

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. L.P. No. 14/2004

% Decided on: 11<sup>th</sup> December, 2009

State (through CBI) ..... Petitioner  
Through: Mr. Ashiesh Kumar, Adv.

Versus

Mahesh Chander Nagar & Anr. .... Respondents  
Through: Mr. B.B. Vasisht & Mr. M.C.  
Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

1. Whether the Reporters of local papers may be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

**A.K. PATHAK, J.(ORAL)**

1. Respondent Nos. 1 and 2 have been acquitted by the learned Special Judge, vide order dated 1<sup>st</sup> September, 2003.
2. Petitioner, the Central Bureau of Investigation (CBI), has filed this petition under Section 378(2) read with Section 378(3) of the Code of Criminal Procedure seeking leave to appeal against the order of acquittal dated 1<sup>st</sup> September, 2003 passed by the learned Special Judge, in CC No. 259/1994 arising out of RC No. 28(A)/92-DLI, under Section 7 of Prevention of Corruption Act, 1988 (for short hereinafter refer to as "Act").

3. Brief facts of the case are that the complainant, Rakesh Kumar, Proprietor of M/s. R.K. Builders, on 12<sup>th</sup> May, 1992 approached CBI and informed that respondent No. 1 Mahesh Chander Nagar, who was working as an Upper Division Clerk in the office of Assistant Commissioner of Income Tax, C.R. Building, I.T.O., New Delhi had demanded illegal gratification of Rs.1,000/-, in order to hand over to him a cheque for Rs.6419/- on account of refund of income tax. On the basis of this information, a trap was laid by Inspector Ramesh Kumar (Trapping laying Officer). Two independent panch witnesses R.K. Sharma and K.G. Yadav were joined in the trap proceedings. These panch witnesses were Government officials.

4. Complainant along with shadow witness Sh. R.K. Sharma met respondent No. 1 in his office in C.R. Building at about 4:00 PM while remaining trap team led by Inspector Ramesh Kumar took position in the gallery. Complainant asked respondent No. 1 to hand over the cheque to him and also informed that he had brought the amount as settled between them earlier. Respondent No. 1 told respondent No. 2, who was his colleague and was sitting in the same room, to take Rs.1,000/- from the complainant and to give him the cheque. Thereafter, respondent No. 1 left the office. Complainant

handed over phenolphthalein treated notes to respondent No.2, who accepted the same from his right hand and without counting the same he kept those notes in his right side pant pocket. Thereafter, respondent No. 2 handed over the cheque, along with the intimation letter, to the complainant. At this stage, shadow witness Shri R.K. Sharma (PW-4) went out the room and gave the signal to trap team, pursuant whereof trap team arrived there and apprehended respondent No. 2. Another panch witness Sh. K.G. Yadav (PW-7) was also with the trap team at that time.

5. Fingers of respondent No. 2 were dipped in a solution of sodium carbonate which turned pink. Wash of right pant pocket of respondent No. 2 was also taken in the sodium carbonate solution which also turned pink. Both these solutions were sealed in separate bottles with the seal of CBI. Recovered bribe money was also sealed separately.

6. Since respondent No. 1 had already left the office, trap team went to his house and arrested him.

7. Bottles containing right hand wash of respondent No. 2 as well as the wash of right pocket of his pant were sent to CFSL and its report was obtained, which confirmed the presence of sodium carbonate and phenolphthalein in above said solution.

8. With these allegations charge-sheet was filed by the CBI in the court of learned Special Judge against the respondents. Charges under Section 120-B of the Indian Penal Code and under Sections 7 and 13(1)(d) of the Act were framed against the respondents to which they pleaded not guilty and claimed trial.

9. Prosecution examined fourteen witnesses i.e. PW1 Rakesh Kumar, PW2 S.C. Raswant, PW3 Ganga Ram, PW4 R.K. Sharma, PW5 Sudhir Chandra, PW6 Tejbir Singh, PW7 K.G. Yadav, PW8 Pradeep Kumar, PW9 Ms. Rupendra Brar, PW10 D.N. Prasad, PW11 Ram Nayan Nagar, PW12 Ramesh Kumar, PW13 N.K. Parsad and PW14 Kishore Kumar. Statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure wherein entire incriminating material, which had come on record, was put to them. Respondents admitted that they were public servants and that they were posted at Income Tax Office in C.R. Building, I.T.O., New Delhi, at the relevant time. However, they denied that they had demanded and obtained bribe from the complainant for handing over his income tax refund cheque.

