

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

Date of Reserve: 1st October, 2010
Date of Order: 29th November, 2010

+Crl. Appeal No. 110 of 2004
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29.11.2010

BRAHMA NAND

... Appellant

Through: Mr. Jayant Nath, Sr. Advocate with Mr. Krishna
Muraree Singh, Advocate

Versus

THE STATE OF NCT OF DELHI

... Respondents

Through: Mr. O.P. Saxena, Addl. PP for the State

And

+Crl. Appeal No. 126 of 2004
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BIJENDER KUMAR

... Appellant

Through: Mr. K.B. Andley, Sr. Advocate with Mr. M.L. Yadav,
Advocate

Versus

STATE OF DELHI

... Respondent

Through: Mr. O.P. Saxena, Addl. PP for the State

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

1. These two Appeals have been preferred against a common Judgment dated 3rd February, 2004, whereby the Appellants were convicted under Section 7 and 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred to as "P.C. Act" for short) and Order on the Point of Sentence dated 7th February, 2004, whereby they were sentenced to undergo 18 months Rigorous Imprisonment on each count and to pay a fine of ₹ 5,000/- on each count.

2. Facts leading to conviction of the two appellants are that Smt. Jaipali was working as a *safai karamchari* (Sweeper) in M.C.D. She retired on 30th September, 1993. Her dues after her retirement were to be paid to her. Appellant Brahma Nand was U.D.C. working in Shahdara Zone, MCD, where Jaipali used to work as Sweeper. In her complaint she reported that Brahma Nand was responsible for payment of post retirement dues to her. She was forced to lodge a complaint Ex. PW2/A with CBI when appellant Brahma Nand persisted that she cannot get cheques of post retirement dues “free” and she would have to pay bribe for these cheques. She was given a cheque of ₹ 15,000/- about 15-20 days prior to making of complaint and for giving that cheque of ₹ 15,000/-, Brahma Nand had already taken from her ₹ 1500/-. Since she had to receive more amount against her retirement dues and more cheques were to be handed over to her, Brahma Nand was asking bribe. She had visited office several times and every time Brahma Nand would tell her that she should bring money and then take cheques. On 25th November, 1993, she went to Brahma Nand with her grandson Bhagat Singh (in distant relation) and Brahma Nand asked her to come on 26th November, 1993 at 9.30 am with ₹ 1,000/- and told her that he would issue cheques only thereafter. She was compelled to lodge the report because of this. She had no enmity with Brahma Nand or any of his colleagues nor she had any other financial transaction with Brahma Nand. She had approached police with her grandson as she was weak and aged, and was not able to talk properly. At the time of lodging report, she had taken ₹ 1,000/- with her.

3. After recording this report, an Inspector of Anti Corruption Branch (ACB) prepared pre-raid proceedings, called a punch witness, noted the ‘number’ of currency notes brought by the complainant and applied phenolphthalein powder on them, demonstrated to the witness how phenolphthalein powder worked and sent the punch witness along with complainant and her grandson to the office of accused.

Punch witness was told to give signal after the bribe was accepted. Jaipali went to the office of appellant Brahma Nand. Appellant Bijender Kumar was sitting opposite him and the amount of ₹ 1,000/-, at the instance of Brahma Nand, was taken by Bijender Kumar from Jaipali. Immediately signal was given to the raiding party and both the appellants were apprehended and post raid proceedings were carried out. Hand wash to Bijender Kumar was taken by the Inspector and was sealed. After completion of investigation, the accused persons were sent for trial.

