

**R. Venkatesan Vs. State**

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**Court :** Chennai

**Decided On :** Aug-27-1979

**Reported in :** 1980CriLJ41

**Judge :** Maheswaran, J.

**Appellant :** R. Venkatesan

**Respondent :** State

**Judgement :**

**Maheswaran, J.**

1. Venkatesan, Agricultural Income-tax Officer, Erode, hereinafter referred to as the appellant was convicted of offences punishable under Section 161, I. P. C. and under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947 by the learned Special Judge and Chief Judicial Magistrate, Coimbatore. He was sentenced to rigorous imprisonment for one year under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act. The learned Special Judge did not award any separate sentence for the offence under Section 161, I. P.C. The appellant is aggrieved and has filed this appeal.

2. The facts leading to his conviction need narration. The appellant was an Agricultural Income-tax Officer. P. W. 1, Chidambara Gounder, a resident of Rakkapalayam in Erode Taluk, was an agricultural income-tax asses-see. He

originally had extensive lands but had only about 58 acres in 1972. He alienated about 8 acres in June 1972, and applied under Ex. P-1 to the appellant to have a proportionate reduction of tax. Proceedings under Ex. P-2 were sent by the appellant to P. W. 1 and a demand notice was also sent directing P. W. 1 to pay a sum of Rs. 144.75 towards composition fee for the assessment year 1973-74. Again P. W. 1 sent a letter and as he did not receive any reply, he went to see the appellant at Erode. A statement was taken by the appellant from P. W. 1. The letter Ex. P-5 dated 10-9-1975 was received by P. W. 1 and he was asked by the appellant to be present at 10-30 a.m. on 19-9-1975 at the village Chavadi at Uttukuli. The letter stated that if P. W. 1 fails to attend, the permission to compound the tax will be cancelled and tax will be levied on the basis of income. On 19-9-1975 P. W. 1 appeared before the appellant at 10-30 a.m. at the village Chavadi at Uttukuli. A statement was again taken from P. W. 1 by the appellant and that is Ex. P-6. The appellant then told P. W. 1 that he had spent Rs. 600 to Rs. 700 at the time of audit of his office and that he should pay Rs. 200 and if he pays Rs. 200, he will reduce the tax. P. W. 1 told the appellant that he had not brought the money and thereafter the appellant told P. W. 1 that he will be available at his office at Erode on 29-9-1975 and that he could go over there with the money. P. W. 1 agreed, but on 28-9-1975 at about 10-15 a.m. P. W. 1 went straight to the office of the Deputy Superintendent of Police, Vigilance and Anti-Corruption, at Coimbatore and there a complaint was given by P. W. 1 under Ex. P-7 and P. W. 1 was directed to go over on next day, to the guest house at Perundurai TB Sanatorium.

3. P. W. 1, as directed, went to the guest house at Perundurai T. B. Sanatorium at about 9 a.m. with the amount. When he was at the guest house two persons, one Superintending Inspector of Factories and another Deputy Commercial Tax Officer, came there and they were introduced to P. W. 1. The Deputy Superintendent of Police gave the complaint preferred by P. W. 1 for perusal by those two officers. The Deputy Superintendent of Police made all of them acquainted with the phenolphthalein test and later smeared phenolphthalein powder on the currency notes brought by P. W. 1 and handed over them to P. W. 1 and asked him to hand them over to the accused if he so desired. The Deputy Superintendent of Police also gave a tape recorder and directed him to switch it on

at the time of conversation with the appellant. He also asked P. W. 1 to give the signal, of wiping his face with a towel if the appellant received the cash of Rs. 200 from him,

