PETITIONER:
SRICHAND K. KHETWANI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
27/09/1966

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
RAMASWAMI, V.
BHARGAVA, VISHISHTHA

CITATION:
1967 AIR 450 1967 SCR (1) 595
CITATOR INFO :
RF 1970 SC 45 (15)

ACT:
Code of Criminal Procedure, s. 232-Indian Penal Code s. 120B-Trial for conspiracy-Licences issued to bogus firms-Eight such licences issued-Whether one conspiracy or eight conspiracies-Charge.
Indian Evidence Act, ss. 45 and 114-Specimen writing of accused obtained but not sent to hand-writing expert-Court whether can consider possible reasons for not sending the same, apart from explanation given by investigating officer-Adverse inference whether may be drawn against prosecution.

HEADNOTE:
The appellant was tried and convicted along with certain others under s. 120-B read with ss. 409 and 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act. The accused were alleged, in pursuance of a conspiracy, to have arranged the issue of a number of licences for the import of motor vehicles and motor vehicle parts, to a number of cornpanies which had no existence. Against the appellant the specific allegation was that he had received the delivery by post of two such licences and had signed the acknowledgment -receipt. The appellant along with others was convicted by the trial court, and his conviction having been upheld by the High Court, he came to this Court by special leave.
The material questions that came up for consideration were : (1) whether the charge at the trial was not defective since it mentioned only one conspiracy for the issue of all the licences whereas eight licences had been issued and there were therefore eight conspiracies; (2) whether the High Court was right in taking into account reasons other than those given by the investigating officer as an explanation of his failure to send the specimen handwriting of the appellant to the handwriting expert for opinion.
HELD : (i) The charge of conspiracy was not that the conspiracy was entered into with each bogus individual firm for the benefit of that firm alone in connection with the issue of licences to that particular firm. The charge was that out of the profits made from acts done in furtherance of the conspiracy, all the persons in the conspiracy were to

benefit.[598 B-C]
The conspiracy was a general conspiracy to keep on issuing licence.-, in the names of fictitious firms and to -share the benefits arising out of those licences when no real independent person was the licensee. The various members of 'the conspiracy other than the two public, servants must have joined with the full knowledge of the modus operandi of the conspiracy and with the intention and object of sharing the profits arising out of the acts of the conspirators. It could not therefore be said that the mere fact that licences were issued in the names of eight different companies makes out the case against the appellant and the other conspirators to be a case of eight different conspiracies each with respect to the licences issued to one particular fictitious company. [598 D]
R. v. Griffiths, [1965] 2 All E.R. 448, distinguished.
(ii) The High Court could not be said to have been in error in considering other reasons besides those given by the investigating officer and
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holding that no adverse inference could be drawn against the prosecution from the fact -that the opinion of the handwriting expert had not been obtained with respect to the acknowledgment receipt. [600 C]
Further, an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained., it cannot be said what that evidence would have been and therefore no question of presuming that the evidence would have been against the prosecution under s. 114, illustration (g) of the Evidence Act can arise. [600 D-E]

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 184 of 1964.
Appeal by special leave from the judgment and order dated July 16, .1964 of the Bombay High Court in Criminal Appeal No. 1858 of 1962.
R. Jethamalani and P. Kalpila Hingorani, for the appellant.
O. P. Rana and B. R. G. K. Achar-, for the respondent.
The Judgment of the Court was delivered by
Raghubar Dayal, J. A. G. Nelson, Assistant Controller of Imports, P.H. Shingrani, Upper Division Clerk in the Quota Licensing Section of the Office of the Joint Chief Controller of Imports and Exports, Bombay, Shrichand Khetwani appellant, and Ramshankar Ramayan Bhargava, were tried of an offence punishable under s. 120-B read with s. 409 I.P.C. and s. 5(2) read with S. 5(1) (d) of the Prevention of Corruption Act. They were all convicted by the trial Court. On appeal, the High Court acquitted Bhargava and dismissed the appeals of the other three persons. The present-appeal is by Khetwani, by special leave. The. other two convicted persons have not appealed.
It may be mentioned here that the prosecution case is that in pursuance of the conspiracy, a number of licences in the name of several companies which had no existence were prepared, that some of these were actually is-sued and that two of those licences issued were in the name of M.L. Trading Co., Bombay, and were delivered to the appellant by Prabhakar, Karmik, P.W. 20, a postman, on May 15, 1959. The appellant denied having received any such licences and to have conspired -with, Nelson and Singrani. The Courts below

relied on the statement of Karmik and found that the appellant received the licences issued, in the name of the fictitious firm, M.L.Trading Co., and that- therefore the appellant was a member of the conspiracy with, which he was charged.