4. Jaipali appeared as PW-2. In her testimony in the Court she again reiterated that she had received earlier cheque of ₹ 15,000/- from accused Brahma Nand, who was posted as UDC in the department and she had visited several times in the office of Brahma Nand. Accused had demanded bribe of ₹ 1500/- for the amount of cheque of ₹ 15,000/-. She had tried to persuade the accused not to demand bribe but the accused did not desist and told that she could not receive cheque of ₹ 15,000/- for 'free' (without paying bribe). Bhagat Singh was a grandson in distant relation of complainant Jaipali. He went along with Jaipali to Brahma Nand and in his presence Brahma Nand settled the matter for ₹ 1,000/-. Thereafter, Jaipali went to Anti Corruption Branch (ACB) along with her grandson. However, A.C.B. initially sent her back telling to settle the matter herself with Brahma Nand. She then again went to ACB with ₹ 1,000/- and lodged report Ex. PW2/A and produced 10 notes of ₹ 100/- denomination. In her presence phenolphthalein powder was applied on those currency notes and the characteristics of powder was explained to her and punch witness, another person called by ACB. She was then sent to the appellant Brahma Nand and instructed to give signal after the money was accepted. She stated that after she went to office of Brahma Nand, Bijender Kumar was sitting opposite him. Brahma Nand, on seeing her asked if she had brought the money (*paisa laayee hai* ?) and thereafter he asked her to give the money. She took out the tainted money

from her purse to give it to Brahma Nand. On this Brahma Nand asked her to give money to appellant Bijender Kumar, who was sitting opposite him. So she gave money to Bijender Kumar. Bijender Kumar took the currency notes in his right hand and as he took currency notes in his hand, he inquired as to what flour type material was on the notes. Jaipali told him 'take the money and you will come to know everything' (*pakar lo beta, sab pata lag jayeega*). She then gave signal to the raiding party waiting outside. Police came in and on seeing the police, Bijender Kumar threw those notes towards Brahma Nand. The police caught hold hands of Bijender Kumar and his hand wash was taken. Both the appellants were apprehended and post raid proceedings were completed.

5. PW-2 was cross examined at length on behalf of both the accused persons. She stood the test of cross examination well and reiterated even during her cross examination that the demand of bribe was made by Brahma Nand and accused Bijender Kumar, sitting opposite Brahma Nand, had accepted the amount of ₹ 1,000/- at the instance of Brahma Nand. During cross examination she also stated that when she initially went to ACB for lodging her report, she was turned out from there and it was suggested that she should settle the matter mutually with accused after giving some money. Her complaint was lodged by ACB only after she again went there. Although, in her complaint she stated that Brahma Nand, after giving initial cheque of ₹ 15,000/- to her, had been demanding ₹ 1500/- as bribe money, no suggestion was put to her on behalf of accused Brahma Nand that this demand was not made and the cheque of ₹ 15,000/- was handed over to her without taking bribe. The prosecution case was further fortified by PW-3 who had accompanied PW-2 Jaipali as punch witness and had witnessed the entire proceedings of raid. He had testified about the pre-raid proceedings and thereafter as to what happened in the office of Brahma Nand. He supported the prosecution version of facts and testified

that complainant had asked Brahma Nand if her cheque was ready in reply to which Brahma Nand told her that it was not ready. On this Bhagat Singh asked Brahma Nand as to why he was harassing her and told him that they had brought money demanded by him. On this Brahma Nand asked them to give money to Bijender Kumar and on his saying so, money was handed over to accused Bijender Kumar and thereafter pre-arranged signal was given to the police and the police party came into the room of the accused persons and apprehended both the accused persons and conducted post raid proceedings which were signed by him. This witness was also cross examined at length and nothing contrary, to his testimony in his examination in chief, came in cross examination. He testified that he could hear the talks between complainant and Brahma Nand and accused Brahma Nand did tell the complainant that her cheques were not ready. Both PWs, PW-2 and PW-3 had stated that in the office room of accused Bijender Kumar and Brahma Nand, there were many other employees sitting and working when the raid was conducted. Bhagat Singh appeared as PW-14. He also supported the prosecution evidence and reiterated the facts as stated by PW-2 and PW-3.