4. On 29-9-1975 at about 10-30 a.m. P. W. 1 along with the Deputy Superintendent of Police and three Inspectors of Police and with the two trap witnesses, namely, the Superintending Inspector of Factories and the Commercial Tax Officer, left for Erode, by a jeep. Before leaving for Erode, the numbers of the currency notes were noted. The party got down near the fire service station at Erode and P. W. 1 proceeded alone to the office of the appellant situate in Subbaraya Naidu Street. Even before he entered the office, P. W. 1 switched on the tape recorder which he kept in a bag. P. W. 1 then went with the bag and saw the appellant in his office. P. W. 1 told him that he has brought the money and then P.W. 1 gave the amount which the appellant received and kept in the pocket of his shirt, P.W. 1 then took, leave of the appellant and the appellant then called the peon of his office. P. W. 1 came out of the room of the appellant and switched off the tape recorder and wiped his face with the towel giving the preconcerted signal. Immediately the Deputy Superintendent of Police P. W. 8. the Inspectors and the trap witnesses P. W. 3 and another, went into the office of the appellant and entered the room where the appellant was sitting. P. W. 8 asked him to produce the money given by P. W. 1. The appellant denied having received any money from P. W. 1. the appellant was asked to dip his fingers in the sodium carbonate solution prepared there and the solution turned pink. The test proved positive. But the money, P. W. 8 could not find on the person of the appellant. A search was made in the drawers of the table, but nothing was found. At that time, Gururajan, who was a peon, entered the office and he was interrogated and P. W. 2 told P. W. 8 that P. W. 1 gave him the money to be handed over to P. W. 6, an Advocate, and that he handed over the amount to P. W. 6. P. W. 8 accompanied the Inspector Indrasenan and P.W. 3 and one Aravamudan, went to the house of P. W. 6. P.W. 6 admitted having received the money from P.W. 2. The phenolphthalein test was conducted on P.W. 2 and the sodium carbonate solution turned pink. The money MO 1 series, was seized by P. W. 8 under a mahazar Ex. P-11, P. W. 8 and others returned to the office where the tape recorder was played in the presence of P. W. 3 and Aravamudan, and a mahazar was also prepared for

that MO2 the black shirt of the appellant was also seized from the appellant and the left front pocket of MO 2 when dipped in sodium carbonate solution turned pink and that fact was noted in a mahazar. Later, the tape was again played in the office of the appellant and a true transcription of the conversation between P. W. 1 and the appellant was taken under Ex. P-13, a copy of which was given to the appellant. A statement under Section 164, Cri. P. C. was taken by P. W. 2 by the Judicial Second Class Magistrate No. I, Coimbatore, on a requisition from P. W. 8. A report to the Director of Vigilance and Anti-Corruption was sent for sanction to prosecute the appellant. After the sanction the successor to P. W. 8 filed the charge-sheet.

5. When examined with reference to the incriminating circumstances appearing against the appellant in the evidence, the appellant admitted having sent Ex. P-5, the proceedings and having received Ex. P-1, the petition for reduction of the agricultural income-tax from P. W. 1, but denied having received Rs. 200 from P. W. 1. He also stated that he was on inimical terms with P. W. 1 as he gave a complaint against the members of the family of P. W. 1 for cutting trees on poromboke lands. He further stated that the tape recorder conversation has been tampered with.

6. The appellant challenges his conviction under Section 161, I. P. C. and under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947, recorded by the Special Judge and Chief Judicial Magistrate, Coimbatore. The facts have been narrated above, It is contended for the appellant by his learned Counsel that one of the essential ingredients of the offence under Section 161, I. P. C. with which the appellant stands charged is that the gratification must have been received as a motive or reward for committing any act or omission in connection with his official functions. He also pointed out that it must be shown that there was an understanding that the bribe was given in consideration of some official act or conduct and that such an ingredient is wanting in this case. He further pointed out that the charge under Section 5 (1) (d) of the Act also cannot be sustained against the appellant for the reason that it cannot be reasonably said that the appellant had obtained the currency notes by using some corrupt or illegal means or otherwise using his official position as a public servant. These

