

(1963) 12 AHC CK 0011

Allahabad High Court

Case No: Criminal Appeal No. 1041 of 1962

Gopal Krishna

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 16, 1963**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 156, 161, 161(3), 169, 367
- Evidence Act, 1872 - Section 133

Citation: AIR 1964 All 481 : (1964) CriLJ 497**Hon'ble Judges:** H.C.P. Tripathi, J**Bench:** Single Bench**Advocate:** S.B. Jauhari and P.C. Chaturvedi, for the Appellant; M.M. Chaturvedi, for the Respondent**Final Decision:** Allowed

Judgement

H.C.P. Tripathi, J.

Appellant Gopal Krishna has filed this appeal against his convictions u/s 161 I. P. C. and u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act recorded by the Special Judge, Aligarh. Appellant has been sentenced to one year's rigorous imprisonment for each of the two offences, and, both the sentences have been directed to run concurrently.

2. In May 1961 the appellant and one Mangal Sen were posted as Marketing Inspector and Senior Marketing Inspector respectively at Aligarh and in their capacity as such public servants, they used to check the accounts or stocks of the licencees of foodgrains for ensuring the proper observance of the provisions of the U. P. Foodgrains Dealers Licencing Order, 1959. Both of them were prosecuted for having committed offences u/s 161 I.P.C. and the appellant was also charged u/s 5(i)(d) read with Section 5(2) of the Prevention of Corruption Act (Act II of 1947) while Mangal Sen was further charged u/s 165A, I.P.C. and were tried together by the

learned Special Judge of Aligarh who gave benefit of doubt to Mangal Sen but convicted the appellant as indicated above,

3. The prosecution case lies in a short compass.

4. There is a partnership firm M/s. Naubat Ram Chandrapal owned by two brothers Naubat Ram and Chandrapal, at Aligarh, which holds licence for dealing in foodgrains and vanaspati ghee. The shop and godown of the firm is situated in Mohalla Mahabirganj. Satya Prakash (P. W.) was the Munim of the firm. This firm was also a wholesale dealer and it used to maintain regular account of its dealings and also a stock register. On 18-5-1961 at about 10.30 A. M. the appellant and Mangal Ram, Senior Marketing Inspector inspected the shop of this firm and verified the actual stock in its godown with reference to its stock registers. They found 68 bags of rice which had been shown in the stock register of the firm as pledged with the bank and out of their possession present in the godown and within their possession. Chandrapal, his brother Naubat Ram and their Munim Satya Prakash were present at the time of the inspection and tried to explain this divergence between the stock of rice as found in the godown and the relevant entries in the stock register, as the result of a bona fide mistake which they admitted to have committed in making a wrong entry in the stock register, and begged to be excused.

The appellant and his colleague directed them not to sell the rice without obtaining their prior permission and also obtained a writing (Ex. Ka 1) to this effect from Chandrapal. Mangal Sen then took the stock register in his possession along with the writing given by Chandrapal, and, when Chandrapal entreated him again to excuse them for their mistake in making wrong entries in the register, Mangal Sen told him that it was not a minor affair and he could be sent to jail for the offence committed by them. He asked Chandrapal to see him at his house in the evening at about 6 P. M., and then both of them left the shop along with the stock register and the writing (Ex. Ka 1) given by Chandrapal.

5. Chandrapal, as desired, went to the house of Mangal Sen in Mohalla Raghubirpur the same evening at 6 P.M. He found Mangal Sen and the appellant present there. He again requested them to excuse him and again received the same reply from Mangal Sen that it was not a minor affair and he could be sent to jail. Chandrapal requested Mangal Sen to return the writing and the register whereupon Mangal Sen said that they could be returned only if he could pay him Rs. 200/-. Chandrapal asked the amount to be reduced but Mangal Sen did not agree. Chandrapal told Mangal Sen that he had not brought the necessary amount but will pay him the same at his shop on the next day between 11 and 11.30 A.M. if he could come there.