6. Sanction in this case was proved by the Sanctioning Authority. The other witnesses proved various memos prepared before and after conducting raid. The learned Trial Court after appreciating the entire evidence convicted both the appellants as stated above.

7. It is argued on behalf of accused Bijender Kumar that Bijender Kumar was neither involved in demand of bribe nor involved in acceptance of it. He happened to sit opposite Brahma Nand and even if it is presumed that he had taken bribe money in his hand at the instance of Brahma Nand, that does show that Bijender Kumar was guilty either under Section 7 or under Section 13 (1) (d) of the P.C. Act.

8. Reliance has been placed by the appellant on **SADASHIV MAHADEO YAVALUJE AND GAJANAN SHRIPATRAO SALOKHE VS. STATE OF MAHARASHTRA (1990) 1 SCC 299** wherein the Supreme Court, while considering a case under Section 161, 165 and 156-A of IPC and under Section 5(2) read with Section 5 (1) (d) of P.C. Act observed that merely because accused No. 2 was entrusted with some money to be passed on to accused no. 1 it could not be held that he was guilty of any one of these offences unless it is established that he was a party to the arrangement and the arrangement arrived at was that the money would be handed over to accused No. 2 to be given over to accused No. 1. It was also observed that settlement between complainant and accused no. 1 had taken place at the house of accused No. 1 and accused No. 2 was not there and he had no knowledge about the settlement.

9. The facts of the present case are altogether different and case of Sadashiv Mahadeo Yavaluje and Gajanan Shrip Atrao Salokhe is of no help to the appellant. In the present case both the appellants were sharing same table and were very well aware of each other's acts and omissions. In the presence of appellant Bijender Kumar, Jaipali had gone and inquired about her cheques from accused Brahma Nand and Brahma Nand told her that her cheques were not ready. In his presence Jaipali's grandson PW-14 told Brahma Nand as to why he was harassing and they had brought the money demanded and in his presence Brahma Nand had told that if she had brought the money demanded, the same should be given. After Jaipali took out money from her purse for giving to Brahma Nand, it was at that stage that Brahma Nand asked that money should be given to Bijender Kumar. This only shows that Brahma Nand and Bijender Kumar were shareholders in the booty. Bijender Kumar was well aware that money being accepted by him was bribe money. Both used to work on the same table and were well aware of each other's affairs and

Brahma Nand knowing well that the money being demanded was a bribe, accepted the same from Jaipali. Section 7 and Section 13(1) (d) of P.C. Act make it clear that even if money is accepted by a person on behalf of other, he commits offences under Section 7 and 13 (1) (d) of P.C. Act. Words used by the statute in Section 7 of P.C. Act are “acceptance from any person for himself or for any other person any gratification”. Similarly, words used by the statute in Section 13 (1) (d) are “if he obtains by corrupt or illegal means for himself or for any other person any valuable thing or pecuniary advantage”. A reading of Section 13 and 7 of the P.C. Act makes it clear that if a person has knowledge that money being accepted by him was bribe money for someone else, the offence is complete. In this case, Bijender Kumar had knowledge that the money being paid by Jaipali was bribe and he accepted bribe, though, for Brahma Nand. I, therefore, consider that the above judgment relied upon is not applicable in the present case. The appellant also relied upon **A Subair Vs. State of Kerala, (2009) 6 SCC 587** to press the point that the Trial Court wrongly drew presumption under Section 20 (1) and in view of Section 20(3), the amount being a trivial amount of ₹ 1,000/-, the Trial Court should not have drawn any presumption. I consider that this argument is totally irrational, and vague. Jaipali had worked in MCD as *safai karamchari*. She was given a cheque of ₹ 15,000/- towards her retirement dues and the amount demanded from her was 10 per cent of this cheque amount. This was not a trivial amount. ₹ 1,000/- today may look a trivial amount but in 1993, when this amount was demanded from Jaipali, it was not a trivial amount, moreover, it was not a trivial amount for a person who was working as *Safai Karamchari*. Word “trivial” is to be interpreted in the context of time and quantum in relation to income of complainant. If a person for handing over a cheque of ₹ 15,000/- demands ₹ 1500/- as bribe, this cannot be considered as trivial amount at any time because it is 10% of the amount. This amount may look trivial with passage of time but the Court has to travel back in the year when incident took place and

consider whether at that time the amount recovered from the appellant was trivial in nature or not. I consider, by any standard the amount of bribe recovered from the appellant was not trivial.