contentions require examination. The appellant is said to have accepted from P. W. 1 Chidambara Gounder, a sum of Rupees 200, as gratification other than legal remuneration as a motive or reward for reducing the agricultural income-tax for the year 1973-74 in respect of 8-03 acres of land already sold by him in June 1972. Chidambara Gounder, P. W. 1, had about 116 acres of land originally and he had sold nearly half of it and was having only 58 acres in 1972, and sold away 8 acres in the month of June 1972. As he wanted a proportionate reduction in the tax, he sent a petition to the appellant under Ex. P-1. (the date of receipt of Ex. P.-1 appears to be 15-6-1974). Ex. P-2 dated 29-8-1974 is a copy of the proceedings of the Agricultural Income-tax Officer and Ex. P-3 dated 5-9-1974 is the notice of demand asking P. W. 1 to pay a sum of Rs. 144-75 as agricultural income-tax for the assessment year 1973-74. By his proceedings. Ex P-2, the appellant has not reduced the tax. On 10-9-1975, the appellant sends Ex. P-5, a notice directing P. W. 1 to appear before him on 19-9-1975 at the village Chavadi at Uttukuli at about 10-30 a.m. It should be noted that in Ex. P-5 nothing is mentioned about Ex. P-1, but a reference is made to a composition application filed by P. W. 1 for the assessment year 1973-74, wherein P. W. 1 has referred to the sale of certain lands. It is to enquire into this matter P. W. 1 was directed to appear at the village Chavadi. The appellant had also stated in that notice that if P. W. 1 fails to appear, the permission to compound the tax will be cancelled and tax will be levied on the basis of income. In pursuance of this notice P. W. 1 called on the appellant at the village Chavadi or Uttukuli where he is said to have demanded of P. W. 1 a sum of Rs. 200 as consideration for reducing the tax. It is now pointed out by the learned Counsel appearing for the appellant that the proceedings Ex. P-2 and the demand notice Ex. P-3 show that a tax of Rs. 144-75 only was levied and the appellant could not have demanded of P. W. 1, Rs. 200 as illegal gratification for reducing the tax proportionately for 8 acres already sold, which would be of a very negligible amount. But, it is pointed out for the prosecution that Ex. P-5 the notice, carried a threat that assessment would be made on the basis of the agricultural income cancelling the permission to compound the agricultural income-tax and it is this which made P. W. 1 to part with the sum of Rs. 200. The learned Special Judge in dealing with this aspect observes that one has to remember that 'PW 1 is not a person who knows the intricacies of the rules of assessment and it is normal to

expect that he was carried away by the threat conveyed in Ex. P-5.' Obviously, the learned Special Judge has not scrutinised the evidence of P. W. 1 more carefully. P. W. 1 admits that he was studied up to Intermediate. He has also admitted that from the inception of the Act, he has obtained the permission to compound the agricultural income-tax payable by him. He further admits that if this tax is paid regularly without any default, assessment cannot be made on the basis of the agricultural income cancelling the permission to compound. D. W. 1, an Agricultural Income-tax Officer, has deposed that if the assessment is to be made on the basis of agricultural income cancelling the permission to compound, the consent of the assessee is necessary. The observation of the Special Judge, therefore, is not correct. It should further be noted in this connection that there is clear evidence of D. W. 1, that Ex. P-5 is one of those 'routine notices' usually sent to assessees. It is therefore abundantly clear that the alleged threat is not a threat at all and PW 1 who has studied up to Intermediate, was conversant with the rules of assessment and will be the last person to be carried away by the threat. Further, as already pointed out, the total tax payable for 57.08 ordinary acres (equivalent to 17.79 standard acres) is only Rs. 144-75 and the reduction of tax in respect of 8 acres sold by P. W. 1 in June 1978, would be of a very negligible amount and it is not likely that the appellant would have demanded of P. W. 1 a sum of Rs. 200, for reducing the tax on 8 acres. Further, it should be noted that the charge mentions that the appellant received the bribe amount, 'as a motive or reward' for reducing the agricultural income-tax for the assessment year 1973-74, and for 'not assessing tax, on the basis of agricultural income'. The evidence let in by the prosecution is to the effect that the appellant demanded of P. W. 1 a sum of Rs. 200 for making good the expenses incurred in connection with the inspection of his office by the audit staff. Though lack of motive does not necessarily take the case out of the mischief of the penal provisions, yet it is an important factor bearing on the question as to whether the appellant has received the gratification as a motive or reward for doing an official act or for showing any favour or disfavour in the exercise of his official function. I have already pointed out to the evidence of P. W. 1, that when once permission to compound the tax has been granted, assessment cannot be made on the basis of the agricultural income without the consent of the assessee and also to the evidence of P. W. 1 who

admits that the tax payable after obtaining the permission to compound the agricultural income-tax, if paid regularly, the assessment cannot be made on the basis of agricultural income. P. W. 1 was therefore aware of the fact that the appellant cannot assess him to tax on the basis of agricultural income. The motive alleged is therefore insufficient.