The correctness of the conviction of the appellant has been questioned by learned counsel on the following grounds

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1. The charge of conspiracy framed against the appellant was a charge of a single conspiracy while the facts proved establish the existence of not only a single conspiracy but of at least eight conspiracies, each , single conspiracy being related to the issue of licences to one particular company. The charge of conspiracy as laid is therefore not established.

2. Karmik, P.W.20, was an accomplice on account of the circumstances urged, but the High Court misread the evidence by stating that there was a state of intimate relationship between the appellant and Karmik.

3. The hand-writing expert should have been examined to prove that the endorsement on the postal receipt was in the handwriting of the appellant, especially when the investigating officer had obtained specimen writings of the appellant. The High Court considered certain circumstances in justification of the failure of obtaining the opinion of the hand-writing expert in addition to such explanation which the investigating officer had given.

4. The High Court sought corroboration of the statement of Karmik from a single circumstance for which there was no evidence and which was not put to the accused when examined under s. 342 Cr. P.C.

We may now set out the charge in so far as it concerns the appellant:

> "That, during May 1959, you accused No. 1 A.G. Nelson, ..., accused No. 2 P. H. Shingrani,. . . ., you accused No. 3 Shrichand Keshuram Khetwani and you accused No. 4 Ramshankar Ramayyan Bhargawa were parties with other unknown persons to a criminal conspiracy, by agreeing to do or cause to be done illegal acts, to wit, to abuse the official positions of yourselves viz., you -accused No. 1 A. G. Nelson and you accused No. 2 P. H. Shingrani by corrupt or illegal means or otherwise to have import licences for Motor Vehicle parts and specified items of Motor Vehicles parts issued in the names of bogus or unknown applicants on the basis of false numbers of quota certificates, which were never produced with applications, by misusing for the said purpose, import licence forms from out of Import Licence Books in the custody of you, accused No. 1, A.G. Nelson, and thereby to obtain pecuniary advantage, to all of you and/or. the said unknown persons, and thereby committed, an offence punishable s. 5(1) (d) of the Prevention of Corruption Act and read with section 409 I.P.C. and within my cognizance."

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The charge, as framed, describes the conspiracy to be the agreeing of the various persons, including persons not put on trial, to do or cause to be done, illegal acts. The acts to be done were the abuse ,of the official positions of Nelson and Shingrani for the issue of import licences in the

names of bogus or unknown applicants on the basis of false particulars etc., and the object of conspiring to ,do such acts by the persons in the conspiracy charged or not charged was to obtain pecuniary advantage. The charge of conspiracy was not that the conspiracy was entered into with each bogus individual firm for the benefit of that firm alone in connection with the issue of licences to that particular firm. The charge was that out of the profits made from acts done in furtherance of the conspiracy, all the persons in the conspiracy were to benefit.

The finding that the various firms to whom licences were issued were fictitious is not questioned. The conspiracy was a general conspiracy to keep on issuing licences in the names of fictitious firms and to share the benefits arising out of those licences when no real independent person was the licensee. The various members of the conspiracy other than the two public servants must have joined with the full knowledge of the modus operandi of the conspiracy and with the intention and object of sharing the profits arising out of the acts of the conspirators. We do not therefore see that the mere fact that licences were issued in the names of eight different companies make out the case against the appellant and the other conspirators to be a case of eight different conspiracies each with respect to the licences issued to one particular fictitious company.

Great reliance is placed on the case reported as R. v. Griffith (1) in support of the contention that the facts established make out the case of eight conspiracies instead of the single conspiracy charged. That case is very much different. In that case, a supplier of lime and his book-keeper and various individual farmers were charged with conspiring to commit fraud and obtain money by false pre-tences from the Ministry of Agriculture and Fisheries and Food on account of lime subsidy. It was established that there was link as between one farmer and another. None of them was in contact with another. Neither was any farmer shown to have known that any other of the farmers was contracting for the supply of lime by the supplier. It was, in these circumstances, that it was held that to constitute one conspiracy between all the farmers and the supplier of lime there had to be evidence from which it could be in feared that each farmer knew that there was or was coming into existence a scheme to which he attached himself to which there were other parties and which went beyond the act that he agreed to do so that all would be shown to have been acting in pursuance of the

(1) [1965] 2 All. E.R. 448.

