

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

Pronounced on : 26.12.2023

Case: CRA No. 1/2004

Mohammad Assadullah Lone,
S/o Khazir Mohammad Lone,
R/o Chatoosa Rafiabad,
Sopore.
Police Constable No: 139.

.....Appellant..

Through: Mr. M.A.Qayoom, Advocate.

Vs

State of Jammu and Kashmir
Through Vigilance Organization
Kashmir.

..... Respondent..

Through: Mr. Mohsin S. Qadri, Sr. AAG.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The appellant has filed the present appeal against the judgment dated 23.06.2004 passed by the learned Special Judge (Anti-Corruption), Kashmir. The appellant-accused faced trial for commission of offence under Section 5 (2) P.C.Act read with Section 161 RPC arising out of FIR No. 29/1998 registered with the Vigilance Organization, Kashmir and held guilty and sentenced to undergo imprisonment for a period of two years for offence under Section 5 (2) P.C.Act Act as well as for offence under Section 161 RPC. Both the sentences are to run concurrently. The appellant was also held liable to pay fine of Rs.2500/- each for aforesaid offences and in case of default of payment of fine the appellant was to undergo simple imprisonment for three

months. The appellant shall be referred to as accused in the appeal in hand for discussion purposes.

2. The respondent has appeared in the appeal and contested the same.
3. The brief facts leading to the challan are that Vigilance Organization Kashmir received information through letter from Dy. Director prosecution that it was learnt through reliable source that some officers/officials of Traffic Police Department are indulging themselves in corrupt practices as they demand money from the drivers of some vehicles in presence of senior officers at different places in Jammu as well as in Kashmir province and particularly on National Highway and this resulted into registration of FIR No. 29/1998 with Police Station V.O.K on 12.05.1998.
4. In the case in hand, the Investigating Officer with Executive Magistrate and other team members left for Dalgate Traffic Point in private minibus No. 4283/JK01. The accused was found at Dalgate crossing managing the traffic. In order to lay trap, the driver of the minibus PW-Mohd. Ashraf Bhat was handed over two currency notes of Rs.50/- denomination each and was required to pay the currency notes, signed by the Executive Magistrate, to the traffic personnel on demand as entry fee by the accused. The accused stopped the vehicle-minibus, demanded bribe and amount is stated to have been paid by the driver in the traffic booth and was caught red handed while receiving bribe amount from the driver and the money was recovered and sizure memo prepared of seized currency notes as EXPWMR-1. The investigation resulted into presentation of challan.
5. The charges were framed against the accused under Section 5 (2) P.C.Act read with Section 161 RPC. The accused did not plead guilty and claimed to be tried by the court. The prosecution produced evidence in support of its case. On closure of the prosecution evidence the statement of the accused under Section 342 Cr.P.C was recorded wherein he denied the charges. No evidence was produced in defence.

It is profitable to give brief statements of prosecution witnesses before analyzing their statements.

6. PW-Mohd. Ramzan Rather is the Special Tehsildar Recovery and is part of the investigation and attended the office of Vigilance Organization on 12.05.1998. The witness had signed the two currency notes of denomination of Rs.50/- and noted the numbers of the currency notes. As per the witness, the minibus was parked on the left side of the road. The accused asked the driver that vehicle could not be parked there and then driver proceeded towards the traffic booth. Two Inspectors from the Vigilance Department also came down from the minibus and reached traffic booth. He also visited the spot. The accused was searched and from the right side pocket of the pant of the accused two notes were recovered and were the same which were signed by him. The seizure memo of personal search of accused was prepared and signed by him and is marked as EXPW-MR. The witness identifies the notes in question. As per the witness, no document with regard to the proceedings taken in the Vigilance Office was prepared. He was sitting on the right side of the minibus and on the back side of the driver seat. The witness does not know whether the recovery memo was prepared on spot though he states that the personal search of the accused was done in the Vigilance Office. The witness has denied that the personal search of the accused was conducted at Dalgate.
7. PW-Mohd. Ashraf Bhat is the driver of the minibus who is stated to have offered the currency notes to the accused. The very important witness has denied any role in the incident and was declared hostile. He has denied all the assertions made by the prosecution during the course of cross-examination. He has even denied the statement attributed to him under Section 161 Cr.P.C and also contents of seizure memo though admitting the signatures on the same.
8. PW-Bashir Ahmed is Constable who has deposed about the steps taken in the vigilance office. He along with other officials also reached the place of occurrence Dalgate. He has stated that he was looking at the