7. Turning our attention next to the demand of bribe by the appellant, I may point out that there is the evidence of only PW 1. The appellant is said to have made this demand on PW 1 at the village Chavadi at Uttukuli. The evidence of PW 1 is that at the time when he saw the appellant at the Chavadi at Uttukuli, neither the karnam of Rakkiapalayam nor the karnam of Chengapalli was present and that at that time the peon of the appellant was also not present. But DW2 the karnam of Rakkiapalayam in his evidence has stated that he also received a copy of Ex. P-5 and that he went to the village Chavadi at Uttukuli on 19-9-1975 at about 10-30 a. m. that at that time the Revenue Inspector was also there and that about 15 minutes after his arrival, PW 1 came and the appellant took a statement from PW 1 and that he also gave a statement Ex D 4, that it would be about 11-30 a.m. when he finished the statement and that PW 1 later left the room. Even PW 2, the peon of the appellant, examined by the prosecution admitted in cross-examination that on 19-9-1975 he went along with the appellant to the camp at Uttukuli, that at that time the karnam of Rakkiapalayam DW 2 and another karnam were present and that to his knowledge the appellant took statements only from the two karnams and not from others, that he brought coffee for PW 1 and others and that he and the appellant alone were present when they left the Office. The evidence of D. W. 2 and of P. W. 2 clearly shows that on the date when P. W. 1 saw the appellant at the Chavadi at Uttukuli as directed under Ex, P-5, both DW 2 and another karnam were present along with some others and that PW 2 alone was present with the appellant at the time of his leaving the Chavadi at Uttukuli. In the case of the evidence of P. W. 2, and D. W. 2 the evidence of P. W. 1 that the karnam and PW 2, the peon of the appellant, were not present at the village Chavadi is not worthy of credit. When the two karnams of different villages were present along with others, the appellant would not have made a demand of PW 1 for Rs. 200. The only evidence for the demand of bride by the appellant is that PW 1, who was himself an aggrieved person. The evidence of such a witness cannot

be acted upon without corroboration. P.W. 1 himself admits that he is aggrieved as the appellant has not reduced the tax. There is no corroboration in respect of the demand made on PW 1 by the appellant. Further, the demand is alleged to have been made on 19-9-1975. Evidence discloses that PW 1 returned to the village and it is only on 28-9-1975 that he saw the vigilance police for launching a complaint. During the nine days he spent at the village, he did not disclose this demand made on him by the appellant to any one. Under those circumstances, I must hold that the prosecution has not proved the demand of bribe alleged to have been made on P. W. 1 by the appellant.

8. No other witness except P. W. 1, speaks to the offer by P. W. 1 and the acceptance of the bribe by the appellant on 29-9-1975, at his office at Erode. As earlier pointed out the defence pointed out that P. W. 1 himself being a trap witness, the Court should be cautious in relying on his testimony to found a conviction and without corroboration the evidence of P.W. 1 cannot be acted upon. But the learned Public Prosecutor pointed out that the tape-recorded conversation and the phenolphthalein test conducted on the appellant which proved positive, are enough corroboration. I shall deal with the tape recorded dialogue between the appellant and P. W. 1 and also 'the phenolphthalein test' a little later. But, before that, it is necessary to recapitulate in brief certain happenings at the Perundurai TB Sanatorium Guest House where P. W. 1 was asked to meet P. W. 8 on 29-9-1975, with the amount intended to be paid to the appellant. P. W. 1 as directed by, P. W. 8, saw him at the TB Sanatorium, Guest House at Perundurai at about 9 a. m. on 29-9-1975 with the amount. When P. W. 1 was with P. W. 8, two witnesses came and one of them was P. W. 3, and the other was a Deputy Commercial Tax Officer. P. W. 1 was introduced to both of them. The Deputy Superintendent of Police gave a demonstration of phenolphthalein test to all of them with a currency note of ten rupee denomination. P. W. 8 also gave a tape recorder to P. W. 1 with necessary instructions about its operation. He was also asked to give the signal of wiping his face with the towel when the appellant accepts the bribe offered by him. Later, the party consisting of P. W. 3, P. W. 1, P. W. 8, and three Inspectors and the Deputy Commercial Tax Officer and also certain police personnel left the TB Sanatorium Guest House in a jeep and got down at the fire service station at Erode. Prior to it, the numbers of the currency notes which were intended to be