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common criminal purpose and that therefore there was no evidence of conspiracy between all farmers as distinct from evidence of a number of separate conspiracies between the supplier of lime, his book-keeper and one or other of the farmers. The farmers were genuine persons in that case. Each farmer approached the supplier of lime and happened to be a party to the fraud committed in regard to the supply of lime to him. In the instant case, there is no such genuine independent company which directly approached the two public servants for its own benefit. Whoever posed for the purpose of the receipt of the licences and for utilising them were those who posed on account of the full knowledge of the conspiracy. It is not possible to believe that one without such knowledge would have posed, for a fictitious firm. We are therefore of opinion that this case does not fit in with the facts of the present case and that the contention for the appellant that the charge as framed is wrong is not

sound.
The High Court has given good reasons for holding that Karmik is not an accomplice. He was a public servant. He simply delivered the registered envelope to the appellant on being told by him a day or so earlier that he would be getting some registered cover in the name of M.L. Trading Co., and that it be delivered to him. It is in his statement that he had been delivering letters to the appellant for a few years previously. He has deposed:
"I knew the accused No. 3 for a long time before I delivered the registered cover to him. I do not think it necessary to obtain any attestation for his signatures."
The High Court cannot therefore be said to have misread. the evidence when it expressed that Karmik knew the appellant rather intimately, as Karmik's statement about knowing the appellant and delivering letters to him in the past had not been challenged. The intimacy referred to was on account of contacts which Karmik bad with the appellant in the discharge of his duty as a postal peon.
Karmik's statement that the appellant had written the endorsement on the postal receipt has been accepted by the High Court. It is not necessary to examine an handwriting expert in every case of disputed writing. The investigating officer stated that he did not send the specimen writing of the appellant for comparison with the endorsement on the postal receipt as he could not secure admitted writings of the appellant though he tried his best to obtain his admitted handwritings. He was not further questioned to explain why he considered it necessary to have admitted writings of the appellant in order to obtain the opinion of the handwriting expert about the disputed writing when specimen writings of the appellant were available. The explanation of the investigating officer seems to have been on account of practice. It appears from his statement
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that he sent certain questioned documents along with the admitted handwritings and specimen handwritings, signatures and initials of accused Nos. 1 and 2 to the Government Examiner of questioned documents. The practice may be sound or not but the bona fides of the conduct of the investigating officer cannot be questioned. The High Court, however, further considered that the material provided by the writing on the acknowledgement receipt was very scanty and the investigating officer might have felt that the subsequent handwriting would be feigned or disguised and that any comparison with the same would be deceptive. Such considerations might have been in the mind of the investigating officer but he had not stated them to be his reasons for not obtaining the opinion of the handwriting expert. The High Court cannot be said to have been in error in taking these further reasons into consideration and holding that no adverse inference can be drawn against the prosecution from the fact that the opinion of the handwriting expert has not been obtained with respect to the endorsement on the acknowledgment receipt.
Further, an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained, it cannot be said what that evidence would have been and therefore no question of presuming that that evidence would have been against the prosecution, under s. II 4, illustration (g) of the Evidence Act, can arise.
When Karmik is not held to be an accomplice, no question of

corroboration of his evidence arises once the Court believes his statement. The High Court believed Karmik and expressed the opinion:

> "On the whole we feel that Karmik is an independent and disinterested witness. There is no reason why Karmik should have perjured himself to implicate an innocent person."

It is after arriving at this opinion that the High Court observed that Karmik's evidence received indirect corroboration from the subsequent conduct of the appellant. Such conduct is said to be that the appellant waited for three or four days before approaching the Joint Chief Controller, after receiving the letter of Mishra asking him to meet the Joint Chief Controller the same evening or the next day. The accused was certainly not questioned about the reason for his not meeting the Joint Chief Controller promptly. The delay need not therefore be attributed to his guilty conscience and cannot be taken to be any corroboration of the statement of

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Karmik. This, however, does not affect the case against the appellant when Kamik's statement is believed and requires no corroboration.

The result is that the conviction of the appellant is correct. We therefore dismiss the appeal.

G.C. Appeal dismissed.,