. It is quite probable therefore that he asked for payment of Rs. 150/- when he met Popatlal on 5.10.1952. Popatlal contacted Mr. Oza the same afternoon and it was in consequence thereof that Mr. Oza went with a Sub-Inspector and a police constable to Popatlal's house that evening and there arranged for a trap. It was urged that Mr. Oza did not record Popat lal's complaint when the complainant met him first, but did it after going to Popatlal's house. That is no doubt so, but the omission is in no way material and the fact does remain that the complaint was recorded in the evening at Popatlal's house.

5. Mr. Mehta also urged that the complaint must have been recorded after the first part or the panchnama Ex. 9 was drawn up. The said part of Ex. 9 is in respect of handing over the marked currency notes to Popatlal and it mentions that one Babubhai Manek was to come to Popatlal's house with the permits and was to receive Rs. 150/- as illegal gratification from Popat lal. Mr. Mehta pointed out that in the complaint Ex. 6 the name is mentioned as Kantilal Tribhovan das Manek and he urged that if the complaint was recorded earlier the panchnama would not have mentioned the name as Babulal Manek. However, this does not inevitably lead to the inference that the complaint must have been recorded later than the first part of the panchnama Ex. 9, and it is not improbable that in the panchnama the person was referred to by his pet name.

6. The currency notes were found in the shirt pocket of the accused when Mr. Oza and others rushed into the room and were seized from him. The appellant's version is that he had not gone to Popatlal's house that night for the purpose of receiving any moneys, but he went there because Popatlal had sent his brother Chunilal to call him twice and that it was at the persuasion of Chunilal, when he came the second time, that he agreed to go and further that he and Chunilal had gone together. This latter statement is belied by the evidence of Popatlal, Chunilal and the panch Somnath according to all of whom the appellant had come alone. In fact Chunilal and Somnath say that on coming there the appellant had asked whether Popatlal was in the house, and this discredits his version that he had gone with Chunilal. Popatlal's evidence that he gave the moneys to the appellant as illegal gratification in connection with the permits is corroborated by

Chunilal and it finds further corroboration from the evidence of Mr. Oza and Somnath. The two latter say that they were standing a little away from the window of the room in which the appellant and Popatlal were sitting, and they could hear their chat as also see what was happening in the room. There was no lantern in the room used as the factory and where the police officers and the panchas were to lie in wait, and the portion of the verandah in front thereof too was not lighted. Mr. Oza's evidence is that after the appellant came he and Somnath came out of the second room and stood in the verandah a little away from the window of the living room, and this is corroborated by the panchnama Ex. 9 relating to the incident proper, which mentions the talk between the appellant and Popatlal and also recites that at the end of the talk Popatlal handed the currency notes to the appellant and the appellant placed them in the pocket of his shirt. These recitals definitely indicate that Mr. Oza and the panchas must have seen and heard what was passing in the room between Popatlal and the appellant. It is true that the panchnama and the complaint do not specifically mention that Mr. Oza and Somnath were standing a little away from the window of the living room at the time, but it is probable that enough significance may not have been attached to this fact at the time or to the importance of mentioning it in the complaint. Mr. Oza's explanation that the movements of the panchas and the police have not been shown in the panchnama too is not improbable. At any rate, the omission complained of is not sufficient to discredit the sworn testimony of Mr. Oza and Somnath particularly when it finds corroboration from the contents of the panchnama itself which was drawn up immediately after the incident. Therefore there is ample evidence in the case to prove that Popatlal gave and the appellant accepted Rs. 150/- as illegal gratification for securing the permits, and the learned Judge was clearly right in accepting the prosecution case that the appellant was caught red handed while accepting the illegal gratification.

7. It was urged that Mr. Oza was interested in getting up this case against the appellant because a permit applied for by him had been refused by the Industries and Supply Office. In our opinion, there is no substance in this allegation. Mr. Oza had applied for the permit in August 1952, and it was refused on 13.9.1952, and it appears that he was also informed of it though it is not clear when exactly the information was sent to him. Whatever that might be Mr. Oza had not the slightest grudge against the appellant, and he would not involve the appellant who was quite innocent so far as Mr. Oza's application was concerned. The suggestion is far-fetched and is altogether unacceptable.

8. Mr. Mehta next urged that according to Popatlal the moneys were to be given in exchange for the permits which the appellant was to bring with him that night and that if the appellant told Popatlal that he had not brought the permits, Popatlal would not part with the moneys at all; however that is not unnatural and since the appellant had asked for the sum and had come to receive the payment, Popatlal would be willing to give the moneys. It was also urged that Popatlal would not agree to pay Rs. 150/- since he could have secured the sheets in the black market by payment of Rs. 100/- more than the controlled rates. That would however depend upon the circumstances then existing and it may well have been that there might have been a

shortage of the goods even in the black market, or there might be other reasons as well. No explanation is sought from Popatlal on the point. At any rate this circumstance cannot outweigh the positive and unanimous evidence of all the witnesses that the moneys were asked for, that Popatlal handed the currency notes to the appellant, and that he was caught red handed in the act of accepting the illegal gratification. It is improbable that Popatlal would have gone to the length of informing the police and it is equally improbable that policemen and panchas would lie in wait, unless the appellant had demanded a bribe and was coming to Popatlal's house that night to receive it. If the moneys had been thrust in his pocket, as he says, his reaction would have been altogether different and he would have kicked up a row over it. The suggestion that he complained when he was arrested that Popatlal had thrust the moneys into his pocket has been definitely denied by Somnath who says that the appellant had done nothing of the kind. We have carefully considered the evidence of the defence witnesses Shivilal Hiralal, Ratilal Valji and Sunderdas Parashram, and we agree with the learned Judge below that they are interested and got up witnesses. Their evidence, in our opinion, in no way disproves the positive and unanimous evidence of the prosecution witnesses. We are satisfied beyond all doubt that the appellant did receive illegal gratification from Popatlal and was caught red handed by the police with the marked currency notes on his person and that he has been properly convicted.

9. The contention made in the lower Court that the sanction for the prosecution was defective has not been urged before us.

10. Mr. Mehta has lastly urged that separate sentences for the conviction under Section 161 of the Code and Section 5(2) of the Prevention of Corruption Act, 1947, are illegal since there is only one Act which constitutes an offence under two enactments. The contention is well founded and Mr. Joshi for the State concedes that no separate punishment should have been awarded. Under Section 26 of the Saurashtra Acts (Interpretation) Act, 1952, which is on the same lines as Section 26, General Clauses Act, the offender is not to be punished twice for the same offence. (See also - '*Sukhnan dan Rai v. Emperor*'¹, and - '*In re Anantanarayan*'²). Therefore, the separate punishment of six months and a fine of Rs. 200/- must be held as illegal. Accordingly we confirm the conviction for the two offences, but set aside the sentence of six months rigorous imprisonment and fine of Rs. 200/- in respect of the conviction under Section 5(2) of the Prevention of Corruption Act, 1947. In effect, there fore, the appellant will suffer six months' rigorous imprisonment and pay a fine of Rs. 200/- in default further rigorous imprisonment for one month. The appellant to surrender to his bail and serve out the sentence. Bail bond to be cancelled.

Baxi, J.

11. I agree.

Order accordingly.

Cases Referred.

¹ AIR 1918 Pat 649

² AIR 1933 Mad 337