given to the appellant by P. W. 1, were noted. P. W. 1 was asked to proceed from the fire service station by walk to the office of the appellant at Subbarayalu Naidu Street at Erode. P. W. 1 then went to the office of the appellant. He saw the accused in his room and P. W. 1 went there with the bag where he kept the tape recorder switched on. According to the evidence of P. W. 1, after an intimate conversation with him as regards his family affairs, P. W. 1 told the appellant that he has brought the amount of Rs. 200. which he demanded of him and the appellant received it and kept it in the right pocket of his shirt. After that P. W. 1 came out of the office and gave the preconcerted signal and P. W. 8, P. W. 3 and other witnesses and the Inspectors rushed in the room of the appellant. Before entering the office of the appellant, the Deputy Superintendent took the tape recorder from P. W. 1 and asked him to go to Coimbatore and wait for him. But P. W. 8 could not find the money with the appellant. When asked by P. W. 8, the appellant told him that he has not received any money from P. W. 1. The phenolphthalein test was conducted on the appellant and the appellant was asked to dip his fingers in the sodium carbonate solution and the solution turned pink. A search of the person of the appellant was made by the Deputy Superintendent of Police and the Inspectors, the appellant produced from his pocket Rs. 376 which are MO 4 series. The numbers of the currency notes did not accord with the numbers noted earlier by the Investigating Officer P. W. 8. The money that was intended to be given by P. W. 1 and which is said to have been actually given by P. W. 1 was not found on the person of P. W. 1, nor was it found inside the table or anywhere in the room. It is at that time, P. W. 2, Gururajan, a peon of the appellant came into the room and P. W. 8 questioned him and he told P. W. 8 that the appellant gave him Rs. 200 to be handed over to an Advocate, P. W. 6. Later P. W. 2 took P. W. 8 and also P. W. 3 and others to the house of P.W. 6, an Advocate, from whose leather bag the currency notes MO 1 series said to have been handed over by P. W. 1 to the appellant were recovered. The phenolphthalein test was conducted on the Advocate also and also on P. W. 2 and the test proved positive.

9. It is therefore clear that MO 1 which according to the prosecution is the tainted money, was recovered not from the appeal, but from the house of P.W. 6. The evidence of P.W. 6, the Advocate, does not support the prosecution case, but

P.W. 6 admitted that P. W. 2 came to his house and gave Rs. 200, saying that P. W. 1 Chidambara Gounder has given him the amount to be handed over to him. He also stated that Chidambara Gounder P. W. 1 is his client. While the recovery of the currency notes MO 1 series from P. W. is not disputed by P. W. 6, his explanation is that those currency notes MO 1 series were handed over to him by P.W. 2 and that they were sent by P.W.1 Chidambara Gounder his client. P. W. 6 was treated as a 'hostile witness.' As P. W. 6 has not supported the case of the prosecution, the prosecution placed reliance on the evidence of P. W. 2, the peon, and on the evidence of P. W. 3, the official witness, and also on the evidence of P. W. 8, the investigating officer, as also on the result of the phenolphthalein test conducted on the appellants P. W. 2 and P. W. 6.