6. Next morning, on 19-5-1961, Chandrapal went to the residence of the District Magistrate with a written complaint (Ex. K2) and met him at about 10 A. M. The District Magistrate endorsed his complaint to the Superintendent of Police for necessary action. Chandrapal met the Superintendent of Police also within half an

hour at the residences of the District Magistrate and the Superintendent of Police passed order on his complaint directing the Dy. Superintendent of Police (Complaints) to take necessary action for entrapping the accused, and asked Chandrapal to contact him. From there Chandrapal went straight to the Dy. Superintendent of Police (Complaints) but he was not available at his residence and was to return in the flight. He, therefore, returned to his shop at about 5.30 P.M. and within a few minutes of his reaching there both the appellant and Mangal Sen, reached his shop and told him that they have brought the stock register and writing which they would return on receiving from him Rs. 200/-. This demand of money, again, was made by Mangal Sen and not by the appellant. Chandrapal, however, expressed his inability to pay the amount as he could not arrange the same and entreated them to come next morning between 11 and 11.30 A.M. for receiving the amount.

7. On 20th May, 1961, Chandrapal again went to the residence of Dy. Superintendent of Police (Complaints) and met him at about 8.30 A.M. and handed him over his complaint (Ex. Ka 2) with the endorsements of the District Magistrate and Superintendent of Police. Thereafter he returned back to his shop.

8. The Complaints Officer, as arranged previously, reached the shop of Chandrapal at about 10.30 A.M. accompanied by his peon Rampal and occupied the third compartment of the shop which had two door leaves there being no door leaves in between the first and the third compartments. He sat near the door after closing it and through the chinks things happening in the first compartment were visible, the distance between the two compartments being 8 or 9 feet only. He sent for witnesses Prakash Chandra and Sone Pall through his peon and when they had arrived he read out the written complaint of Chandrapal and told them that they should hear the talks between Chandrapal and the Marketing Inspector who would come for taking bribe and they should also witness the actual taking of the amount. Complainant Chandrapal gave 20 currency notes of Rs. 10/-each which were initialed by the Complaints Officer and the two witnesses. The Complaints Officer after noting their numbers on a piece of paper (Ex. Ka 3) returned the notes to Chandrapal and asked him to hand them over to any one who would come for accepting the bribe. He also asked Chandrapal to cough after having made the payment of the bribe, so that the Complaints Officer may immediately be able to come up and take proceedings against the wrong-doer. So tutored by the Complaints Officer, Chandrapal and the two witnesses went to the first compartment of the shop and sat there awaiting for the arrival of the appellant and Mangal Sen,

9. Within half an hour, the appellant and Mangal Sen came to the shop of the complainant Chandrapal and placed there bicycles on the way in front of the shop. Mangal Sen instructed Gopal Krishna, appellant, to return the Writing (Ex. Ka 1) and the stock register (Ex. 1) on taking Rs. 200/-from Chandrapal and then himself went

away on his bicycle saying that he was going to inspect, some other shops in the neighbourhood. Accused Gopal Krishna placed his bicycle against the door of the first compartment of the shop and sat on a chair near the seat of the complainant Chandrapal. He told Chandrapal that he had brought the writing and the stock register and was prepared to return the same on receiving Rs. 200/- as settled previously. Chandrapal again requested for a reduction in the amount to which he did not agree but promised to help him in some other matter in future. Chandrapal then took out the signed currency notes from inside his cash box and hand coned them over to Gopal Krishna, appellant, who after counting placed the same in the right pocket of his pant. As prearranged Chandrapal coughed, and the Complaints Officer then came out from the place where he was sitting and arrested the accused. He disclosed his personal identity and asked the appellant to take his personal search as of the witnesses.

