

Akilesh Kumar Vs. CBI Represented By It's Public Prosecutor and Another

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Court : Kerala

Decided On : Jun-17-2011

Judge : P.S. Gopinathan

Appeal No. : CRL.A.No. 1497 of 2004(C)

Appellant : Akilesh Kumar

Respondent : CBI Represented By It's Public Prosecutor and Another

Judgement :

"CR"

1. The appellant, a former telephone mechanic in the office of the Junior Telecom Officer, Bharat Sanchar Nigam Ltd. (BSNL), Ichilamkode Telephone Exchange, Kasaragod was found guilty by the Special Judge(SPE/CBI)-II, Ernakulam, for offences under Section 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as 'PC Act'). Consequently, he was convicted and sentenced to rigorous imprisonment for six months and a fine of Rs. 3,000/- under Section 7; and rigorous imprisonment for one year and a fine of Rs. 5,000/- under Section 13(2). Assailing the above conviction and sentence, this appeal was filed.

2. The facts leading to the case is that PW3, a resident of Kasaragod District, was doing business at Sullia in Karnataka. His cousin, who was examined as PW1, then a painter, was managing the affairs at Kasaragod. PW3 applied for a

telephone connection under the OYT scheme. Pursuant to that application, he was served with Ext.P7 demand notice to deposit Rs.10,000/-. Accordingly, deposit was made. Thereafter, he got Ext.P1 intimation which was entrusted to PW1 for further follow up action. On 12.5.2001, PW1 met the appellant at his office. He verified the records and replied that connection would be given on that day itself. The appellant asked to fetch a taxi jeep. PW1 readily obeyed. The appellant took a phone set and required cables, and proceeded to the house of PW3. The appellant inspected the house and went out stating that he had to call his officer. He went to the neighbour's house to telephone the officer. After call, the appellant demanded a sum of Rs. 1,500/- as illegal gratification. When PW1 stated that he could reply only after contacting PW3, the appellant stated that atleast Rs. 1,000/- should be paid. The appellant returned with the telephone set and the connected equipments stating that connection would be given as and when the money was paid. When intimated, PW1 was told by PW3 that connection need not be obtained after giving bribe and PW1 was asked to take appropriate steps. He went to the State Vigilance Office at Kasaragod. They directed to complain before the CBI. Telephone number was also provided to PW1. PW1 telephoned to the CBI Office at Kochi, which was attended by PW6, an Inspector. PW1 only complained that an officer in the Telephone Exchange was demanding bribe. He did not disclose the name of the officer and stated that he would disclose the name only after somebody was sent. PW3 deputed the Assistant Sub Inspector (ASI) one Radhakrishnan who contacted PW1 at his residence and ascertained that it was a genuine complaint. The matter was intimated to PW6. PW6 rushed to Kasaragod with other officials. ASI was asked to find out PW1. PW1 by the time contacted the appellant who replied that since it was raining on that day, the connection would be given on the next day. The appellant repeated his demand. PW6 was informed about the message from the appellant. PW1 was asked to meet PW6 at Enay tourist home in room No.208 where PW6 was camping. On 22.5.2001, PW1 went to PW6 and submitted a written complaint, which was marked as Ext.P2. PW6 took a photocopy of the same and forwarded Ext.P2 through a messenger to Cochin to register a case. By the time, PW6 had made arrangements to trap the appellant. He secured the presence of two independent witnesses of whom one was examined as PW2. PW6 demonstrated Phenolphthalein test. PW1 had