accused so as to see if the accused demands bribe from the driver of the vehicle. The accused took the driver towards the traffic booth and was talking to him and in the meanwhile the accused received money from the driver of the vehicle and kept it in the right side of his pant. All the team members did not witness the occurrence as it took inside the traffic booth. The driver informed about the payment made to the accused and thereafter the accused was caught hold of by the Vigilance team and the money was recovered from the right side pocket of the pant of the accused. On cross-examination, the witness has deposed that when the driver entered the traffic booth with the accused the witness was standing with other team members on the other side of the road. The driver informed that the accused has accepted the bribe money. Neither he nor other team members could see the receipt of the money by the accused from the driver. He does not know from where the currency notes were obtained by the Vigilance team.

9. PW-Farooq Ahmed Shah is conductor of the minibus No. 4283 and he too has been declared hostile by the prosecution. He has no knowledge of occurrence having taken place at Dalgate as alleged by the prosecution. The prosecution could not elicit any information from the witness.
10. PW-Riaz Ahmed was posted as P.O in the Vigilance Organization. He has deposed about the information received regarding the gratification being received by the traffic officials on the National Highway. He was associated with the team. As per the witness, the minibus conductor called the passengers to board the vehicle and for being carried to Anantnag. The accused approached the minibus and asked for route permit of the vehicle from the driver which he did not possess. The accused asked the driver to come down from the vehicle and accused took the driver inside traffic booth. The accused demanded Rupees hundred from the driver and received two currency notes of rupee fifty each. PWs-Nasir Khan and Mohd. Saleem entered the traffic booth and caught the accused red handed and money was recovered from the right

side pocket of the pant of the accused. The notes were identified by the Magistrate on spot and seized. The personal search was also conducted of the accused. The seizure memos are marked as EXPW-MR and EXPW-MR1 to which he is signatory. The witness has further deposed that the notes were handed over by the driver of the minibus to the Magistrate and the Magistrate after signing the same handed back the notes to the driver at the time of constitution of the team. He does not know as to who had given the currency notes to the driver. He had followed the accused to traffic booth and was stationed opposite the booth. The accused did not demand bribe in words but demanded the bribe by rubbing his fingers and then accused and driver went inside the booth. He had himself seen the driver handing the money to the accused in the traffic booth which is enclosed by three sides and was open on one side. There remains traffic on the road but there was no disturbance of the traffic at that moment as the bribe was taken in just a minute or so. He did not enter the booth immediately on seeing the bribe being taken as PW Mohd. Saleem and others had already caught hold of the accused. PW-Mohd. Saleem had recovered the money from the pants of the accused in the presence of the magistrate. He did not hear the accused demanding money from the driver but saw the accused demanding bribe through signal.

11. PW-Mohd. Yousuf Kully was also posted in the Vigilance Organization in May 1998 as selection grade constable. The witness states that the minibus was parked at Dalgate crossing and the conductor was calling for the passengers for being taken to Anantnag. The accused came on spot and asked the driver of the minibus to produce the route permit. The driver along with accused went towards traffic booth and he along with others followed them. It was on receiving of the signal that the accused was searched and money was recovered from the accused though he does not know how much amount was recovered. It was driver who had informed that he had handed over the money to the accused. He is also signatory to the

seizure memos regarding the recovery of bribe money and personal search of the accused. As per the witness the distance between the place where the minibus was parked and traffic booth is 20 ft. to 25 ft. as there is road in between two spots. The road normally remains busy because of traffic. The notes were recovered by Magistrate in presence of I.O. and all the notes mentioned in both seizure memos were recovered from same pocket. The two currency notes were recovered after the arrest of the accused.