After taking the personal searches of the Complaints Officer and the witnesses, appellant Gopal Krishna put his right hand in his right pocket of the pant, as a result of which one out of the 20 signed currency notes fell to the ground. The Complaints Officer at once picked it up. He then took the search of the person of the appellant and recovered 19 signed currency notes, a few other currency notes, some change, the writing (Ex. Ka 1) from the right pocket of his pant and also made certain recoveries from his left pocket. He kept all the articles recovered, in a sealed envelope and prepared a recovery list (Ex. Ka 4) in respect of the same. He also took the bicycle of the accused (Ex. 10) in his possession and recovered the stock register (Ex. 1) and the diary of the appellant as well as a file with 17 papers (Ex. 11) and a booklet (Ex. 12) from the carrier of the bicycle and prepared a recovery, list (Ex. Ka 5) of the articles. He asked Gopal Krishna the reason for his taking bribe but the appellant said that he will make his statement afterwards. Gopal Krishna asked the Complaints Officer to call the Senior Marketing Inspector from the neighbouring shop whereupon Satya Prakash Munim, was sent to call him but he was not found. The Complaints Officer then took the accused and the recovered articles to the police station Kotwali and handed them over to the Incharge of the police station. He also wrote out a narration of the incident (Ex. Ka 6) on the basis of which a First Information Report was prepared and a case as indicated above was registered against Mangal Sen and the appellant.

10. The Complaints Officer then immediately took up the investigation of the case, left for the scene of occurrence and reached the shop of the complainant at about 2 P. M. There he recorded the statements of Chandrapal, Prakash Chandra and Sone Pal. After recording the statements of some other witnesses, he prepared a site plan of the shop (Ex. Ka 9). He searched for Mangal Sen but he was not available. He also recorded the statement of Sri Mahendra Pal, the then Deputy Regional Marketing Officer, Aligarh. Accused Mangal Sen surrendered himself in Court on May 29, 1961. After completing the investigation he submitted , his report along with the connected papers including the case diary to the Regional Food Controller, Meerut,

through the Superintendent of Police, for according necessary sanction for the prosecution of the two Marketing Inspectors. On July 7, 1961. the Regional Food Controller, Meerut, sanctioned the prosecution of both the Inspectors, on receipt of which the Complaints Officer submitted a charge-sheet against them in Court.

11. In his statement u/s 342 Cr.P.C. the appellant denied the charges and urged that he went to the shop of Chandrapal for physical checking of his stock but the stock register was not available. He then got busy in inspecting the account books of Chandrapal. Soon after he felt some sensation in the , pocket of, his pant on the right side. He then struck his right hand forcibly towards the back and turned round and saw that some ten rupee currency notes fell on the ground from the hand of Chandrapal. Chandrapal began collecting the notes when the Complaints Officer came out from inside his shop and said that the appellant had accepted bribe. Chandrapal had currency notes of Rs. 190/- in his hand and one ten rupee note was picked up from the ground by some one and handed over to the Complaints Officer, He admitted to have checked the account and godown of the complainant on 18-6-1961 along with Mangal Sen and to have found a discrepancy in his act counts, but he denied his presence on 18-5-1961 at the house of Mangal Sen when Chandrapal had gone there, and he also denied to have visited his shop on 19-5-1961. He also denied to have asked for a bribe of Rs. 200/- from Chandrapal for returning the Stock Register and the document Ex. Ka. 1. He produced 2 witnesses in his defence.

12. The question which arises for consideration is, whether the appellant did negotiate for any bribe and ultimately accepted Rs. 200/- from the complainant Chandrapal as illegal gratification for returning the writing (Ex. Ka 1) and the Stock Register to him, instead of taking legal action against his firm for having contravened the provisions of U. P. Foodgrains Licencing Order by making incorrect entries in their stock register.

13. The prosecution case rests on the testimony of complainant Chandrapal as corroborated by the Complaints Officer Sri Bal Singh (P..W. 7) and the two recovery witnesses Prakash Chandra and Sone Pal (P. Ws. 2 and 3).

14. Learned counsel for the appellant has contended that as the Complaints Officer "Sri Bal Singh was the principal architect of the trap, he acted with material irregularity in assuming also the role of investigator in the case. Learned counsel contends, that. Bal Singh being a highly interested witness in the success of the prosecution case, could not have brought about a detached mind for ensuring a fair and above-board investigation, and the impropriety committed by him in this regard, has resulted in vitiating the trial.