brought Rs.1,000/-, namely one 500 rupee note and five 100 rupee notes which were marked as MO1 series. Notes were smeared with phenolphthalein powder and put it in the pocket of PW1, through one Sivadasan, an officer of the Canara Bank, who was summoned along with PW2 to witness the trap, with instruction to PW1 to pay it only if demanded. Ext.P3 entrustment mahazar was prepared. PW6 along with PW1 and independent witnesses proceeded to the house of PW3. They took position in the neighbourhood. PW1 was sent along with PW2 with instruction to shadow PW1. Accordingly, PWs 1 and 2 waited for the appellant at the house of PW3. Since the appellant didn't turn up, PW1 telephoned the appellant. The appellant replied that since it was raining, he was late and that would be reaching soon. The appellant enquired whether there was any person along with PW1, to which, PW1 replied that his friend was there. The appellant asked PW1 to send the friend away. Accordingly as instructed by PW6, PW2 joined the trap party. A little later, the appellant along with a worker arrived and connection was given. After giving connection, the appellant called PW1 to a side room and repeated the demand for bribe. PW1 took out MO1 series and handed over. The appellant accepted the same with his right hand, put it in the back side pocket of the pants and requested PW1 to fetch an autorickshaw to return. PW1 came out and conveyed signal by combing hair as instructed by PW6. Getting signal, PW6 along with PW2 and others rushed to the house. Seeing PW6, the appellant took out MO1 series and threw away to the side of the window. PW6 disclosed his identity by showing the identity card. PW2 and others were also introduced and asked whether the appellant had accepted bribe from PW1, to which the appellant answered negatively. PW6 took Sodium Carbonate solution and the hands of the appellant were subjected to Phenolphthalein test. Right hand responded to test. The appellant was arrested. The currency notes thrown away by the appellant were seized, for which Ext.P4 recovery mahazar was prepared. The identity of the currency notes were verified with reference to Ext.P3 entrustment mahazar and satisfied that the currency notes seized from the spot are the same that was entrusted to PW1 as per Ext.P3. Ext.P5 rough sketch was prepared. The investigation was taken over by PW8, who after completing the investigation submitted the charge sheet alleging the earlier mentioned offences.

3. The appellant, who was later released on bail, responding to the process issued by the learned Special Judge after taking cognizance, entered appearance. Copy of the final report and the connected documents were furnished. Either side was heard. Finding that there are materials to send the appellant for trial, charge for the said offences was framed. The appellant pleaded not guilty when the particulars of the charge sheet was read and explained. Therefore, the appellant was sent for trial. On the side of the prosecution, PWs 1 to 9 were examined. Exts.P1 to P21 and material objects MOs 1 to 7 were marked. After closing the evidence for the prosecution, the statement of the appellant was recorded under Section 313(1)(b) of the Code of Criminal Procedure. He denied the incriminating evidence. But, he admitted his official status. In a separate written statement, the appellant stated that he saw PW1 on 15.5.2001. When PW1 requested to provide the connection at the earliest, PW1 was told that the cable laying work was over by 13.5.2001 and in the event the Junior Telecom Officer (JTO) was contacted PW1 would get the connection. On 22.5.2001, the JTO called on the appellant and asked to give connection. Since there was tool down strike on that day, the appellant stated that the connection would be given on the next day. But JTO insisted the appellant to give connection on the same day itself. Obeying the instruction given by the JTO, the appellant proceeded to the house of the subscriber along with helper Rajasekharan and connection was given. After giving connection, while he was sipping a cup of tea PW1 thrust some money into the pocket of the pants. The appellant took out the same and returned. PW1 stated that if he didn't want the money, let it be given to the helper. Stating that it was not possible the appellant put down the money at the floor. While the appellant was preparing to return, the CBI officers rushed and asked whether the appellant had accepted any money from PW1. The appellant stated that he had not accepted any amount and that the money was on the floor. The appellant was asked to point out the money and he was pulled inside the house. By the time somehow or other the money was flown beneath a table. Since the notes were not found, the appellant was beaten by the CBI officer. By the time PW1 took out the tainted notes from the bottom of the table and handed over to PW6. Responding to the call to enter his defence, the JTO and a telephone mechanic were examined as DWs 1 and 2. The learned Special Judge on appraisal of the evidence arrived at a conclusion of guilt,

consequent to which the impugned conviction and sentence were imposed.

4. I have heard Sri.Salish Aravindakshan, the learned counsel appearing for the appellant and Sri.P.Chandrasekharan Pillai, the learned standing counsel for the CBI.