12. PW-Abdul Rashid was also posted as Constable with the Vigilance and was associated with the team. As per the witness the accused came on spot and the conductor proceeded towards the traffic booth. The witness has also deposed about the recovery of the money from the right side pocket of the pant of the accused. He was also near the other members of the trap team. He is also witness to the recovery memo EXPW-MR1. The witness also deposes of a 50 ft. wide road between the vehicle and the traffic police booth. The booth was closed on three sides. He did not enter the traffic booth along with Mohd. Yousuf. No other traffic official was present on the spot. He conducted the search of the accused.
13. PW-Abdul Nasir Khan who was inspector in the Vigilance Organization at that time was also member of the trap team. As per the witness, the team had gone to Dalgate in a minibus where it was parked on the one side of the road and the team members got down from the vehicle. The accused approached the bus driver and had conversation with him which he could not hear. The driver and the accused proceeded towards traffic booth where the driver handed over the two currency notes of Rs.50/- each to the accused. He along with PW-Mohd. Saleem searched the pant of the accused and recovered the amount from the pocket of the accused. The notes bear the signature of the Magistrate. The statement of this witness is otherwise no different from the statement of the other prosecution witnesses and is more on the procedure carried out during the occurrence.

14. PW-Mohd. Saleem Khan is the I.O in the case and has deposed of the briefing given to the team members. The driver of the minibus bearing No. 4283/JK01 was asked to park the vehicle at Dalgate crossing opposite traffic booth. The driver of the minibus was instructed that the vehicle be loaded with passengers for being carried to Anantnag and in case the traffic official approaches the driver and seeks bribe he should handover the money to that official. The witness speaks of the accused approaching the vehicle and the accused asking the driver to come to traffic booth. The accused demanded bribe from the driver in the traffic booth and the driver handed over to tainted notes to the accused and this was noticed by all the team members. The Vigilance team reached the spot and surrounded the accused as soon as the accused received the bribe notes. The notes were recovered from the right pocket of the pant of the accused by PW-Abdul Rashid and the notes were identified by the Magistrate who identified his signatures on the notes. The witness also speaks of other formalities carried in the matter. On cross-examination, the witness states that many teams were constituted after the FIR was registered. The team was sent on verbal orders of Commissioner Vigilance. He does not know from where the currency notes were obtained and no panchnama was prepared of handing over of the currency notes to the driver. As per the witness, the road is 16 ft. wide at the place of occurrence. The pant was not seized from where the money was recovered.
15. Mr. M.A.Qayoom, learned counsel appearing for the appellant has argued that the very essential ingredient of the demand of bribe has not been proved not to speak of accepting the same by the accused from the driver of the minibus who has otherwise turned hostile in the case. The learned trial court has proceeded more on assumption than on evidence on record to hold that the bribe was demanded by the accused and also accepted during the course of alleged occurrence. It is also pleaded that the sanction is not proved and further the sanctioning

authority had not applied its mind before granting the sanction to prosecute the accused.

16. Learned Senior Additional Advocate General has argued that the prosecution has proved its case against the accused and the trial court has rightly analyzed the prosecution evidence before holding the accused guilty in the case. The sanction has been duly given by the competent authority and no fault can be found in the same.
17. The alleged occurrence of 12.05.1998 wherein the accused is alleged to have demanded and accepted the bribe of Rs.100/- in the shape of two currency notes of Rs.50/- each has landed the accused in the court of law for bribe charges and also found guilty of offences in which he was charged by the court. The demand of bribe followed by the acceptance of the same by the accused are required to be proved by the prosecution before the court holds the accused guilty of commission of offence under P.C. Act. In the case in hand, the team was constituted as there was complaint that the traffic police personnel indulge themselves in corrupt practices on the National Highway and the FIR was lodged. It is suffice to mention herein that the FIR does not mention of any accused who is stated to be indulging in corrupt practices. The team was constituted by the Vigilance and dispatched to Dalgate. The minibus bearing registration No. 8113/JK01 was hired for the purpose and the minibus along with the team members reached Dalgate where the passengers were to board the vehicle for being carried to Anantnag. The driver of the vehicle is stated to have been approached by the accused and demanded route permit of the vehicle and the driver alighted from the vehicle and proceeded to the traffic booth with the accused where the alleged bribe was demanded by the accused and the bribe money of Rs.100/- was handed over by the driver to the accused. The accused was caught on spot when the transaction took place between the driver and the accused and thereafter the further proceedings took place which on completion resulted into filing of

charge sheet in the court of law for the offences in which he was ultimately tried.