10. P. W. 2 the peon, deposed to the fact that the appellant gave him Rs. 200, one currency note of hundred rupee denomination and others of ten rupee denomination, to be handed over to P. W. 6 and that he went on a cycle and handed it over to P. W. 6, that it would be at 11.45 a.m. and that on his return to his office, he was taken by the vigilance police to P.W. 8, and he told P. W. 8 that the appellant sent him with Rs. 200 to be handed over to P. W. 6. He also spoke to the fact of his taking P. W. 8 and other officials to the house of P. W. 6 and the phenolphthalein test conducted on him and on P. W. 6 and the sodium carbonate solution turning pink on dipping their hands into that solution. It is not clear as to when P. W. 2 left the office with the money given by the appellant. According to P. W. 2, the appellant counted the money and handed it over to him and it would have taken about 5 minutes and after that he left the office on a cycle. But, P. W. 1 would state that when he came out of the office, he gave the signal agreed upon and within two or three minutes, the vigilance police rushed into the office. If the police entered the office within 2 or 3 minutes after P. W. 1 coming out of the office, P. W. 2 could not have left the office in that time, as, according to him, it took nearly five minutes for him to count the money. However P. W. 2 stated that he does not remember whether he had other moneys with him than MO 1 series and that when he returned to the office the vigilance police did not allow any one to enter into the office and therefore he stood outside, for about five minutes and then the police took him to the Deputy Superintendent of Police. The appellant was not there. It is also seen from his evidence that no phenolphthalein test was

conducted on, P. W. 2 at the office. It is also in his evidence that the appellant did not accompany them to the house of P. W. 6. This witness P. W. 2 was examined by P. W. 4, who was the Judicial Second Class Magistrate No. I, Coimbatore. He recorded the statement of P. W. 2 under Section 164, Cr. P. C. It is pointed out by the learned Counsel for the appellant that P. W. 2 being only a peon of the office, he must have been subjected to much threat and should have been made to speak, as the prosecution wanted him to speak, and therefore, the evidence given by him is not voluntary. In dealing with the question of the weight to be attached to the evidence of witnesses whose statement under Section 164, Cr. P. C. was recorded earlier, the Supreme Court in *Ramcharan v. State of U.P.* : 1968 CriLJ1473 , approved the following observations of Nagpur High Court in *Paramanand v. Emperor* .

We are of the opinion that if a statement of a witness is previously recorded under Section 164, Cr. P. C., it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under Section 164 will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon.

My attention was invited to the evidence of P. W. 2, in cross-examination. It was suggested to him that the vigilance police asked him to tell them whether it was he who gave the money to the vakil and P. W. 2 admitted that the police asked him such a question and that he told them that he gave the money to P. W. 6. He however denied the allegation that because of the threat by police, he has deposed against the appellant. But certain other admissions by him makes me hesitant to rely upon his evidence. He admitted that he was taken by the vigilance police to Coimbatore and kept in the house of one S. K. Venkataraman and that he was asked to stay at Coimbatore itself and later he gave a statement before P. W. 4, the Magistrate and that the vigilance police took him from the house of Venkataraman to the Magistrate's Court. It is therefore obvious from this admission of P. W. 2 that he was taken to Coimbatore on the very day the appellant was arrested and was kept in seclusion in the house of Venkataraman P.

W. 2's evidence shows that he was taken to Coimbatore on 29-9-1975 itself. P.W. 4's evidence shows that P. W. 2 was produced before him at 3-30 p.m. on 1-10-1975. From the afternoon of 29-9-1975 till the afternoon of 1-10-1975, he was kept in seclusion by the vigilance police and it is only later that the statement under Section 164, Criminal P. C. was recorded. It is not clear as to who this Venkataraman is. Under those circumstances, there is a doubt whether P. W. 2 could have made the statement voluntarily though he had stuck to that statement in his evidence.

11. P.W. 3, Easwaramoorthy, General Manager of Thanthai Periyar Transport Corporation, Villupuram, was a Superintending Inspector of factories at the relevant time. He witnessed the raid. He was with the vigilance official at Perundurai TB Sanatorium guest house. He spoke about P. W. 8 noting the numbers of the currency notes brought by P. W. 1 and also about the demonstration of phenolphthalein test and about the pre-arranged signal which P. W. 1 should give after the acceptance of the bribe by the appellant and also about the raid and the phenolphthalein test conducted on the appellant and the solution turning pink. He further spoke about his accompanying P. W. 8 to the advocate's house and the recovery of M.O. 1 series from the Advocate's house In cross-examination however he admitted that the appellant was asked to dip his fingers thrice, A suggestion was thrown to this witness that it was due to the fact that the solution did not turn pink when the appellant dipped his fingers for the first time. But he repelled that suggestion. This witness also says that the appellant began to rub his hands on the table cloth and that the Deputy Superintendent of Police, P. W. 8 asked him not to do that. The appellant in his statement under Section 313, Cr. P. C. has denied that he rubbed his hands on the table cloth. This fact that the appellant rubbed his hands on the table cloth has not been mentioned either in Ex. P-12 or Ex. P-11, the mahazars. The appellant also denied that any phenolphthalein test was conducted in him, When the phenolphthalein test is conducted on the appellant and when the sodium carbonate solution turns pink, it is the plain duty of the investigating officer to note that fact in a mahazar then and there in the presence of the accused. But, strangely this fact of the solution turning pink when the appellant dipped his fingers in the solution was noted for the first time in ft mahazar in the house of the vakil P. W. 6, behind the back of the