5. The fact that the appellant was a telephone mechanic in the office of the JTO, BSNL, Ichilamkode Telephone Exchange, Kasaragod was not only not disputed but admitted. It was brought out by the evidence of PW5 that the appellant was working as a telephone mechanic under him. The finding of the lower court that the appellant was working as a telephone mechanic and in that capacity he would be a public servant as defined under Section 2(c) of the PC Act was not assailed before me in this appeal. In the above circumstance, I concur with the trial court and find that the appellant was a telephone mechanic as alleged by the prosecution and as such he was a public servant coming under Section 2(c) of the PC Act.

6. The evidence of PW7, Assistant General Manager (Administration) BSNL would show that he was the authority competent to appoint and remove the appellant from office and that he got the copy of the final report along with the connected documents and after verifying the records he issued Ext.P16 order according sanction to prosecute the appellant. The evidence of PW7 and Ext.P16 was also not assailed by the learned counsel for the appellant. Having gone through Ext.P16 and the evidence of PW7, I find no reason to reject the evidence of PW7 or Ext.P16. Therefore, I concur with the trial court and find that the appellant was prosecuted with due sanction as contemplated under Section 19 of the PC Act.

7. In support of the charge, the prosecution would rely upon the testimony of PWs 1, 2 and 6 coupled with Exts.P3 and P4 Mahazar. PW1 would depose that his cousin PW3 had applied for a telephone connection under the OYT scheme, for which he had deposited Rs.10,000/- and that on deposit, Ext.P1 intimation was given to PW3. Since PW3 was doing business at Sullia, PW1 was looking after the affairs of the house of PW3 at Heroor in Kasargod District. PW3 entrusted Ext.P1 to PW1 with request to take necessary steps for getting the connection. PW1 would further depose that on 12.5.2001 he went to the telephone exchange and

met the appellant with Ext.P1. The appellant got Ext.P1 from PW1. After verifying the registers, the appellant offered to give connection on the same day. As requested by the appellant a taxi jeep was called by PW1. The appellant with a telephone set and cables accompanied PW1 to the house of PW3. After inspecting the house, he went out stating that he wanted to contact the officer. PW1 followed the appellant. The appellant, while returning to the house of PW3, after telephoning demanded Rs.1500/- as illegal gratification. PW1 stated that he could not give without contacting PW3. Hearing that, the appellant left the scene with telephone set and cables. When contacted, PW3 told that PW3 didn't want connection by paying bribe and PW1 was requested to take appropriate steps. Further evidence of PW1 is that he went to the local vigilance office, from where it was told that PW1 had to contact CBI at Cochin for which telephone number was provided. PW1 contacted the CBI office at Cochin. Responding to the call PW6, the Inspector, enquired about to which PW1 stated that an employee in the telephone exchange had been demanding bribe. Though PW6 asked to disclose the name of the officer demanding bribe, PW1 told that he would disclose only if somebody was sent to him. Thereafter, one Radhakrishnan, a subordinate of PW6, met PW1 and ascertained the facts. After ascertaining the facts, Radhakrishnan told PW1 that he would further contact him after discussing the matter with the superior officers. On 21.5.2001, PW1 was again contacted and asked to meet PW6 who was camping in room No. 208 of Enay tourist home, Kasargod. PW1 met the appellant at about 4.30 p.m. PW1 was told that since it was heavily raining, the connection could be given on the following day. The appellant repeated his demand for bribe and stated that connection would be provided only on payment of the money. On the following day at about 8.a.m., PW1 went to Enay Tourist Home, met PW6 and gave Ext.P2 written complaint. PW1 would further depose that after taking a copy, Ext.P2 complaint was sent to the office. PW6 had arranged PW2 and one Sivadasan as witnesses. In their presence Phenolphthalein test was demonstrated. PW6 took MO1 series from PW1, smeared with some powder and returned with instruction to hand over the same to the appellant only on repetition of demand. One of the witness who handled MO1 was asked to dip his hands in a solution taken in a glass. The colour of the solution turned pink. Ext.P3 mahazar was prepared by PW6 in which PW1