18. The bribe was demanded by the accused from the driver of the vehicle is required to be proved by the prosecution through its evidence produced in the case. PW-Mohd. Ashraf Bhat is the driver of the vehicle who has not supported the prosecution case in any manner except that the vehicle was taken to Dalgate as per the directions of the vigilance officials. He has not even in a remote manner deposed that the money was demanded from him or that he handed over the same to the accused. He is the witness who is supposed to have handed over the money to the accused after the same was demanded by the accused from this witness in the traffic booth. The witness has only identified his signatures memos but categorically denied the contents of those memos. It cannot be but said that in a trap case the so called bribe giver is the star witness. At the same time, it is not that in case the so called bribe giver turns hostile and does not support the prosecution case, the same has to result in the dismissal of the challan if the other evidence otherwise supports the prosecution case and the same is believed by the court. However, in the case in hand the statement of this witness assumes importance as he was only supposed to be with the accused in the traffic booth. PW-Farooq Ahmed Shah is the conductor of the minibus and he too has been declared hostile and no positive response could be elicited from the said witness when examined by the prosecution. PW-Bashir Ahmed Constable has tried to advance the case of the prosecution by stating that the accused received the money from the driver of the vehicle after the accused took the driver towards the traffic booth and both of them had conversation. At the same time, the witness has also deposed that it was the driver who informed the team that the payment has been made and thereafter the accused was caught and searched. The witness himself demolishes the case of the prosecution as he states that neither he nor any other member of the team saw the accused taking the bribe money. It appears that the

witness only supposes that the accused must have received the bribe money from the driver of the vehicle and nothing more.

19. Another important witness in the case is PW-Riaz Ahmed who was posted in the Vigilance department as P.O. He was part of the team constituted on the lodging of FIR and had gone to Dalgate along with other team members where the occurrence is stated to have taken place. He also speaks of the accused approaching the minibus driver and asking for the route permit and the driver being told to come to traffic booth. As per the witness, the accused has demanded illegal gratification from the driver of the minibus and received the two currency notes from the driver. The important feature of the statement of the witnesses and on which the learned trial court has also relied upon heavily is that the accused had sought the bribe with a sign by rubbing his fingers though the accused did not orally demanded money. The trial court has observed that it is a practice in the traffic department that the bribe shall be obtained in such a manner. It appears that the trial court has taken this finger sign as if the finger sign had a statutory backing and accepted norm. The trial court could not have relied upon the so called sign from the accused as an indication of asking for bribe from the driver of the minibus. How the trial court could interpret the statement of the witness regarding the finger sign given by the accused as having asked for bribe is not understandable. The court could not have made presumption of demand of illegal gratification by the accused on the aforesaid sign alleged to have been made by the accused. The statement of the witness to this effect cannot be accepted as undisputed gesture from the accused that he had demanded the bribe from the driver of the minibus. The trial court has assumed something which was not required to be done by it. The witness having observed the handing over or taking over of the bribe money during the course of occurrence is remote when it has come in the statement of this witness as well as in the statements of other witnesses that the traffic booth was closed from three sides and was open from one side only. The alleged

