

**Bashir Mohd. Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-14-1989

**Reported in :** 1989WLN(UC)367

**Judge :** G.K. Sharma, J.

**Appeal No. :** S.B. Cr. Appeal No. 154 of 1982

**Appellant :** Bashir Mohd.

**Respondent :** State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

**G.K. Sharma, J.**

1. This appeal is directed against the judgment dated 31-3-1982 by which, the appellant has been found guilty of the offence under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and sentenced him to one year's R.I. and a fine of Rs. 500/-, in default of payment of fine to undergo three month's imprisonment. Under Section 161 IPC he was sentenced to one year's R.I. Both the sentences were ordered to run concurrently.

2. According to prosecution story on 5-12-1979 one Kanhaiya Lal submitted an oral report before the Addl. S.P. Anti Corruption Department Kota where in it was

alleged by him that an Ox of his brother-in-law was stolen away and a report to that effect was got registered at Police Station, Khanpur For the purpose of recovery of ox, he paid Rs. 300/- as bribe to Bashir Mohd. The ox was recovered from village near Aklera. Thereafter, the Police got falsely implicated his nephew Shankar in the theft case. The SHO Bashir Mohd. demanded Rs. 200/- for not giving any bearing to Shankar not taking remand and not to implicate him in the theft case. There after, he came to accept Rs. 150/- only, It was further alleged that the SHO did not arrest the main culprit as he received Rs. 1,000/- from him and falsely implicated his nephew Shankar. It was further alleged that when he did not go for a day, the SHO called him through a Constable at his residence and as he did not want to give any bribe to Bashir Mohd. he submitted this report. A trap was arranged and all the procedures were adopted. Kanhaiya Lal was directed to hand over the notes which were smeared with powder and give Signal to Addl. S.P. On 10-12-1979, the Addl. S.P. complainant and motbirs along with staff went to Kanpur. The accused was not available there. Then the Addl. S.P. came back to Jhalawar along with the party. On 11-12-1979 it was found that the accused had gone to Aklera and when they went to Aklera it was found that the accused had gone to Jhalawar. They came to Jhalawar and near bus-stand the complainant and the witnesses were sent. The accused-appellant met the complainant at the bus-stand Kanhaiya Lal took the accused Bashir Mohd. for a cup of tea where accused demanded the amount from him. Kanhaiya immediately gave Rs. 150/- and the accused put the amount in the pocket of his pant. Then the complainant gave a signal which was seen by (PW 3) Devi Sahai who was standing inside the bus-stand, who then gave signal to Additional S.P. and immediately he came there and gave introduction to the accused. Devi Sahai and Gopal Constables caught the accused The accused was arrested and search was made and from his pocket Rs. 150/- were recovered. After completing the investigation the Police submitted challan against the appellants.

3. The learned trial Court framed charge against the appellant Under Section 161 IPC and Under Section 5(1)(d) read with Section 5(2) of the P.C. Act. The accused; pleaded not guilty and claimed trial.

4. After concluding the trial Court found the case established against the appellants and found him guilty of the offences and sentenced him as mentioned above.

5. The entire record of this has been perused. Kanhaiya Lal (PW 4) is the decoy who submitted the report to the Addl. SP., A.C.D. and who was sent to give bribe to S.H.O. Bashir Mohd. The statement of Kanhaiya Lal was perused minutely. Actually, Kanhaiya Lal himself has not corroborated his own report submitted to Anti Corruption Department. According to Kanhaiya Lal the amount Rs. 150/- was kept wrapped in the paper and he found Thanedar at the bus-stand. He said to Thanedar to take tea and silently he put the bundle of notes wrapped in the paper in the pocket of the pant of Thanedar Bashir Mohd. So from his statement it is clear that the amount was not demanded by Thanedar. This witness Kanhaiya Lal has been declared hostile and has been cross-examined, He has stated that one Delair Khan who is relative of S.H.O. Bashir Mohd. came to him and told that he should refuse that he had kept the money in the pocket but he has stated that he had kept the money in the pocket of Bashir Mohd. Ghasi Lal (PW 1) and Chattar Singh (PW 2) have been examined and these two persons were sent with Kanhaiya Lal to watch that the amount is paid by him to accused Bashir Mohd. Both these witnesses have not been declared hostile but they have not supported the prosecution story. Ghasi Lal has stated that he has not seen that Kanhaiya Lal gave money to Bashir Mohd. Similarly Chattar Singh has stated that as he was not feeling well he remained in the jeep and did not go to the spot where accused & Kanhaiya Lal were sitting. So he has also not seen the passing of bribe money. Both these witnesses Ghasi Lal and Chaitar Singh have not been declared hostile but they have not supported prosecution case.

6. Another important witness is (PW 3) Devi Sahai Constable. The learned P.P. say that from the statement of Devi Sahai passing of the money from Kanhaiya Lal to Bashir Mohd. and keeping the money in pocket after counting by Bashir Mohd. is fully proved. I have gone through the statement of Devi Sahai Constable. He has doubt stated that from a distance he was watching this fact and Kanhaiya Lal gave Rs. 150/- to Bashir Mohd, Bashir Mohd. counted the money and then put the money in the pocket after wrapping it in a paper. In the cross-examination in chief

he has stated this statement. But this fact he has not stated in his police statement under Section 161 Cr.P.C. Had it been a fact that he was witnessing the passing of the money and that the accused counted the money and then wrapped in a paper and put in pocket why he did not stated like this in his police statement given under Section 161, Cr.P.C. It means that in the court statement he was made to say all these things. Therefore, the statement of Devi Sahai (PW 3) is not reliable statement and conviction cannot be based on his testimony. From the entire evidence and the record it cannot be even inferred that the accused has demanded bribe from the complainant. It has been argued that according to the prosecution case Kanhaiya Lal brought this money from Govind Lal. Govind Lal is that person who was arrested by the Police in another case and his arrest memo is Ex. D 2. When Kanhaiya Lal brought money from Govind for making payment of the bribe then Govind Lal should been examined by the prosecution. Kanhaiya Lal has admitted that he has brought the money from Govind Lal and at the instance of Govind Lal he reported this matter to Anti Corruption Department. So in that way Govind Lal was a very important witness but he has not been examined. So there is no evidence that accused had demanded bribe from Kanhaiya Lal or that the demand has been proved by the prosecution. Therefore, the case has not been established beyond reasonable doubt. The learned trial Court has failed to appreciate the evidence in the right perspective manner and has wrongly arrived at conclusion that the case against the accused appellants has been made out.

7. As a result, the appeal is accepted. The accused appellant is not found guilty of the offence under Section 161, Cr.P.C. and under Section 5(1)(d) read with Section 5(2) of PC Act and he is acquitted. His conviction and sentence are set aside. The appellant is on bail. His bail bonds are cancelled and he need not surrender.