had attested. Thereafter, PW1 along with PW6 and other witnesses proceeded to the house of PW3. PW2 was asked to shadow PW1. PW1 was instructed to introduce PW2 to the appellant as a friend. PW6 and party took position in and around the neighbourhood. Though they waited till noon, the appellant didn't turn up. When informed to PW6, PW1 was advised to contact the appellant over phone. Accordingly, PW1 contacted the appellant over phone and came to understand that the appellant would be reaching soon. The appellant enquired whether there was any other person in the house. When PW1 mentioned about PW2, the appellant asked PW1 to send him away. When this message was informed to PW6, PW6 called back PW2 to the team. The appellant along with one helper reached there and connection was given. After giving connection, the appellant demanded bribe. Then PW1 took out MO1 series and gave it to the appellant which he accepted with his right hand, kept inside the back pocket of the pants and requested PW1 to fetch an autorickshaw to return. PW1 came out and conveyed the signal. PW6 along with PWs 1, 2 and others rushed to the house. Seeing PW6 and the party, the appellant took out the currency notes from his pocket and threw away to the side of the window. PW6 introduced him and others to the appellant. When asked whether the appellant had received any money from PW1, the appellant answered negatively. The hands of the appellant were subjected to Phenolphthalein test to which the right hand responded. Both the solutions were sealed in separate bottles. When asked about the money, the appellant pointed out the currency notes to the CBI officers. As asked by PW6, one of the witnesses took MO1 series, the identity was verified with reference to Ext.P3 and satisfied that the currency notes were the same mentioned in Ext.P3. After providing a Dothi to the appellant, the investigating officer got the pants of the appellant and the pocket of the pants was tested with the liquid. The pocket side of the pants became pink. The solution was taken in a bottle and sealed. A mahazar was prepared in which he had affixed his signature. Ext.P4 was identified as the mahazar.

8. PW2 is an Assistant Administrative Officer employed in New India Assurance Company, Kasaragod Branch. He would depose that as asked by the Branch Manger he had been to the office of PW6. One Sivadasan from Canara Bank was also there. They were appraised about the complaint of PW1. MO1 currency notes

were obtained from PW1 and phenolphthalein test was demonstrated. PW2 would further depose that after smearing phenolphthalein powder over MO1 series it was put inside the pocket of PW1 through Sivadasan with instruction that PW1 should not touch it except for giving to the appellant. Ext.P3 mahazar was prepared wherein he is an attester. PW2 was requested to shadow PW1 and to witness the transaction between PW1 and the appellant. Thereafter they proceeded to the spot. PW6 and party took positions. PW2 was sent to the house of PW3 along with PW1. Though they waited till noon the appellant didn't turn up. As instructed by PW6, PW1 telephoned the appellant. After telephoning, PW1 stated that the appellant would reach within half an hour. PW6 instructed PW2 to leave the house and to join them. He would further depose that by about 3 p.m. the appellant reached there in an autorickshaw along with a helper and connection was given. By about 4.30 p.m. PW1 came out and conveyed the signal as instructed by PW6. Getting signal PW6 along with PW1 and PW2 rushed to the house. Seeing PW6 and others the appellant took out currency notes from the pocket of the pants and threw away to the side of window. Thereafter, the hands of the appellant were subjected to Phenolphthalein test. Test on the right hand responded and that MO3 is the solution used for phenolphthalein test. MO4 is the solution used for phenolphthalein test on the left hand. The appellant was provided a dothi and got the pants. Pocket of the pants was subjected to phenolphthalein test which also responded and that MO5 is the solution. MO6 is the pants. PW2 would further depose that the currency notes thrown by the appellant was taken by Sivadasan as instructed by PW6 and the identity was verified with reference to Ext.P3. The appellant was arrested and Ext.P4 mahazar, wherein PW2 is an attestor, was prepared. A search of the house was also made by PW6. MO7 was identified as the clothes used for sealing MO3 and MO4 bottles.