10. The appellant has placed reliance on **Madan Mohan Singh Vs. State of U.P., AIR 1954 SC 637** to argue that there was no motive for acceptance of bribe at all for appellant Bijender Kumar. This judgment is also of no help to the appellant. The bribe culture in this country has increased so much over the time that it is hard to imagine if any work gets down in Government offices and in the offices of various public authorities without payment of bribe money. If you have to receive payment from any official of any public authorities you give speed money or bribe money. The situation is that even if an ordinary employee has to withdraw money from his own Provident Fund for some necessity, he will find it difficult to withdraw from his Provident Fund unless he bribes the concerned *babus*. It is not strange that in this case bribe was demanded in presence of all other employees who were sitting in the office because bribe has become an accepted norm in public offices. Everybody knows that no work is done without paying bribe that is why no voice of resistance or objection is raised by co-employees in such cases. No co-employee comes to help of such harassed person either because of indifference or because they themselves indulge into similar practices and it is for the same reason that none of the co-employees of the appellant appeared in the witness box to say that Jaipali had wrongly implicated the accused persons. It is true that onus of proving an offence lies greatly on the prosecution, but, once it is proved that tainted money was recovered from the accused, the onus shifts on the accused to show that money recovered from him was not bribe money. He could have proved this by examining any of his co-employees as the room was full of co-employees. Non-examination of anybody from the co employees shows that the appellants defense was not tenable.

11. The plea taken by appellant Brahma Nand is that he had not accepted the bribe money and the bribe money was accepted by accused Bijender Kumar. The other argument is that earlier cheque of ₹ 15,000/- was handed over to the complainant within few days of her retirement and further cheques were not ready and Brahma Nand could not have demanded bribe money for remaining cheques. However, no suggestion was given to the complainant during cross examination that the appellant had not told her that she cannot get cheque of ₹ 15,000/- for free. No motive of the complainant to falsely implicate Brahma Nand has been proved. All suggestions, given to the complainant, are such about which complainant had no knowledge and the plea raised by the appellant that he was falsely implicated because of union activities was not proved by the appellant by cogent evidence. Merely by giving suggestion to the complainant of such facts with which she was not concerned, defence would not stand proved neither doubt is raised on the veracity of the evidence of the complainant. The complainant in this case amply proved demand of bribe by appellant Brahma Nand. This was further corroborated by two more witnesses. It is not denied that it was Brahma Nand who was to hand over cheques of retirement dues to the complainant. The complainant, perhaps, was left with no option when she was harassed at the hands of Brahma Nand but to make complaint. In fact, the harassment was such that despite suggestion of ACB that she should settle with Brahma Nand by payment of money, she persisted that no she would complaint against Brahma Nand and she again came to the office of ACB and lodged the report.

12. I find that trial court rightly convicted the appellants. It makes no difference that appellant Brahma Nand himself did not accept the bribe money and asked his colleague Bijender Kumar to accept it on his behalf. There must have been an

arrangement between the two and both would have been accepting bribe money on behalf of each other and that does not lessen the crime of Brahma Nand.

13. I find no force in the appeals. The appeals are dismissed.

14. Appellants are directed to surrender before the Court and undergo remaining sentence. In case they do not surrender, the police is directed to arrest them and lodge them in jail.

NOVEMBER 29, 2010
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SHIV NARAYAN DHINGRA, J.