transaction is stated to have taken place inside the traffic booth. The witness observing the whole transaction personally is doubtful more so when PW-Bashir Ahmed had stated that it was the driver of the vehicle who had informed of the transaction having taken place and thereafter the team recovering the bribe money from the accused. The statements of other witnesses when viewed also do not inspire confidence in the court. PW-Mohd. Yousuf Kully has only deposed that it was only after the signal was received that the search of the accused was conducted and money recovered from the person of the accused. He also states that the driver had informed of the money having been handed over to the accused meaning thereby that the witness had not seen the alleged transaction which took place between the accused and the driver of the minibus. The witness also admits that the distance between the minibus and the traffic booth was 20 ft. to 25 ft. and the members of the team remained stationed near minibus when the driver along with the accused proceeded towards the traffic booth. PW-Abdul Rashid is also Constable in the Vigilance department and is part of the team constituted by the Vigilance. He too does not disclose that he heard the accused seeking bribe from the driver of the minibus nor that he saw the driver handing over the money to the accused though speaks of the recovery of money from the pocket of the accused. He also states of the 50 ft. wide road between the place where the vehicle was parked and the traffic booth and further that there was traffic on the road and the traffic booth was closed from three sides and open from one side only. The witness further clears that neither he nor Constable Mohd. Yousuf entered the traffic booth. Infact he only says that none of the witnesses accompanied him to the booth. The statement of PW-Abdul Nasir Khan is also on the same lines as he states only of the driver handing over the amount to the accused.

20. What can be analyzed from the statements of the prosecution witnesses in nut-shell is that it can be safely concluded by the court that none of the prosecution witnesses had heard the accused seeking bribe from the

driver of the minibus who had himself not supported the prosecution case. There was no occasion for the team to hear the conversation, if any, between the accused and the driver of the minibus as the same happened within the traffic booth which was enclosed from three sides and was open from one side only. Any team member having seen the occurrence that is the conversation if any that might have taken place in the traffic booth or handing over and accepting of the bribe money in the booth is remote and unbelievable. The team member, if any, standing near the minibus could not otherwise possibly see the alleged transaction taking place inside the booth when there was some distance between the minibus and the traffic booth and the vehicles plying on the road. PW-Mohd. Ramzan Rather is Executive Magistrate who has been examined in the case has only deposed of recovery of the amount from the accused and the currency notes bearing the same number which had been noted by him in the Vigilance Office. He too appears to have not witnessed to the occurrence. He has indeed stated of being witness to the seizure memo prepared of the recovery of the amount from the right side of the pant of the accused and has stated by the other witnesses examined by the prosecution. EXPW-MR1 and EXPW-MR are the seizure memos prepared in the case and relate to recovery of the amount in question and also the other amount and material recovered from the person of the accused. The recovery of money from the right side pant of the pocket of the accused even if believed is not sufficient to prove the guilt of the accused unless the other two factors of demand and acceptance of bribe stand proved by the prosecution which from the discussion above is evident that the prosecution has not been able to prove the same. Merely because number of witnesses stand examined in the challan does not mean that the case stands proved by the prosecution against the accused. It is when credible evidence comes on record and connects the accused with the commission of offence only then the accused can be held liable for the offence in which he stands charged by the court.

21. PW-Mohd. Saleem Khan is the Investigating Officer in the case who had also been part of the trap team. His statement by itself is not proving the case of the prosecution against the accused when the court has not believed the statements of other witnesses having witnessed the occurrence.
22. Who conducted the search of the accused in the case in hand is not credibly proved by the prosecution. PW-Riaz Ahmed states that it was PW-Mohd. Saleem I.O who had searched the pocket of the accused, on the other hand, PW-Abdul Rashid deposes that it was he who conducted the search of the accused. PW-Abdul Nasir Khan in his statement has deposed that he along with PW-Mohd. Saleem searched the pant of the accused. PW-Mohd. Saleem I.O has deposed that PW-Abdul Rashid had recovered the currency notes from the pant of the accused. The inconsistency in the statements of the prosecution witnesses qua the search of the accused from whom the currency notes are alleged to have been recovered is writ large which cannot be ignored and is a serious lacuna in the prosecution evidence. This is indeed fatal for the prosecution.
23. In 1983 KLJ 1 titled 'Khurshid Ahmad Khan v. State' this court held that the demand made by the accused must be positively established and further that the bribe was consciously accepted.
24. It may be mentioned herein that it is not proved by the prosecution that the witnesses who alleged that they had witnessed the occurrence otherwise were in a position to watch the whole proceedings which took place in the traffic booth. The positioning of each witness at the time of the alleged occurrence that is when the accused demanded the bribe and accepted the same and even placed the bribe money in the pocket of the pant is not clear from the prosecution evidence. The Investigating Officer has prepared the site plan which is marked as EXPW-MSK. As per the site plan in the note prepared qua the marks mentioned in the site plan it is mentioned that the witnesses were stationed at mark D. Which witness was stationed at a particular point