9. PW3 would depose that he is a cousin of PW1 and that he who was having business at Sullia in Karnataka had applied for a telephone connection and that Ext.P6 is the application form and responding to Ext.P7 demand notice, Rs.10,000/- was deposited and that in the absence of PW3, PW1 was looking after the affairs and that Ext.P1 is a communication received from the telephone department and that it was entrusted to PW1 for follow up action and that on 15.5.2001, PW1 informed over phone that the lineman was demanding Rs.1,000/-

as bribe. PW3 instructed PW1 not to pay bribe, but to take appropriate steps for getting the connection.

10. PW4, the Assistant Director in the office of the Chief General Manager, Telecom would prove Ext.P6 application and Ext.P7 memo. He would depose that Ext.P7 is the memo issued to the customer and that copy was forwarded to the JTO for providing connection and that Ext.P8 is an advice memo issued and that the department was bound to give connection within six months.

11. PW5 would depose that he was Junior Telecom Officer (JTO) having charge over the Ichilamkode Exchange during the year 2001 and that upon receipt of Ext.P8 it was noted in the advice note book, which was marked as Ext.P9 and that Ext.P9(a) (serial No.4) is the entry relating to Ext.P8, and that on getting advice, connection should be given to the party subject to the feasibility and that the appellant was instructed to give connection. He would further prove Ext.P10 attendance register and Ext.P11 stores register. He would also depose that PW3 was entitled to get telephone connection in accordance with the seniority and that the appellant had not informed PW5 regarding any non-feasibility.

12. PW6 had given evidence corroborating with the evidence of PWs 1 and 2 regarding the trap.

13. PW8, the Inspector, CBI, had investigated the case and submitted the chargesheet. Ext.P17 was proved as the FIR registered on the basis of Ext.P2. PW9 was the night watchman who was accompanying the appellant as a helper for providing the connection. He would depose that he was along with the appellant for providing connection to PW3 and that after providing connection the appellant was apprehended by the CBI.

14. The evidence of PW1 which I mentioned earlier would show that the appellant demanded Rs.1,000/- as illegal gratification for providing telephone connection to PW3. The demand was on 12.5.2001. Initially the demand was for Rs.1,500/-. When PW1 stated that it was for PW3 to decide, the appellant reduced his demand to Rs.1000/-. PW3 had deposed that on 15.5.2001, PW1 had telephoned him and reported that the lineman was demanding Rs.1,000/- as bribe. Evidence

of PW3 is relevant under Section 6 of the Evidence Act. In Ext.P2, PW1 had stated in unambiguous terms that the appellant demanded Rs.1,500/- for providing connection and later it was reduced to Rs.1,000/-. Regarding the demand, there is only the evidence of PWs 1, 3 and Ext.P2. The further evidence of PW1 would show that on 22.5.2001 after providing telephone connection the appellant repeated the demand and it was then MO1 series were handed over to the appellant which he accepted with his right hand and kept inside the pocket of the pants. Though PW2 was sent along with PW1 to oversee and overhear the transaction between the appellant and PW1, later PW2 was withdrawn by PW6 when PW1 stated that the appellant asked to sent out the person who was along with PW1. So, regarding the acceptance by the appellant, there is no direct evidence other than that of the evidence of PW1. The evidence of PW1 would further show that after the appellant accepting the tainted currencies, PW1 came out and conveyed signal. The evidence of PWs 2 and 6 would show that on getting signal they rushed to the house of PW3 along with Sivadasan and PW1. PWs1, 2 and 6 are harmonious that seeing them the appellant took away the tainted notes from the pocket of pants and threw to the side of the window. Carefully going through that much evidence, I find no reason to disbelieve. It instil confidence. That evidence would show that till PW6 and party rushing to, the appellant was keeping that amount in his pocket. It is an indication that the appellant voluntarily accepted the same. It was thrown only when PW6 and party rushed to on apprehending that he would be caught redhanded. The evidence of PWs 1, 2 and 6 would further show that when the hands of the appellant was subjected to phenolphthalein test the right hand responded and the solution turned pink. Regarding the entrustment of MO1 series to PW1 for giving as bribe on demand, the evidence of PW1, 2 and 6 is corroborated by Ext.P3. Ext.P3 contains the description of the tainted currency notes. After phenolphthalein test on the hands of the appellant, when PW6 asked the appellant as to where was the money received from PW1, the appellant pointed out MO1 series lying near the window. The evidence of PWs, 1, 2 and 6 would show that PW6 asked Sivadasan, an officer of the Canara Bank, to take it, It was taken out, verified and satisfied that the currency notes are the same entrusted to PW1 as per Ext.P3. The evidence of PWs 1, 2 and 6 also would show that the pocket of the pants of the appellant was