appellant. It is not disputed that the appellant did not accompany P. W. 8 and others to the house of P. W. 6. He was left in the custody of P. W. 7, Inspector Raman and Inspector Srinivasa Thanthiri. The mahazar is Ex. P-11 and it clearly shows that it was prepared in the house of P. W. 6. As already pointed out, the evidence of P. W. 3 shows that the appellant dipped his fingers thrice in the solution. There is no need to repeat the dipping three times and the fact of the solution turning pink was noted not in the presence of the appellant P.W. 3 clearly admits that the accused was not present when the mahazar Ex. P-11 was prepared at the house of the vakil P. W. 6. It is also seen from the evidence of P. W. 4 that the house of P. W. 6 was also searched. The evidence of other witnesses discloses that nothing incriminating was found in the house of the appellant. P. W. 3's evidence shows that till the house search was over, the slack shirt of the appellant was not subjected to any phenolphthalein test. Ex. P-12, the mahazar, shows that the appellant was arrested at 2-30 p.m. on 29-9-1975, and the shirt which he was wearing was subjected to phenolphthalein test and the left pocket of the shirt when dipped in the solution of sodium carbonate, turned pink. The appellant has stated in his statement under Section 313, Criminal P. C. that M. O. 2 is his shirt, but no phenolphthalein test was conducted in his presence. Further Ex. P-12 shows that it is the left pocket of M. O. 2 that turned pink. The evidence of P. W. 1 is that the appellant received the bribe money and kept it in his right pocket. If the money was kept in the right pocket, it is not clear as to how the left pocket turned pink when dipped. The solution of sodium carbonate. The evidence of P. W. 2. is not entitled to much credence as he was a witness kept in seclusion by the investigating officer, P. W. 8 at Coimbatore in the house of one Venkataraman for nearly two days before he made a statement under Section 164 Criminal P. C. In this case, P. W. 8 admits having examined P. W. 2 at Erode itself and there is no need to take him to Coimbatore from Erode on 29-9-1975 and keep him in the house of one Venkataraman. It appears to me that P. W. 8 has exhibited an excessive zeal in the matter of procuring the evidence of P. W. 2. It will not be out of place to point out to the evidence of P. W. 8 who states that P. W. 2 told him that P. W. 1 gave the money to him to be taken to P. W. 6. According to P. W. 6, P. W. 1 is his client. The tainted money M. O.1 series was not recovered from the person of the appellant, nor from his office. That money was recovered

from the house of P. W. 6 who is P. W. 1's advocate. The phenolphthalein test said to have been conducted on the appellant is not free from doubt. P.W. 3 admits that the appellant was asked to dip his fingers thrice and there was no need for it and even the fact of the test proving positive has not been noted in the presence of the accused in a mahazar, but noted only in the house of P. W. 6. Certainly it is indiscreet on the part of P. W. 8 not to have prepared a mahazar in the presence of the accused. The conduct of the appellant rubbing his hands on the table cloth as spoken to by P. W. 3 obviously suggesting that, that conduct of the appellant is compatible with his guilt does not find reference in Ex. P-12 or Ex. P-11, the mahazars. P. W. 8 admits having not made a reference to this conduct in the mahazars prepared by him, but he states that he noted it in the case diary after his return to Coimbatore. The left pocket of the shirt M. O. 2, worn by the appellant was subjected to phenolphthalein test and the test proved positive. The evidence of P. W. 1 is that the money was kept by the appellant in his right pocket. These circumstances throw considerable doubt as regards the offer and acceptance of the bribe by the appellant. The prosecution cannot rely on the phenolphthalein test as corroborating the evidence of P. W. 1, because the recovery of the currency notes was not from the person of the accused. The recovery of the currency notes from the person of the accused is an important link in proving the case of the prosecution of the offence under Section 161, Indian Penal Code and Section 5 (2) of the Prevention of Corruption Act.

