

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

Judgment reserved on: August 09, 2010
Judgment delivered on: December 24, 2010

+ **CRL.A. No.579/2005**

VISHAL CHAND JAIN @ V.C. JAIN **....APPELLANT**

Through: Mr. Neeraj Jain, Advocate

Versus

C.B.I. **.....RESPONDENT**

Through: Ms. Sonia Mathur, Advocate

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 08.07.2005 in Corruption Case No.26/03 FIR No.RC-DAI-2002-A-0054 and the consequent order on sentence dated 11.07.2005 whereby the appellant Vishal Chand Jain was convicted for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the P.C. Act and awarded RI for the period of two years and to pay fine of ₹10,000/-, in default to undergo SI for the period of three months. Similar sentence was also awarded to the appellant for the offence

punishable under Section 13(2) read with Section 13(1)(d) of the P.C. Act with the direction that substantive sentences awarded for respective offences shall run concurrently.

2. Briefly stated, case of the prosecution is that on 20.09.2000 complainant Gurcharan Singh (PW2) visited the CBI office, New Delhi and submitted a written complaint against the appellant Vishal Chand Jain, Branch Manager, State Bank of India, Laxmi Nagar, Delhi. As per the complaint Ex.PW2/D, the complainant's wife Pawandeep Kaur was having a Current Account No.01600085031 in State Bank of India, Laxmi Nagar Branch in the name of her firm M/s. Wiser International, G-77/1, Jagat Puri, Delhi. She applied for a loan for purchase of lathe machines on 03.08.2002. The appellant, Branch Manager of SBI, Laxmi Nagar made it clear that he would sanction the loan but they would have to pay ₹4,000/- to him. Since the loan sought was only ₹58,000/-, they were surprised by the quantum of demand. Complainant further alleged that a day prior to the complaint, the loan was sanctioned and pay orders were issued in favour of the supplier company. When the complainant and his wife went to collect the pay orders, they were told by the appellant to visit him at his residence Flat No.210, Parshav Apartments, Madhu Vihar after 9:00 pm along with ₹4,000/-.

3. On the basis of the complaint Ex.PW2/D, formal FIR was registered and Inspector P. Balachandran was directed to verify the complaint by laying a trap. Inspector P. Balachandran arranged for two

independent witnesses, namely, Suresh Kumar, Vigilance Assistant from Indian Oil Corporation and Shri P.P. Singh, Junior Engineer from DDA. In their presence, complainant was asked to talk with the appellant V.C. Jain from his Mobile No.9810261097. Gurcharan Singh (complainant) called the appellant at his residence telephone No.2016873 and talked with him, which conversation was recorded in a blank micro cassette and said conversation, prima facie, confirmed the demand for bribe. Thereafter, the complainant produced eight currency notes of ₹500/- denomination each which were treated with phenolphthalein powder and live demonstration was given in the presence of the complainant and the witnesses about the reaction of phenolphthalein powder with colourless solution of sodium carbonate. For that purpose, witness Shri P.P. Singh was asked to touch phenolphthalein treated currency notes and dip his fingers in freshly prepared colourless solution of sodium carbonate. On P.P. Singh's dipping his fingers in the said solution, the solution turned pink. Thereafter, pink colour solution was destroyed and the left over phenolphthalein powder was sent back to the Malkhana. Sodium carbonate powder and clean tumbler were kept in the investigation bag.

4. It is also the case of the prosecution that personal search of the complainant as well as shadow witness Suresh Kumar was taken and they were not allowed to keep anything incriminating with them. Phenolphthalein treated GC notes were then kept in right side pocket

of the part of the complainant. He was directed to hand over those GC notes amounting to ₹4,000/- to the appellant only on demand. The micro cassette recorder loaded with the micro cassette in which the telephonic conversation was recorded was also handed over to the complainant and he was directed to switch on the same while initiating conversation with the appellant.