subjected to phenolphthalein test which also responded and the pocket of the pants turned pink. The evidence of PWs 1, 2 and 3 on that aspect was corroborated by Ext.P4 recovery mahazar. By the above evidence recovery is established beyond doubt. The question then remains is whether the above evidence is believable to come to a conclusion of the guilt of the appellant.

15. The defence that PW1 deliberately thrust MO1 series into the pocket of the appellant despite his resistance and that the appellant soon threw away MO1 series from his pocket is belied by the evidence of PWs 1, 2 and 6 that seeing PW6 and party the appellant took out MO1 series from the pocket and threw away. That defence would show that in fact the appellant did concede that he had touched MO1 currency notes. Therefore, the evidence of PWs 1, 2 and 6 that the right hand of the appellant and the pocket of the pants of the appellant responded to phenolphthalein test is believable. Referring to the evidence of PW5, it was argued by the learned counsel that on 12.5.2001 the appellant was on field duty from the early office hours; and that he had taken two telephone sets and equipments for providing connection to OYT 84 and 85 and according to PW5 it would take about 9 hours for providing connection. Basing upon that evidence, the learned counsel would submit that there was little chance for PW1 meeting the appellant on 12.5.2001 to make a demand for bribe. I have carefully gone through the evidence of PWs 1 and 5. The consistent evidence of PW1 is that he contacted the appellant on 12.5.2001. In cross examination, it was stated that to his memory it was by about 11.30.a.m. - 12'O clock. In Ext.P2 it is stated that it was at 10.a.m. PW1 met the appellant first time. Whatever may the time, the evidence of PW5 is not at all convincing to come to a conclusion that the appellant had never come to the office on 12.5.2001. Probably, PW5 might not have seen the appellant on that day. That does not mean that the appellant was not available in the office, or that PW1 had not met the appellant on 12.5.2001. At this juncture, it is crucial to note that PWs 4 and 5 had deposed that PW3 was entitled to get the telephone connection on seniority basis. Ext.P9(a) would show that the application of PW3 was registered as Serial No.4. Ext.P9 would further show that to Serial Nos.5, 8 and 17, connection was given on 11.5.2001. To Serial Nos. 6, 7, 11 and 12, connection was given on 12.5.2001. To Serial No.9, connection was given on 14.5.2001. To Serial No.15, connection was given on 15.5.2001 and to serial

No.10, connection was given on 17.5.2001. Ext.P9 would show that the above connections were given out of priority. PW3 was entitled to get connection before giving connection to SI.No.5. The learned counsel for the appellant would submit that the right to get connection on seniority basis is subject to the feasibility and that the cable was drawn only on 13.5.2001 to give connection to PW3 and it was for that reason the telephone connection to PW3 was delayed. As against that argument, the learned standing counsel for the prosecution would submit that PW5 had in unambiguous terms stated that the appellant had not reported any non-feasibility for providing connection to PW3 on seniority basis. Neither Ext.P9 nor Ext.P11 would contain any material to come to a conclusion that to give connection to PW3 on seniority basis there was any sort of impediment. Having due regard to Exts.P9 and P11 and the evidence of PWs 4 and 5, I am persuaded to come to a conclusion that PW3 was denied connection on seniority basis for reason best known to the appellant. That means there was attempt to delay the connection and to persuade to grease the palms. In this view of the matter, I find little reason to disbelieve the evidence of PW1 regarding the demand made by the appellant.