10. Learned Special Judge perused evidence available on record, more particularly the testimony of PW1 Rakesh Kumar and PW4 the shadow witness, but did not find them to be

trustworthy and reliable with regard to the presence of respondent No. 1 in his office at the time, when trap was organized and conducted. Learned Special Judge found the plea taken by respondent No. 1 in his statement under Section 313 of the Code of Criminal Procedure of his leaving office at about 1:30 PM, to attend cremation of his brother-in-law, who had died on that day i.e. on 12<sup>th</sup> May, 1992, to be reliable. According to the learned Special Judge this plea was duly supported by testimonies of DW1 to DW3. He was also of the view that demand of bribe was not made by respondent No. 2 as neither the complainant nor any other witness had deposed in this regard. He also found the defence of respondent No. 2 that the money was thrust in his pocket while he was in the gallery, mistaking him as respondent No. 1, who was not even present in the office. This was done at the behest of Inspector R.K. Khatri of CBI, who was known to the in-laws of deceased sister of respondent No. 1, and was nursing a grudge against him as respondent No. 1 was pursuing a case of murder against the in-laws of his deceased sister. In nutshell, learned Special Judge was of the view that petitioner had failed to prove its case against the respondents beyond the shadow of reasonable doubt, consequently, he acquitted respondents of all the charges framed against them.

11. I have heard the submissions of learned counsel for the parties and have carefully perused the entire material available on record including the trial court record; more specifically the testimonies of PW1 complainant and PW4 the shadow witness. I am in agreement with the view taken by the learned Special Judge that testimonies of PW1 and PW4 were not trustworthy and reliable; presence of respondent No. 1 in the office at about 4:00 PM was highly doubtful, as also this fact was corroborated by DW1 to DW3; there was every possibility of thrusting upon the bribe money in the pocket of respondent No. 2 by mistaking him as respondent No. 1, in view of the defence evidence led by the respondents; as also because of the presence of Inspector Khatri at the time of pre-trap proceedings, inspite of his not being part of the trap team, which lends credence to the defence taken by the respondents.

12. Respondent No. 1 had taken a specific defence that he had left office at about 1:15 PM on account of death of his brother-in-law. DW1, DW2 and DW3 have supported this version. DW2 is nephew of respondent No. 1. He categorically deposed that respondent No. 1 on 12<sup>th</sup> May, 1992 had come to his house at about 2:15 PM due to death of his father (brother-in-law of respondent No. 1) and remained there upto 5:30 PM

during which period cremation of deceased also took place. DW3, friend of respondent No. 1, had also supported this version by saying that it was he, who had gone to the office of respondent No. 1 at about 1:15 PM and had informed him about the death of brother-in-law of respondent No. 1 and thereafter both of them left for the house of deceased to attend the last rites. DW1 Narender Singh, who was working as Peon in the office of Income Tax Department at C.R. Building, at the relevant time and was also a witness to the trap proceedings, also specifically deposed that respondent No. 1 had left the office at about 1:30 PM on hearing the news of death of his brother-in-law and was not present when trap was laid. It is worth mentioning here that DW1 was even signatory to some of the recovery memos and was cited as prosecution witness. However, during trial prosecution for some reason did not choose to examine him. In fact DW1 was prosecution witness but since he was not examined by the prosecution, respondents examined him. Death of brother-in-law of respondent No. 1 was not disputed by the petitioner during the trial, inasmuch as no question was put to DW2 or DW3 in this regard. If brother-in-law of respondent No. 1 had died on 12<sup>th</sup> May, 1992 his presence in the office, at about 4:00 PM, is virtually impossible, deceased being a close relative of

respondent No. 1. Even PW4 has deposed in his cross-examination that respondent No. 1 had left before the trap proceedings. Thus this star witness of the prosecution also supports the defence version. Accordingly, prosecution version that respondent No. 1 asked complainant to pay bribe money to respondent No. 2 becomes doubtful. At the time when bribe money was allegedly passed-on to respondent No. 2, admittedly, respondent No. 1 was not available in the office. He was not even apprehended at the spot. All the above facts create a serious doubt about the presence of respondent No. 1 in the office at the time when trap was laid, when the bribe money was allegedly given to respondent No. 2, on the instruction of respondent No. 1.