5. Complainant Gurcharan Singh stated that it would not be possible for him to take the shadow witnesses along with him. Therefore, both the independent witnesses were directed to remain as close as possible to the complainant so as to hear the conversation which may take place between the complainant and the appellant and also to see the transaction of passing of bribe. The complainant was directed to wipe his face with his handkerchief on acceptance of bribe by the appellant. Thereafter, all the members of the trap party washed their hands with soap and water and proceeded for the house of the appellant.

6. On reaching the residence of the appellant i.e. Parshav Vihar Apartment, Flat No.210, Patparganj, the complainant was directed to go and meet the appellant while the remaining members of the trap party took suitable positions near the house. After some time, the complainant gave the prearranged signal. On this, trap laying officer along with the independent witnesses and other members of the team entered the house of the appellant. Appellant was sitting on a sofa.

Complainant informed that the appellant had demanded and accepted ₹4,000/- from him and kept the money in the right side pocket of his pant. PW5 Suresh Kumar was directed to search the appellant and he recovered eight GC notes of ₹500/- denomination each from the right side pocket of the pant of the appellant. On comparison, numbers of those GC notes tallied with the numbers already noted down in the handing over memo prepared during pre-raid proceedings. Colourless solution of sodium carbonate was prepared in a clean tumbler and the appellant was asked to put his right hand fingers in the said solution. On his doing so, the solution turned pink. Right hand wash of the appellant was transferred into a clean bottle and sealed with the seal of the Investigating Officer. Similarly, the procedure was repeated for taking left hand wash which also turned pink and left hand wash of the appellant was transferred into a clean bottle and sealed with the seal of the Investigating Officer. The appellant was made to take off his pant and wash of the right side pocket of the appellant was taken in freshly prepared colourless solution of sodium carbonate that also turned pink and the wash of right side pocket of the pant was also transferred in a clean bottle and sealed with seal of the Investigating Officer. Those washes were taken into possession.

7. Micro cassette recorder was taken from the complainant and played. From the recorded conversation between the appellant and the complainant, it was apparent that the appellant had demanded illegal gratification at the rate of 5% of the enhancement of cheque

purchase facility sanctioned in favour of the firm of wife of the complainant and agreed to accept ₹4,000/-. Copy of the micro cassette was prepared and micro cassette was converted into a *pulanda*. The post trap proceedings were recorded in the recovery memo Ex.PW2/F.

8. It is further the case of the prosecution that during the investigation, specimen voice of the appellant was recorded in a cassette and the aforesaid cassette, along with the micro cassette containing the conversation between the appellant and the complainant, was sent to CFSL for comparison and, as per the report of CFSL, the voice attributed to the appellant in the micro cassette was opined to be the voice of the person who had given the specimen voice. Hand washes were also sent to CFSL and their chemical analysis report confirmed presence of phenolphthalein in the said hand washes and pant pocket washes.

9. On completion of the investigation, S.P.'s report was sent to the competent authority for obtaining sanction for prosecution and after the receipt of the sanction, charge sheet was filed against the appellant in the court.

10. Learned Special Judge, after completing the formalities of Section 207 Cr.P.C. and hearing the appellant, charged him for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the P.C. Act. Appellant pleaded not guilty to the charge and claimed to be tried.

11. In order to bring home the guilt of the appellant, prosecution has examined nine witnesses in all. PW2 Gurcharan Singh, however, is the sole witness to the actual transaction of demand and acceptance of bribe. PW5 Suresh Kumar and PW7 P.P. Singh are panch witnesses, who are witnesses to the recovery of the tainted currency notes from the possession of the appellant and subsequent post raid proceedings i.e. taking of hand wash, pant pocket wash, hearing of recorded conversation, preparation of a copy of the recorded conversation and seizure of the case property. PW8 P. Balachandran is the trap laying officer.

12. As per the case of prosecution, only witness to the actual transaction of demand and acceptance of bribe is the complainant. Therefore, before adverting to the submissions made on behalf of the rival parties, it would be useful to have a look on his testimony.

