

July 14, 2016

India Supreme Court Clarifies Standard for Enforcement of Indian Prevention of Corruption Act

Earlier this year, the Supreme Court of India clarified the standard necessary to prove violations of India's Prevention of Corruption Act, 1988 ("PCA"), in a ruling that may limit enforcement of the PCA and that has potential ramifications for multinational companies operating in the country. The PCA is India's major anti-corruption law, and is designed to combat corruption in government agencies and public sector businesses. Among other things, the PCA prohibits public servants from "taking gratification other than legal remuneration in respect of an official act" and obtaining "any valuable thing or pecuniary advantage" by unlawful means. On January 6, 2016, the Court issued its ruling in the case of *Krishan Chander vs. State of Delhi*, holding that "the proof of demand of illegal gratification . . . is the gravamen of the offense" under Sections 7 and 13(1)(d) of the PCA, holding that proof that a public servant had accepted a payment, without also proving that the public official had affirmatively demanded a bribe, is insufficient to sustain a conviction under the PCA.¹

The decision stems from a case against a police constable, Krishan Chander, who was alleged to have demanded a bribe of 5,000 rupees (or approximately \$75 USD) from complainant Jai Bhagwan in order to release Bhagwan's brother from jail. Bhagwan allegedly paid an initial installment of 4,000 rupees, after which his brother was released on bail, and purportedly agreed to provide Chander the 1,000 rupee balance the following day. Instead, Bhagwan approached the Delhi Police's Anti-Corruption Branch and filed a written complaint against Chander. The Anti-Corruption Branch gave Bhagwan marked bills to provide to Chander in a sting operation. The next day, Bhagwan was observed handing cash to Chander, who was subsequently arrested and charged with violating the PCA. Interestingly, at trial Bhagwan retracted his allegation against Chander, was declared a hostile witness, and subsequently testified that it was a different police officer who had demanded the bribe. Chander was convicted, however, based on Bhagwan's initial written complaint and the fact that he had been found with the marked bills in his possession.

On appeal, the Indian Supreme Court reversed the trial court's ruling, holding that although Bhagwan had been cross-examined regarding his initial written complaint, those statements had not been independently introduced into evidence and could not form the basis of a conviction. Furthermore, the other police officers who testified that they had observed Chander accepting the purported bribe had not heard Chander make any statement requesting the payment or acknowledging the payment as improper. While the PCA does not specifically enumerate requirements of both demand and acceptance, the Supreme Court nonetheless held that Chander's conviction had to be set aside because "the prosecution has failed to prove the factum of demand of bribe money by the appellant . . . which is the *sine qua non* for convicting him."

The ruling has several implications for companies doing business in India. First, the Court's decision means that a discovered payment from a private citizen to a public servant, even when the payment is believed or reasonably inferred to be improper, may be insufficient to establish a violation of the PCA. The stricter evidentiary standard under the PCA, as clarified by the *Chander* decision, may make it harder to win future bribery convictions—and therefore potentially embolden corrupt officials, who believe PCA enforcement is unlikely, to request improper payments.

¹ *Krishan Chander v. State of Delhi*, India Supreme Court (Jan. 6, 2016), available [here](#).

Second, the Indian Supreme Court's relatively strict construction of the PCA lies in distinct contrast to the broad interpretations that other courts have given to international anti-corruption laws such as the U.S. Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act ("UKBA").² It is important that multinational companies subject to the FCPA and UKBA continue to implement robust compliance programs and educate employees in their Indian operations on the scope of those laws, to ensure that they are protected against all possible unlawful activities.

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² 15 U.S.C. § 78dd-1; The Bribery Act 2010 (c. 23).