

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1560 OF 2010

(@ SPECIAL LEAVE PETITION (CRL.) No.2742 of 2010)

KESHAV DUTT

... APPELLANT

VS.

STATE OF HARYANA

... RESPONDENT

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. Two short points fall for consideration in this Appeal. One is whether the opinion of a handwriting expert can be admitted in evidence

without examination of the handwriting expert and the other is whether a person who is charged of an offence under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and is subsequently acquitted of the charge under Section 7, can still be convicted under Section 13(1)(d) of the aforesaid Act.

3. The Appellant and one Kewal Kumar were convicted by the Special Judge, Yamuna Nagar at Jagadhari, under Section 13(1)(d) of the Prevention of Corruption Act, 1988, and were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for a further period of six months. The co-accused Mahesh Kumar was, however, acquitted of all the charges.

4. According to the prosecution, on 23rd April, 2002, one Anil Kumar, son of Kewal Prakash Mehta, made an application to the Superintendent of

Police, Vigilance, Ambala, stating that he was running a dairy adjoining his house. On 19th April, 2002, Kewal Kumar and the Appellant herein, who were employed as Assistant Lineman and Meter Reader, respectively, under the Electricity Board, Sadhaura, came to his house for checking the electric meter. After such checking, the said Anil Kumar was made to sign on a paper and was informed that the load in the meter was in excess of the permissible load and the matter would have to be reported to the Board which could entail a fine of at least Rs.14,000-15,000/-. The accused persons then informed him that he would have to pay a sum of Rs.7,000/- as bribe if he wanted the case to be hushed up. The further case of the prosecution is that on 25th April, 2002, both the accused came to Anil Kumar's house and, once again, demanded the bribe money and ultimately the said two accused agreed to accept a sum of Rs.2,000/- between 4.00-5.00 p.m. on the next date, failing which the case

against him would have to be made ready, but if payment was made, the matter would be hushed up.

5. The matter was endorsed by the Superintendent of Police to the Vigilance Inspector before whom the complainant produced Rs.2,000/- for the purpose of laying a trap. Ultimately, the accused Kewal Kumar as well as Mahesh Kumar came to the complainant's house and went inside and on a signal being given, the members of the raiding party went inside the house and asked Kewal Kumar to hand over the bribe money which he had taken from the complainant. Kewal Kumar indicated that the money had been given to Mahesh Kumar and on demand Mahesh Kumar made over the same to the Inspector. The hands of both Kewal Kumar and Mahesh Kumar were got washed separately in a solution of Sodium Carbonate, the colour of which turned pink. The accused were put under arrest and after police

investigation, a charge sheet was filed against them in Court for their trial.

6. All the three accused were charged under Section 7 read with Section 13(1)(d) of the above-mentioned Act and were convicted and sentenced as mentioned hereinbefore. The judgment and order of the Trial Court was questioned before the High Court in Criminal Appeal No.427-SB of 2005 filed by Keshav Dutt, the Appellant herein, and Criminal Appeal No.438-SB of 2005 filed by Kewal Kumar. The third Appeal No.1328-SB of 2009 was filed by the State of Haryana against the acquittal of Mahesh Kumar of the charges framed against him. The High Court while affirming the judgment of the Trial Court as far as Kewal Kumar and the Appellant are concerned, reduced the sentence of imprisonment from three years to one year. The High Court also dismissed the Appeal preferred by the State.

7. It is against the said order that the present Special Leave Petition has been filed.

8. The main contention of Mr. Nitin Sangra, learned Advocate appearing for the Appellant, is whether a charge under Section 120-B IPC could be maintained against the Appellant in respect of an offence committed by his co-accused. Elaborating further, learned counsel also raised the question as to whether the Appellant's conviction under Section 13(1)(d) of the Prevention of Corruption Act, 1988, was maintainable when the accused had been acquitted under Section 7 of the Act and the Appellant neither received the bribe money nor was he present when such bribe amount was said to have been paid to the co-accused and no charge under Section 120-B/34 IPC had been brought against the accused persons.

9. The other question raised was whether without examining the handwriting expert his report could

have been admitted into evidence and relied upon although the same formed the main basis of conviction. In this regard, the learned counsel placed reliance on the decision of this Court in State of Maharashtra Vs. Damu [2000 (6) SCC 269], wherein while considering the case of abducting and triple infanticide, this Court had occasion to consider whether reliance could be placed on the opinion of the Assistant State Examiner of Documents without examining him as a witness in Court. This Court held that from the opinion itself it could not be gathered whether his office would fall within the purview of Section 293 Cr.P.C. Accordingly, the Court observed that without examining him as an expert witness, no reliance could be placed on his opinion. Learned counsel urged that the conviction of the Appellant on the basis of the above could not be sustained.