13. PW2 complainant Gurcharan Singh is a hostile witness. Though he has proved his complaint Ex.PW2/D, he has not supported the case of the prosecution either on the initial demand prior to the filing of the complaint or the subsequent demand and acceptance of bribe by the appellant at the time of trap. He was cross-examined at length by learned Sr. PP appearing for CBI, but nothing incriminating against the appellant could be elicited in his cross-examination. Instead, he stated that after formal talks, he offered ₹4,000/- to the appellant saying he should not create hindrance in their work and when the appellant

refused to accept the money, he thought that the amount offered by him was below the expectation of the appellant. Thereafter, he put the currency notes in the pocket of the appellant saying that he should accept the same, but the appellant took out the money from his pocket and placed it on the table.

14. PW5 Suresh Kumar and PW7 P.P. Singh are the panch witnesses. They, in their testimony, have more or less supported the prosecution story. PW8 Inspector P. Balachandran, the trap laying officer has also supported the prosecution version.

15. The appellant, in his statement under Section 313 Cr.P.C. has denied the prosecution version in totality. He claimed that he is innocent. Two bankers cheque/drafts pertaining to the loan applied for by the wife of the complainant were handed over to the complainant prior to the filing of the complaint and the cheque purchase limit of the firm of the wife of the complainant had also been increased from ₹2 lakhs to ₹4 lakhs on 02.04.2002, which facts are confirmed by the prosecution evidence. He claimed that he has been falsely implicated.

16. Learned Special Judge, on consideration of the evidence on record, found the appellant guilty and convicted him for the offences under Sections 7 and 13(2) read with Section 13(1)(d) of P.C. Act, 1988 vide impugned judgment and sentenced him vide order dated 11.07.2005.

17. Learned counsel for the appellant has submitted that the appellant is innocent and his conviction is the result of wrong appreciation of facts by the learned trial Judge. Learned counsel argued that the learned trial Judge, while recording conviction of the appellant, has ignored some important factors which cast a strong doubt against the fairness of investigation as well as the correctness of the prosecution story.

18. Dilating on the argument, firstly it is contended that the case of the prosecution is highly suspect for the reason that there was no occasion for the appellant to demand or accept bribe. In support of this contention, learned counsel for the appellant has drawn my attention to the complaint Ex.PW-2/D, which put the investigating agency into motion. In the said complaint, it is specifically alleged that the loan application which is projected as reason for demand of bribe was sanctioned much earlier to the filing of the complaint and even the pay orders pertaining to the sanctioned loan were issued to the supplier companies who were to supply lathe machines to the firm belonging to the wife of the complainant a day earlier to the complaint. Learned counsel argued that once the loan had already been sanctioned and released, there could be no occasion for demand or acceptance of bribe and this raises a strong suspicion that the complaint is motivated.

19. Learned counsel for the C.B.I., on the contrary, has submitted that the learned Special Judge has rightly rejected said argument on the ground that there was a banker-customer relation between the appellant and the wife of the complainant, therefore, the appellant was aware that with a view to get proper trouble free services in future, the complainant was expected to keep the Branch Manager happy.

20. This argument, to my mind, is pure speculation because this explanation has not come in evidence from the mouth of the complainant. Thus, from the evidence, it appears that there was an apparent lack of motive for demanding and accepting bribe and this circumstance raises a suspicion against the correctness of the complainant and it ought to have put the court on caution while assessing the evidence.

21. Learned counsel for the appellant has further submitted that it is the case of the prosecution that only the complainant Gurcharan Singh was sent inside the house of the appellant to pass on the bribe money to him. All other members of the trap party, including the Panch witnesses, remained outside the house. Thus, the only material witness to the transaction of passing of illegal gratification, if it actually took place, is Gurcharan Singh. Learned counsel contended that Gurcharan Singh, in his testimony, has not supported the case of the prosecution either regarding the initial demand of bribe or demand and acceptance of bribe at the time of trap. Instead, in the cross

examination by the Senior Prosecutor, CBI, he stated that since the appellant refused to accept the bribe offered by him, he thought that the appellant was expecting more than Rs.4,000/- and pushed the currency notes in the pocket of the pant of the appellant and the appellant immediately took out those currency notes from his pocket and placed the same on the table. From this evidence, neither the demand nor acceptance of bribe by the appellant is established. Learned counsel argued that this fact, coupled with the lack of motive on the part of the appellant to demand and accept bribe compounds the doubt against the correctness of the prosecution story.