13. The prosecution case is found doubtful, inasmuch as it was stated that bribe was demanded by respondent No. 1 and was accepted by respondent No. 2 at about 4:00 PM on 12<sup>th</sup> May, 1992, more so when the chances of respondent No. 1 being present in the office were highly improbable as also categorically supported by DW1 to DW3 and also by prosecution's own witness PW-4.

14. In spite of the fact that respondent No. 1 was not present in the office, prosecution witnesses have deposed that the money was demanded by respondent No. 1 in his office at

about 4:00 PM and on his instruction sum was paid to respondent No. 2. This fact itself is sufficient to make the prosecution case doubtful and suspicious.

15. Besides this, DW1 had categorically deposed that he was sitting with respondent No. 2 in the office when at about 4:00 PM one person came there and asked for the file relating to R.K. Builders and that the same was to be taken to the office of Assistant Commissioner. The moment respondent No. 2 took out the file from the almirah, one registered letter which was peeping from the file, was snatched by the said person. Thereafter that person tried to run away whereupon respondent No. 2 followed him outside the cabin. In the meanwhile, someone shouted "he is Nagar" at which said person thrust the money in the pocket of respondent No. 2. Inspector Khatri of CBI, who was also present there, told the complainant as to why he had thrust money in the pocket of respondent No. 2, since he was not Nagar and that they had to only arrest Nagar. He has further deposed that Inspector Khatri enquired from him about respondent No. 1, and that DW-1 told him that he had left the office around 1:30 PM. This supports the defence. In fact DW1 was cited as prosecution witness but not examined. In view of loopholes in the prosecution, his testimony assumes importance and has been

rightly read against the prosecution by the learned Special Judge.

16. I do not find any error having been committed by the learned Special Judge in accepting the testimony of DW1 in the peculiar facts of the present case where the prosecution witnesses were not found trustworthy and reliable.

17. Besides this I find that there are inherent inconsistencies in the statements of the complainant, shadow witness, panch witness and the trap officer, regarding the manner in which hand wash of respondent No. 2 was taken, therefore, no reliance can be placed on the CFSL report. As per prosecution, hand wash of respondent No. 2 was taken which turned pink, but the same was thrown by respondent No. 2 during the scuffle. Thereafter hand wash of respondent No. 2 was again taken which also turned pink. Chances of turning the second hand wash pink were not there since his hand wash was already taken once. No scientific evidence has been led by the prosecution to show that if successive hand wash is taken in sodium carbonate solution it will turn pink.

18. It is well settled that in an appeal of an order of acquittal, it is not open for the appellate court to interfere with the findings of the fact recorded by the trial Judge unless such findings could not have been reached on the evidence on

record; in case findings reached by the trial Judge were inconsistent with the evidence adduced or perverse only then the High Court can interfere with such an order of acquittal. In my view appellate court cannot interfere with the order of acquittal lightly and reverse the same as a matter of course, except when it is shown that the lower court had blundered and had reached a distorted conclusion, so as to produce a positive miscarriage of justice. After an order of acquittal has been made the presumption of innocence of the accused is reinforced and in such an eventuality the trial court's decision can be reversed not on the ground that accused had failed to explain the circumstances appearing against him, but only for very substantial and compelling reasons. If two reasonable views are possible on the basis of evidence on record, the appellate court will not disturb the findings of acquittal recorded by the trial court.

19. In *Nepal Singh vs. State of Haryana* reported in JT2009(7)SC 172 the Supreme Court held as under :-

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its

own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

20. From the above it is clear that appellate court has power to reappraise the evidence upon which the order of acquittal is founded and reach its own conclusions but interference with an order of acquittal can be made only on substantial

compelling, sufficient and good reasons. If two reasonable and possible views can be reached on the evidence on record, the appellate court shall not disturb the finding of acquittal recorded by the trial court.

21. In my opinion, the view taken by the learned Special Judge is in consonance with the evidence adduced by the parties and is a possible view and needs no interference.

22. In view of the above discussions, I do not find it to be a fit case to grant leave to appeal to the petitioner.

23. Dismissed.

**A.K. PATHAK, J**

**December 11, 2009**

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