16. The learned counsel for the appellant relying upon the decision reported in Panalal v. State of Maharashtra [1979 SC 1191] submitted that the bribe giver is in the position of accomplice and unless there is corroboration it is not safe to rely upon the evidence of the bribe giver. According to the learned counsel, giving bribe to a public servant is abetment punishable under Section 12 of PC Act and 109 of the IPC. To have a correct appraisal of the argument of the defence counsel, I find that it would be appropriate to read Section 107 of IPC which defines abetment.

"Section 107. Abetment of a thing:-

A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of

that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing."

To constitute an abetment of a crime if reliance is given to Section 107 IPC, firstly there shall be instigation. Secondly there shall be an engagement with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to that doing of that thing and thirdly there shall be intentional aids by an act or illegal omission, by doing of that thing.

17. A careful reading of the evidence of PW1 and 3 would show that PW1 and PW3 were not amenable to pay bribe and to get connection. PW3 had in fact advised PW1 not to get the connection after giving bribe. Therefore, the evidence of PWs 1 and 3 would show that they had no intention to give bribe and to get the connection. Instead of getting connection after giving bribe PW1 first went to the State Vigilance Cell and made complaint. Advised by the State Vigilance Cell he had contacted PW6 and in pursuance to that, the trap was arranged. Ext.P2 complaint also would show that PW1 was not at all willing to pay bribe or to instigate or to persuade the appellant to accept bribe as a motive or reward to provide connection. The evidence on record would show that MO1 series was provided to PW6 by PW1 only to trap the appellant and to establish that the appellant had demanded bribe. Such giving of MO1 series to trap the appellant at the advice of PW6, who is an officer authorised to investigate a crime like this and then given to bribe taker would not amount to any of the three ingredients coming under Section 107 to constitute an abetment. On an anxious consideration of the evidence of PWs 1 and 3, I find that there was no intention on the side of PWs 1 or 3 to abet the appellant to accept the bribe. It is also pertinent to note that the request of PWs 1 and 3 was not for doing anything out of order but their demand was to get a telephone connection in the order of seniority to which PW3 was entitled. In the above circumstance, I find no merit in the submission made by the learned counsel for the appellant that PW1 is an accomplice and his evidence cannot be relied upon unless it is corroborated by independent evidence.

18. In P.Krishna Pillai v. State of Kerala [1989(1) Crime 700], referring to various decisions of the Apex Court including the one in State of U.P. v. G.K. Ghosh {AIR 1984 SC 1453}, it was observed by the learned Judge in paragraph 7 that

"A person like P.W.1 who does not yield to the demand of a public servant for bribe, but informs the concerned police officers and co-operates with them for offering bribe on demand in order to book the culprit and thereby eradicate a social evil by becoming a party to a legitimate trap cannot be condemned as an abettor and disbelieved. Such a person has not been dubbed by the Supreme Court as an abettor and relegated to the position of an accomplice."

19. Having due regard to the evidence of PW1 and 3 I find no reason to arrive at a divergent conclusion. The learned counsel for the appellant advanced a contention that there was failure on the side of PW6 to register the crime as soon as Ext.P2 was obtained, that Ext.P2 was sent to the office for registering the crime and that before registering the crime the investigation was started. Referring to Section 154(1) of the Code of Criminal Procedure and Section 5(3) of the Delhi Special Police Establishment Act, 1946, the learned counsel would submit that PW6 being an officer in the rank of the Inspector, he would come within the category of the officers entitled to hold the post of Station House Officer. Therefore, he would have registered the crime as soon as Ext.P2 was obtained. Referring to a decision reported in H.N. Rishbud v. State of Delhi [1955 SC 196] it was argued that the failure to register the crime as soon as Ext.P2 was obtained is violation of the mandate of law and it can no way be cured by registering the crime subsequently after proceeding with the investigation. According to the learned standing counsel, the CBI unit was having headquarters at Cochin and PW6 received the complaint at Kasaragod and that soon it was sent to Cochin to register the crime because there was no facility available at Kasaragod to register the crime and that the Superintendent of Police was in charge of the headquarters and since the Superintendent of Police was in the Station, the conduct of PW6 in forwarding Ext.P2 to register the crime was in accordance with the Criminal Procedure Code, Rules and the standing instructions and that there was no violation at all. The fact that PW6 was competent to hold the post of a Station House Officer is not disputed. But, according to the learned standing counsel, since Superintendent of

