

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.APPEAL. No. 124/2010

Date of Decision:- 29.9.2010

Mahesh Kumar ... Petitioner

Through: Ms. Shobha with Mr. J. P. Verma, Advs.

Versus

Central Bureau of Investigation ...Respondents

Through: Ms. Sonia Mathur with Mr. Rajat
Soni and S.K.Dubey, Advs.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

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

S. L. BHAYANA, J

The present appeal has been filed by the appellant under section 374 of the Code of Criminal Procedure, 1973, read with section 27 of the Prevention of Corruption Act, 1988 against judgment dated 07.01.2010 and order on sentence dated 11.01.2010 passed in CC No. 142/07 by Shri Pradeep Chaddah, Special Judge, CBI-01 Central District, Delhi, wherein the Learned CBI Court convicted the appellant.

2. The facts necessary to be highlighted in the present petition as alleged by the appellant are that as per the chargesheet, the abovementioned case was registered on the written complaint of Sh. Harpal in which he alleged that there had been a dispute between DDA and his father Pratap Singh regarding title of land bearing Khasra No. 292/1,2 and 92/2 located at village Nangloi Sayeed, New Delhi, and application dated 07.01.1993 and 15.01.1993 were made to DDA for

out of court settlement of demarcation report dated 20.10.1992. The complainant had been perusing the matter and in that context, he met Shri Hari Chand, Tehsildar and Shri Mahesh Kumar Patwari to bring on record the demarcation report dated 20.10.1992. Both Shri Hari Chand Tehsildar and Shri Mahesh Kumar Patwari demanded Rs. 5000/- as bribe for placing the demarcation report dated 20.10.1992 on record. They also asked the complainant to come at DDA office Vikas Sadan with the demanded amount of bribe. The complainant reported the matter to SP, CBI ACB, New Delhi and the instant case was registered and entrusted to Inspector S.K.Peshin for further investigation and laying the trap.

3. That during the investigation, a trap party was constituted and two independent witnesses Shri D Thannapal and Dr. B. Sakia, both from Ministry of Health, Nirman Bhawan, New Delhi, were joined in the said team by the Investigation Officer. The pre trap proceedings were started in the CBI office, where the complainant was introduced with both independent witnesses and others members of the trap team. Complainant's written complaint dated 03.02.1993 was shown to both independent witnesses, who after going through the same asked certain questions to ascertain the genuineness of the allegations and satisfied themselves. Other members were also explained about the allegations.

4. The complainant produced a sum of Rs.4000/-in the form of 30 G.C. notes of rupee one hundred denomination each and 20 G.C. notes of rupee fifty denomination each. These G.C. notes were treated with phenolphthalein powder and were kept in the right side pocket of the pant worn by the complainant. He was asked to pass on these

phenolphthalein powder treated notes to Hari Chand Tehsildar, Mahesh Kumar Patwari, or to any other person as directed by them. A micro cassette tape recorder was arranged with a blank cassette. The micro cassette tape was fitted in the tape recorder and the complainant was explained about the functioning of the tape recorder. Dr. Sakia was a shadow witness. He was asked to remain as close as possible to the complainant, so that he may overhear the conversation and see the transaction, that may take place between the complainant and accused. The trap party reached near DDA office, Vikas Sadan, New Delhi. The complainant and shadow witness reached 3rd floor (A) wing and other members followed them in separate groups. The complainant contacted Shri Hari Chand Tehsildar. At about 3.25 p.m. the trap party rushed inside the cabin and apprehended two persons whose identity was revealed as Hari Chand Tehsildar and Mahesh Kumar Patwari, the appellant herein. Further the complainant informed that he recorded the conversation which took place between them. The complainant has further informed that Shri Hari Chand Tehsildar demanded the bribe amount and Shri Mahesh Kumar, Patwari accepted the bribe amount and kept the bribe amount in the right side pocket of the pant worn by him. Thereafter on the directions of Inspector Sh. S.K. Peshin independent witness D. Thannapal recovered the bribe amount of Rs. 4000/-. Search of office table of Hari Chand, Tehsildar was carried out and papers pertaining to the case of complainant were recovered and seized, these papers were lying on the table in front of Hari Chand. Further the micro cassette was played in the presence of witnesses, which confirmed the demand of bribe. The micro cassette was sealed with CBI seal and both witnesses signed the cloth wrapper in which the cassette was kept. All these post trap

formalities were recorded in the recovery memo prepared at the spot. The CBI seal, after use, was handed over to Shri Thannapal for safe custody and to produce the same in the court as and when required. The recovery memo was signed by the witnesses. The final closure report under section 173 Cr.P.C was forwarded to the Special Judge, who observed that the demand and acceptance of Rs. 4000/- as bribe is shown and even the perusal of transcript of tape recorded conversation would reveal that accused persons demanded and accepted the bribe and as such the Learned Special Judge was of the view that there was evidence on record to proceed against the accused persons and accordingly the Learned Special Judge directed for further investigation. After completing investigation, fresh chargesheet dated 29.06.2000 was filed. Thereafter the Learned Special Judge framed charges under section 120 B read with section 7 and 13 (1) (d) read with section 13(2) of the Prevention of Corruption Act, 1988 to which the appellant pleaded not guilty and claimed trial. During the trial the prosecution examined 12 witnesses to prove the involvement of the appellant. Accused Shri Hari Chand died during the trial.