15. Learned counsel invited my attention to an observation of Brother Uniyal, J. made in his judgment in Ram Swarup v. State, Criminal Appeal No. 2130 of 1960 D/- 3-5-1961 (All. That case had also been investigated by Sri Bal Singh and the learned

Judge had commented on him as follows:

"I may point out that it was not proper for Sri Bal Singh to conduct the investigation of this case when he was himself a witness, at the trial. Strangely enough he even recorded his own statement in the General Diary, as if that could carry any conviction."

Learned counsel also invited my attention to a judgment of Brother Mathur, J. in Criminal Appeal No. 1710 of 1961 (All) in which certain adverse comments have been made on the statement of Sri Bal Singh who had sent up that case fⁿc trial.

16. "Investigation" includes all the proceedings under the Code for collection of evidence ducted by a police officer. It primarily consists in the ascertainment of the facts and circumstances of the case. If, upon the completion of the investigation, it appears to the officer conducting investigation, that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, and may also submit a final report to the magistrate for dropping the proceedings. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he has to take necessary steps therefore as provided under the Code by submitting a charge-sheet before a magistrate for his trial. From this, it is clear that the investigating Officer is required not only to collect evidence for the successful prosecution of the case but also to exercise his discretion in arriving at a decision as to whether the case is fit for trial. It is, therefore, just and expedient that the person entrusted with the investigation should be one who is not unduly interested in the case, and is not personally acquainted with its facts. In this light, I agree with the contention of the learned counsel that it was extremely improper on the part of Sri Bal Singh to have taken upon himself the investigation, when he was going to be examined at the trial as a principal witness conversant with the facts of the case. However, it is only an impropriety which cannot in any manner vitiate the trial.

17. Learned counsel has also contended that Bal Singh has not been examined u/s 161 Cr. P. C. and, as such, the appellant was deprived of an opportunity of cross-examining him with reference to his previous statement, which is an unmistakable proof of prejudice to him. Reliance was placed in this connection on a decision of a Division Bench of this Court in the case of [Shankar Lal and Others Vs. The State](#), . In this case copies of statements of witnesses recorded by a magistrate u/s 164 Cr. P. C. were not delivered to the accused and they were thus deprived of the opportunity of cross-examining the prosecution witnesses with reference to their previous statements. The learned Judges constituting the Bench observed that it is a legitimate right of the accused persons to defend themselves by proving, if they can, that the prosecution witnesses had made different statements on previous occasions. By denying the copies of previous statements this precious right is taken away from them and they are to a great extent handicapped in their defence, It is immaterial for their purposes whether this unfortunate result accrues on account of

any dishonest motive or sheer negligence on the part of the prosecution.

18. Learned counsel contends that where the statement of an important witness of fact is not recorded u/s 161, Cr. P. C., the interest of the accused stands prejudiced in the same manner and to the same extent, as where the statement has been recorded but its copy has not been supplied to him for the purpose of cross-examining the witnesses, as in both the cases the accused is deprived of the opportunity of confronting the witnesses with their previous statements. Learned counsel contends that the statement of such witness should be excluded from consideration.

19. Section 161(3) runs as follows:

"The police officer may reduce into writing any statement made to him in the course of an examination under this section"

20. Section 164 (1) also provides that

"Any Presidency Magistrate, any Magistrate of the First Class may record any statement or confession made to him in the course of an investigation under this Chapter."

The word "may" as used in Section 164 came up for comment in the case of AIR 1936 253 (Privy Council) and their Lordships were pleased to observe as follows:

"It can hardly be doubted that a magistrate would not be obliged to record any confession made to him if, for example, it were that of a self-accusing mad man or for any other reasons the magistrate thought it to be incredible or useless for the purposes of justice. Whether a magistrate records any confession is a matter of duty and discretion and not of obligation"""

In the case of [Purshottam Jethanand Vs. The State of Kutch](#), it was held:

"There can be no doubt that the right which the accused had got of obtaining the copies of the statements made by witnesses during investigation is a very valuable right and that the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial as held by the Privy Council in Kottaya v. Emperor AIR 1947 PC 67,"

21. In the case of [Tilkeshwar Singh and Others Vs. The State of Bihar](#), it was held that while the failure to comply with the requirements of Section 161(3) Cr. P. C. might affect the weight to be attached to the evidence of the witnesses, it does not render it inadmissible.