Police was the Station House Officer and was available in the headquarters, PW6, who was a subordinate of the Superintendent of Police, was not in a position to register the crime. In support of his argument that PW6 was a subordinate of the Superintendent of Police, who was a Station House Officer, the learned counsel would rely upon the decision reported in State v. A.N.Dhyaneswaran [2004 Cr.L.J.2802]. For a correct appraisal of the argument advanced by the learned counsel for the appellant, I find that a reading of Section 154(1) of the Code of Criminal Procedure would be appropriate. Section 154(1) reads as follows:

154. Information in cognizable cases:-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State government may prescribe in this behalf."

Section 154(1) would mandate that as soon an information relating to the commission of a cognizable offence is received to an officer in charge of a police station, it shall be reduced to writing or cause to be written; and be read over to the informant; and every such information, whether given in writing, or reduced to writing, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. No doubt, the Station House officer is bound to maintain such a register in the police station. Admittedly, it is being maintained in the police station. But, no police officer is expected to carry the same on tour. Therefore PW6 was not in a position to record Ext.P2 in the register maintained for that purpose. Since Ext.P2 was obtained to PW6 while on tour, the only course open to PW6 was to forward Ext.P2 to the head office with request to register a crime. The evidence of PW6 would show that as soon as the complaint was received the matter was conveyed to the Superintendent of Police and he proceeded with the trap on instruction from the Superintendent of Police. That

evidence of PW6 was not at all assailed. So there is nothing on record to show that there was any violation of Section 154(1) of the Cr.P.C. In the event, PW6 waited till Ext.P2 was sent to Cochin and to register a crime that would only pave a room for the appellant escaping from the clutches of law. The intermittent delay would no way affect the action of PW6. In this view of the matter, I find that the trap arranged by PW6 was no way illegal or irregular.

20. The evidence of PWs 1, 2 and 6, which I mentioned earlier, would show that the right hand of the appellant was subjected to phenolphthalein test, the sodium carbonate solution turned pink. Even by the defence version, it is revealed that the appellant had handled MO1, of course, to throw it away from the pocket in which it was allegedly thrust by PW1. The question then remains is whether the prosecution story is believable or the defence story is believable. I have a critical analysis of the evidence of PWs 1, 2, 3 and 6. PWs 1, 2, 3 and 6 were subjected to searching and lengthy cross examination. There is nothing suggested to PWs 1, 3 or 6 to suggest that they had got any animosity against the appellant to implicate him with an offence like the one on hand. The appellant has no case that PWs 2 or 6 was any way motivated against him. There is also nothing on record to suggest that PW6 was anyway susceptible to the influence by PW1, even if, PW1 had any such ulterior motive to implicate the appellant. In this view of the matter, I find that the evidence of PWs 1, 2 and 6 instil confidence. The story that PW1 thrust MO1 series into the pocket of the appellant does not appear to be probable. As I mentioned earlier that defence is belied by the evidence of PWs 1, 2 and 6 that seeing PW6 and party the appellant took MO1 series from his pocket and threw to the side of the window. As I mentioned earlier, Ext.P9 would show that PW3 was denied connection in the order of priority. The delay to give connection is an indication regarding the motive of the appellant. That is also a circumstance against the appellant. In short, on a critical reappraisal of the evidence, I find little reason to diverge with the conclusion arrived at by the learned Special Judge. I find that the conviction under challenge is based upon cogent evidence. There is no reason for interference. The sentence awarded is only the minimum prescribed by the statute and it is no way illegal or harsh. So, the sentence also requires no interference.

In the result, the appeal fails. Accordingly, it is dismissed.

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