5. The statement of appellant was recorded under section 313 Code of Criminal Procedure, wherein appellant denied all the allegations. Thereafter the Learned Special Judge by impugned judgment dated 07.01.2010 convicted the appellant and sentenced him to undergo R.I. for two years under section 7 of Prevention of Corruption Act, 1988 and to pay fine of Rs. 5000/- in default to undergo S.I. for one month and further sentenced him to undergo R.I. for two years with fine of Rs. 5000/- and failing to pay the fine to undergo S.I. for one month for the commission of offence punishable under section 13(1)(d) read with

section 13(2) of the Prevention of Corruption Act, 1988 and further sentenced to undergo R.I. imprisonment for one year for the commission of offence under section 120-B IPC.

6. Learned counsel for the appellant has submitted that prosecution has to stand on its own legs. Demand of money has to be explicit and the delivery of bribe also. Recovery itself is not sufficient to convict the appellant under section 13(1) (d) of Prevention of Corruption Act.

7. Learned counsel for the appellant has further submitted that none of the prosecution witness has supported the prosecution story. Even testimony of those witnesses has been demolished in the cross-examination and no reliance can be placed on their testimonies.

8. Learned counsel for the appellant has vehemently submitted that the complainant Harpal Singh has not supported the prosecution story and there are major contradictions in the testimony of this witness during the cross examination.

9. Learned counsel for the appellant has vehemently submitted that the conversation recorded was not signed by any independent witness so no reliance can be placed on the same.

10. Learned counsel for the respondent CBI on the other hand has submitted that the acceptance of the money is admitted. Recovery of Rs. 4000/- was made from the right side pocket of trousers of accused by an independent witness. Thereafter a solution of sodium carbonate was prepared in which the accused Mahesh Kumar was asked to dip his right hand fingers in it. On doing so the solution turned pink. Thereafter, a separate solution was prepared, in which the inner lining of right side pocket of the pant was dipped, which too turned pink.

Both the washes were transferred in neat and clean bottles and were sealed with CBI slip which was signed by the witnesses.

11. Learned counsel for the respondent has submitted that it has been established and proved by the testimony of the complainant that the alleged demand was made to him on 3.2.1993.

12. Further the counsel for the respondent has submitted that the statement of the complainant cannot be rejected as the same stands corroborated by the tape recorded conversation as well as testimony of other witnesses.

13. Learned counsel for the respondent has further submitted that although the transcript was not signed but it has been proved by the testimony of the complainant and independent witnesses in whose presence the transcript was played on the spot and sealed.

14. Learned counsel for the respondent has further submitted that, recovery of the tainted money from the appellant stands unrebutted except for the explanation of loan.

15. Learned counsel for the respondent further submitted that CFSL report shows that the results of the washes are positive against the accused i.e. the results of both the washes of right hand fingers and right side pocket of the trouser of the accused/appellant, which turned pink thereafter.

16. Further the learned counsel for the respondent has submitted that during the investigation by police and examination of prosecution witnesses the appellant has denied all the allegations made against him and same has been narrated in his statement recorded under section 313 of Code of Criminal Procedure.

17. Further the learned counsel for the respondent has submitted that the part of transcript reproduced in the impugned judgment completely demolishes the loan justification as the loan amount could not possibly be shared by the appellant and the other accused.

18. Learned counsel for the respondent has submitted that the sentence is not liable to be reduced. As the money was recovered from his pocket and the demand has also been proved.

19. I have gone through the judgments relied upon by the counsels for the parties.

20. The Supreme Court in State of U.P. v/s Zakaullah, **(1998) 1 SCC 557**, relied upon by the counsel for the respondent, has held that;

“The DSP who arranged the trap had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. The evidence of such a witness can be acted on even without the help of any corroboration.”

21. The Supreme Court in B.Noha v/s State of Kerala and Others **(2006) 12 SCC 277**, observed that;

“When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case.

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The premise is to establish on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted “as motive and reward” for doing or forbearing to do any official act. So the word gratification needs to be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the

collocation of two expressions adjacent to each other like “gratification or any other valuable thing”. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word “gratification” must be treated in the context to mean any payment for giving any satisfaction to the public servant who received it.”

22. The appellant by way of this appeal is praying for acquittal against the order passed by Learned CBI Court.

23. After hearing the arguments advanced by the counsel by both the parties, I am of the view that there was demand and acceptance of bribe/gratification which has been proved by the recovery of Rs.4000/- from the pocket of the appellant and the result of washes of the pant worn by the appellant and right hand fingers in the solution prepared by the trap team, which turned pink. The appellant was apprehended by the trap team red handed in his office and conversation recorded in micro cassette also proves the demand of bribe by the appellant.

24. In view of the aforesaid facts and circumstances and the law laid down by the Supreme Court I do not find any infirmity in the judgment passed by the Special Judge, CBI Court.

25. The present appeal is without any merit. The same is therefore, dismissed.

SEPTEMBER 29, 2010

S.L. BHAYANA, J