22. On the basis of these authorities, it is obvious that though the police are not bound to make a record of the statement of the witnesses u/s 161 as a matter of obligation, it is their duty to do so when the witness is a material witness for unfolding the prosecution story. It is also clear that a failure on their part to comply

with the requirements of Section 161(3), though does not render the subsequent statement of the witness at the trial inadmissible, it does greatly impair the value of the evidence of that witness. I am, therefore, of opinion that the statement of the Complaints Officer Bal Singh at the trial though admissible in evidence has lost much of its weight on account of the fact that his statement was not recorded u/s 161, Cr. P. C.

23. In the light of above discussion of the legal questions raised in the case, the value of the testimony furnished by the witnesses produced at the trial has to be assessed.

24. The prosecution story consists of four parts, First part deals with the arrival of the appellant and his colleague Mangal Sen at the shop of the complainant on 13-5-1961 when they checked his account books and stock, and Mangal Sen asked the complainant to see him at his house at 6 P. M. The second part of the story relates to the visit of Chandrapal at the house of Mangal Sen where he found the appellant also present and Mangal Sen demanded Rs. 200/- as bribe, for refraining from taking any action against him. The third part of the story related to Mangal Sen and the appellant coming, to the shop of the complainant on 19-5-1961 at 5.30 P. M. and to the demand made by Mangal Sen again for the bribe of Rs. 200/- for returning the document (Ex. Ka 1) and the stock register, and the final portion of the story relates to the occurrence of 20-5-1961 which happened at 11.30 A. M. at the shop of the complainant when the amount of Rs. 200/- in signed currency notes of Rs. 10/- each are alleged to have been recovered from the possession of the appellant.

25. The only evidence in support of the first three parts of the prosecution story is that of complainant Chandrapal and the learned trial Judge has refused to rely on the same in the absence of corroboration. Learned Judge also rejected the prosecution case in respect of Mangal Sen regarding the incident which is alleged to have taken place on the 20th of May, 1961.

26. Chandrapal is an accomplice and the version given by him, unless corroborated in material particulars by independent and reliable evidence is unworthy of credit. There are certain inherent improbabilities in the statement of this witness. It appears from his statement that he was very anxious to see that he was not prosecuted for maintaining incorrect accounts. He approached Mangal Sen at his house on 18th May and it was there that Mangal Sen demanded the bribe and he promised to pay the same on 19th between 11 and 11.30 A. M. at his shop. The witness has also stated that he had asked Mangal Sen and the appellant to come to his shop at 11 A.M. but they came at about 5.30 P.M. and not at the appointed hour. The witness again put them off and asked them to come on 20-5-1961 between 11 and 11.30 A.M. It is difficult to believe that two marketing inspectors who are "fairly educated persons did not see through the game which was being played by the complainant though they were being put off again and again.

His statement that though accused Mangal Sen had left words with the appellant to realise the settled amount of Rs. 200/- from him, even then he asked the appellant to reduce the amount which led to some discussion between them, appears to be highly improbable. The amount of bribe had been settled two days earlier at the house of Mangal Sen. The witness had stated that every time the talk regarding the settlement of bribe was between him and Mangal Sen, and not with the appellant. There was no reason, therefore for the complainant to have discussed it again at his shop, specially when on his own showing the appellant was only an agent of Mangal Sen to realise the amount. It appears that he has introduced this allegation with a view to provide an opportunity to the witnesses for hearing the talk regarding the settlement of bribe.

27. Chandrapal, when questioned, gave an entirely wrong direction of the office of the Marketing Inspector in relation to his house and also of the door of his Baithak as is clear from the statement of Sri Mahendra Pal Singh (P. W. 6) the then Deputy Regional Marketing Officer. I am not prepared to place any reliance on his statement.