10. The submissions made on behalf of the Appellant were opposed on behalf of the State of Haryana and it was submitted that the provisions of Sections 7 and 13(1)(d) contemplated separate offences which could stand independently and were not entirely dependent on each other. Learned counsel urged that even if an accused was acquitted of the charge under Section 7, he could still be convicted under Section 13 of the Prevention of Corruption Act, 1988, as has been done in the instant case. It was observed by the High Court that PW.5 had categorically stated that he had not authorized accused Kewal Kumar as also the Appellant to check the meter installed at the residence of the complainant and that it was because of this reason that the Trial Court had excluded this accused from the offence under Section 7 of the Act. The Trial Court, in fact, observed that the complaint Ex.PJ was written by some official of the Vigilance Department or by someone at the instance of the

Inspector and even the complainant could not identify the person who had written the complaint. However, as far as the offence under Section 13(1)(d) is concerned, the High Court affirmed the findings of the Trial Court that the bribe money had been demanded and received by the accused persons. The Appeal Court also observed that the bribe money had been initially received by Kewal Kumar who had handed over the same to Mahesh Kumar, who was acquitted by the Trial Court. However, the document Ex.PR which bears the signature of the complainant, coupled with Ex.PY, the report of the Forensic Science Laboratory, connected the Appellant herein with the commission of the crime and it was held that he could not be allowed to go free only because he was not present or apprehended at the time of the raid. Learned counsel for the State submitted that the submissions made on behalf of the Appellant did not justify interference of

this Court with the impugned judgment of the High Court.

11. We have considered the submissions made on behalf of respective parties and have also taken note of the fact that the Appellant had neither received the bribe money nor was he present at the spot when the same was received by Kewal Kumar, who handed over the same to Mahesh Kumar, but the involvement of the Appellant did not require the presence of the Appellant at the time of the raid as he was connected with the offence in view of Ex.PR which is the paper on which the meter reading was jotted down allegedly by the Appellant, which was proved by the handwriting expert to be in the handwriting of the Appellant. In this context, the plea taken on behalf of the Appellant as to whether the opinion of the handwriting expert could have been relied upon without examining him becomes relevant. The Trial Court has dealt with this

question by taking recourse to Section 73 of the Indian Evidence Act, 1872, which enables the Court to compare the signatures, writing or seal with others admitted or proved. In the instant case, the report of the fingerprint expert who had not been examined indicates that a specimen writing had been given by the Appellant and on a comparison of the same with the writings in Ex.PR, the fingerprint expert had come to the conclusion that they had been written by the same person. The Trial Court skirted the issue by holding that the defence counsel could have examined in their defence to rebut the findings of the Assistant Director, Forensic Science Laboratory, Haryana. The High Court also skirted the issue by observing that the science of handwriting being imperfect and inaccurate, it is very difficult, if not impossible to give the opinion that the writings were in the hand of one and the same persons. The High Court went on to observe that the Appellant did not have

the courage to examine any counter expert in rebuttal of the report. The High Court recorded that the report having gone unrebutted could be relied upon without any demur.

12. We are afraid that we cannot concur with the views either of the Trial Court or of the High Court in the above regard. When the Trial Court chose to rely on the report of the handwriting expert (Ex.PR), it ought to have examined the handwriting expert in order to give an opportunity to the Appellant and the other accused to cross-examine the said expert. There is nothing on record to show that the Appellant and the other respondents had admitted the report of the handwriting expert. In our view, the Trial Court ought to have allowed the Appellant an opportunity to cross-examine the expert and both the Trial Court and the High Court erred in denying him such opportunity and shifting the onus on the accused to

disprove Ex.PR which had not been formally proved by the prosecution. The decision cited on behalf of the Appellant regarding reliance on the opinion of an expert who had not been examined as a witness, however, includes an Assistant Director of the State Forensic Science Laboratory in clause (e) of Sub-section (4) of Section 293 Cr.P.C. Section 293(1)(4)(e), which is relevant for our purpose is extracted below :-

293. Reports of certain Government scientific experts.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) xxx xxx XXX

(3) xxx xxx xxx

(4) This section applies to the following Government scientific experts, namely,

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) The Director [Deputy Director or Assistant
Director of a Central Forensic Science
Laboratory or a State forensic Science
Laboratory];

(f) xxx xxx xxx"

13. In the instant case, it is only the report of the handwriting expert, Ex.PY, which connects the Appellant with the offence on account of Ex.PR which is said to be in his handwriting. Since the Appellant had neither received the money nor was he present at the spot from where the other accused were apprehended, his case has to be treated on a different footing and since his complicity has not been established beyond doubt on the basis of Ex.PR and Ex.PY, he must be given the benefit of doubt.

14. Without, therefore, going into other questions which have been raised in this Appeal, we are of

the view that the same should be allowed on the aforesaid ground alone.

15. The Appeal, accordingly, succeeds and is allowed and the judgment of conviction and sentence of the Appellant under Section 13(1)(d) of the Prevention of Corruption Act, 1988, is set aside. In the event, the Appellant has since been apprehended and is in custody, he shall be released forthwith, if not wanted in connection with any other case.

.....J.
(ALTAMAS KABIR)

.....J.
(DR.MUKUNDAKAM SHARMA)

New Delhi,
Dated: 19.08.2010.