is not mentioned in the note which was required as it has not come in the prosecution evidence that all the trap members who had proceeded towards the traffic booth were infact positioned at same place. It appears that in the site plan mark 'C' mentioned near the traffic booth is infact mark 'D' but inadvertently marked as 'C'. It may also be noted that the traffic booth was closed by three sides and open from one side. It is not again evident from the site plan which side of the traffic booth was open from where the witnesses could allegedly witness the occurrence. More clarity in the site plan could help the prosecution and the court ultimately to find if the witnesses could have witnessed the alleged occurrence as tried to be projected by the prosecution but the same has not happened.

25. The court has to give benefit of doubt to the accused in the case who has been accused of demanding and accepting bribe of mere Rs.100/- from the driver of the minibus who had himself demolished the case of the prosecution. The inconsistency in the statements of the prosecution witnesses, as analyzed above, has only weakened the prosecution case. No presumption can be drawn from the prosecution evidence that the accused either demanded the money or consciously accepted the same in the traffic booth from the driver of the minibus as projected by the prosecution. The factual aspects of the case do not prove that the prosecution has been able to prove its case against the accused beyond reasonable doubt which could result into holding the accused guilty of the offences in which the charges are framed against him.
26. Learned counsel for the accused has also argued that the sanction has not been as per law. The sanction granted for the prosecution of the accused has not been proved and thus the same is also fatal for the prosecution. Learned AAG has submitted that the sanction has been obtained for prosecuting the victim for the offence committed by him cannot be disputed and the same is on the file. There is no flaw in the order dated 10.11.1998 whereby the sanction was granted for

prosecuting the accused for the offence under Section 5 (2) of the P.C.Act.

27. The precise submission of the counsel for the appellant is that the sanctioning authority has applied its mind while granting the sanction is not visible. It is just that certain facts were brought to the notice of the sanctioning authority and thereupon the sanction has been granted. The Court is in agreement with the argument of the accused. The perusal of the sanction order does not prima facie reveal that any material was placed before the competent authority for analyzing the same before the sanction could be granted. The sanction is not but a mere formality and is perfunctory in nature. The prosecution cannot prosecute the accused with a half baked sanction order.
28. In 1979 AIR SC 677 titled 'Mohd. Iqbal Ahmed v. State of A.P', the Hon'ble Apex Court has dealt with the importance of sanction and duty of the sanctioning authority before granting sanction for prosecuting the accused under P.C.Act.
29. The learned counsel for the appellant has argued on some other issues which need not be gone into keeping in view the discussion made above which itself clinches the acceptance of the appeal filed by the accused. Thus, analyzing what has come on record it can be said that the argument of the prosecution that as it has been proved beyond doubt that the tainted money has been recovered from the right side pocket of the pant of the accused and it is sufficient to hold the accused guilty is not sustainable in law. At the cost of repetition, the requirement is the demand of bribe and acceptance of the same by the accused is to be proved by the prosecution before the accused can be held guilty of the offence but is not proved in the present case by the prosecution. The accused cannot be held guilty on mere presumption and surmise. The argument is also raised by the appellant on some other points which need not be gone into in view of the fact that the factual aspects of the case themselves do not come to the rescue of the prosecution and have dented its case.

30. The court holds that the prosecution has failed to prove its case against the accused for the offences in which the accused was charged by the trial court. The appeal is accepted and the judgment of the trial court is set aside. The accused is acquitted of the charges. The accused is on bail. The bail bonds furnished by the accused in the appeal shall stand discharged.

31. Disposed of.

Jammu :
26.12.2023
Pawan Chopra



(Puneet Gupta)
Judge

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable: Yes/No