28. Admittedly one of the signed currency notes was found on the floor. All the eye-witnesses have stated that only the left hand of the appellant was caught by the Complaints Officer, and he dugged his right hand in the right pocket of his pant, took out one of the ten rupee notes and dropped it on the floor. This conduct on the part of the appellant, is inconceivable. If the appellant was able to put his right hand in the pocket of his pant without any obstruction, and if he had a mind to throw away the amount which he had accepted as bribe, there is no reason why he should have dropped not the entire bunch of the currency notes but only one of them on the floor as is suggested by the prosecution. The defence theory, that the complainant who had already arranged a trap, tried to thrust the bunch of the signed notes in the pocket of the appellant without his knowledge and the appellant violently pushed his hand at the back and some of the notes fell scattered on the floor cannot be ruled out as extremely improbable.

29. P. W. 2 Prakash Chandra also does not appear to be wholly reliable witness. He is a shopkeeper and was selected from a place about 100 yards away from the scene of occurrence. He admitted that there were mutual business dealings between his shop and that of complainant Chandrapal. He is also a wholesale dealer like the complainant. From his statement it appears that he is interested In the complainant and that seems to be the reason why persons of the immediate locality were left out and he was picked up to be a recovery witness. He stated that

"none prevented the accused Gopal Krishna in placing his right hand in the pocket of his pant on the right side when he threw out one of the signed currency notes..... After taking my personal search Gopal Krishna placed his hand at the right pocket of his pant and threw out one of the signed currency notes."

As stated earlier it is impossible to believe this statement because such a conduct on the part of the appellant will not be a natural conduct. According to this witness the complaints officer was in his police uniform. The other witness Sone Pal contradicted him and stated that the Complaints Officer was putting on a white "paizama", white kurta and a yellow turban. The learned trial judge has observed that at the time of the occurrence the complaints officer appears to have been in his uniform. If it is so, it is impossible to believe that, if these two recovery witnesses were at the scene at the time of the search of Gopal Krishna, they would have made such contradictory statements regarding the clothes put on by the Complaints Officer. The Uniform of a gazetted Police Officer, being Impressive, leaves an imprint on the mind and the contradiction between the statements of these two witnesses regarding the dress of the Complaints Officer cannot be explained away on the basis of lapse of memory. They have contradicted each other about the dress of the peon also. Prakash Chandra has said that the peon was putting on a white coat while Sone Pal stated that he was not putting on a white coat but was putting on a white paizama and a white kurta. There are other infirmities also in the statements of these witnesses and I do not consider it safe to rely on their testimony.

30. The Complaints Officer, Bal Singh (P. W. 7) had also stated that the accused Gopal Krishna took their personal searches and then threw down one ten rupee currency note, out of the signed notes, from the pocket of his pant on the right side. When questioned further, he said that he took precaution to prevent the culprit in throwing away the money received by him, but contradicted himself immediately thereafter by stating that, "I did not try to catch hold the right hand of the accused Gopal Krishna as I thought that his throwing away the money would not make any difference..... I did not catch hold of the right hand of the accused Gopal Krishna after he threw down one of the currency notes." It is difficult to believe this part of his statement. I have already stated that Bal Singh is highly interested witness and in view of the fact that his statement u/s 161 was not recorded his evidence¹ has lost much of its value.

31. The result is that the explanation of the appellant that the currency notes were being thrust in his pocket without his knowledge and consent cannot be held to be improbable and every reasonable possibility of his innocence has not been excluded.

32. The prosecution evidence does raise a suspicion against him, but suspicion howsoever strong cannot take the place of proof. As observed by the Supreme Court in the case of [Sarwan Singh Vs. The State of Punjab](#), that considering as a whole the prosecution story may be true; but between "may be" and "must be" there is inevitably a long distance to be travelled and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. In my opinion the benefit of doubt in this case must go

to the accused.

33. The appeal is allowed. The convictions of the appellant u/s 161, I. P. C. and u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and the sentence of one year's R.I. for each of the two offences awarded by the trial Court are set aside. The appellant is on bail, His bail bonds are cancelled and the sureties are discharged. He need not surrender.