12. We are left with the tape-recorded conversation which, according to the prosecution, corroborates the evidence of P. W. 1. A tape recorder was given to P. W. 1 to record the conversation. The learned Magistrate while dealing with the recorded conversation on the tape states 'I closely observed the playing of the cassette in court and found that it contained substantially the version given by P. W. 1 in court regarding the conversation had by him at the time of alleged payment of amount to him. I may at once point out that I have also had the tape M. O. 3 played in open court and to me most of the conversation was not clear. Even P. W. 1 is of the same view. He states that certain portions in the tape are clear and other portions are not clear. He also states that he does not know the reason for that. P. W. 3 states that the tape recorder was played in the office in the presence of the appellant and others and it contained the conversation between P. W. 1 and

the appellant. He would also say that M. O. 3 was played again in the office at 3.40 p.m. and a transcript of the dialogue between P. W. 1 and the appellant was taken in his presence and that is Ex. P-13 in which P. W. 8 and the three Inspectors have attested. In cross-examination he admitted that when for the first time the tape record was played, the entire conversation was not transcribed and therefore it was played again and certain portions in the conversation are not clear. P. W. 8, the Investigating Officer, admitted that he heard the tape recorded conversation and in some places the conversation is not quite clear. P. W. 8 is not able to say as to who spoke the words 'Please don't take it as a bribe.' In *Yusufali Esmail v. State of Maharashtra* 1968 MLJ 247, the Supreme Court observed-

If a statement is relevant, an accurate tape record of the statement is also relevant and admissible. The time and place and accuracy of the recording must be proved by a competent witness and the voice must be properly identified. One of the features of the magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The Court must be satisfied beyond reasonable doubt that the record has not been tampered with.

Bearing these observations in mind, we may analyse the evidence in regard to the tape recorded conversation. I earlier pointed out that P. W. 1, P. W. 3 and P. W. 8 say that certain portions of the conversations between P. W. 1 and the appellant recorded by the tape recorder are not clear. The evidence of P. W. 3 also shows that the tape recorder was played twice. The most important condition of identifying the voices has not been satisfied in this case. P. W. 8, the Investigating Officer, admits that he did not examine P. W. 1 with reference to the conversation in the tape. P. W. 1 states in his evidence that he heard the tape recorded conversation for the first time in Court (before the trial Magistrate)'. The evidence of P. W. 1 and P. W. 8 very clearly shows that the voices of P.W. 1 and the appellant have not been identified. Without identifying the voices, Ex. P-13, which is a transcript of the alleged dialogue between P. W. 1 and the appellant, was prepared by P. W. 8, the Investigating Officer. It is not clear as to how in the transcript Ex. P-13, P. W. 8 is able to point out the words spoken by P. W. 1 and the appellant. Even in the transcript, we find a reference to the fact that the

conversation is not audible. The conversation is broken at a very crucial place. The appellant in his statement states that the conversation has been tampered with. P. W. 1 should have identified his voice and the voice of the appellant in the recorded conversation. But P. W. 8 admits that the tape was never played before P. W. 1. P. W. 1 himself says that he heard the tape recorded conversation for the first time in Court. The accuracy of recording has not been proved by a competent witness and the voices have not been properly identified. Under those circumstances, it is not safe to rely on this tape recorded conversation as corroborating the evidence of P. W. 1.

13. It appears that the Special Judge and Chief Judicial Magistrate have failed to notice the above circumstances which throw considerable doubt on the prosecution case against the appellant. I am not at all satisfied that the evidence let in on behalf of the prosecution excludes the reasonable doubt in regard to the guilt of the appellant.

14. As the prosecution case against the appellant cannot be said to be free from reasonable doubt, I must acquit the appellant of the offences with which he is charged. The result is that this appeal is allowed, the conviction and sentence are set aside and the appellant is acquitted.

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