22. Learned counsel further contended that even the investigation of this case has also been done in the most unfair manner. In support of this contention, he drew my attention to Voice Specimen Memo Ex.PW5/B which was prepared on 21.9.2002. In this memo, it is recorded that on 21.9.2002, the appellant V.C.Jain voluntarily agreed to give his voice specimen for comparison with the voice recorded in the cassette recorder. Thereafter, a micro cassette recording was arranged and a blank cassette was loaded in the same and the appellant was given the text of the transcript of the conversation which was recorded on 20.9.2002 between the complainant and the appellant V.C.Jain with the instructions to read the same for the above said purpose and the appellant read the aforesaid text of transcript, which was recorded. As per the case of prosecution, aforesaid voice specimen of the appellant was sent to CFSL for comparison with the

conversation recorded in the cassette at the time of trap. This, according to learned counsel for the appellant, is not possible for the reason that as per the testimony of Inspector Alok Kumar (PW9), who took over investigation of this case on 25.9.2002, he got prepared the transcript of the conversation between the accused and the appellant, which was recorded at the time of raid, vide memo Ex.PW-2/H. This memo is dated 30.9.2002 and it was signed by the complainant as well as the Panch witnesses on 30.9.2002. Learned counsel argued that if the transcript of the conversation between accused and the complainant was prepared on 30.9.2002, there was no occasion for the Trap Laying Officer Inspector Balakrishnan for giving transcript of conversation to the appellant for reading for the purpose of recording his voice specimen on 21.9.2002. This, according to learned counsel for the appellant, raises a suspicion that either the facts recorded in Voice Specimen Memo Ex.PW5/B are incorrect or the packet of the audio recording was opened on 21.9.2002 and manipulated. Learned counsel for the appellant has thus concluded that the case of the prosecution is full of doubts, therefore the appellant is entitled to atleast the benefit of doubt.

23. Learned Prosecutor appearing for the CBI has submitted that Gurcharan Singh (PW2) has been won over by the appellant, therefore much importance cannot be attached to his testimony. She argued that the fact remains that the Panch witnesses, namely, PW5 Suresh Chand and PW7 P.P.Singh, as well as Trap Laying Officer have fully

supported the case of the prosecution regarding recovery of tainted money from the right side pocket of the pant of the appellant, which version also gets corroborated from the fact that hand washes as well as pant wash of the appellant turned pink, which circumstance raises a strong inference that the appellant had handled the phenolphthalein treated trap money. Learned Prosecutor submitted that it is settled law that once acceptance of bribe by the accused is established on record, there is a presumption under Section 20 of the P.C. Act 1988 that he accepted the money for the purpose specified under Section 7 and Section 13(2) r/w Section 13(1)(d) of the P.C. Act and it is for the appellant to explain that he accepted the money for a purpose otherwise than the illegal gratification.

24. I have considered the rival contentions and perused the material on record. On perusal of the evidence, it is evident that the star witness of the prosecution, namely, the complainant, who alone is the witness to the actual transaction has not supported the case of the prosecution either on the initial demand or on the demand and acceptance of bribe at the time of the trap. Instead, he has stated in his cross examination that he had forced the money into the right side pocket of the pant of the appellant and the appellant immediately took it out and placed it on the table. This explains the hand washes turning pink.

25. Now, we are left with the testimony of the Panch witnesses, Trap Laying Officer and the scientific evidence regarding comparison of the conversation allegedly recorded at the time of laying trap and the specimen voice of the appellant.

26. As per the testimony of Dr.Rajinder Singh, PSO(Physics), CFSL, he compared the voices recorded in two cassettes, one allegedly containing recorded conversation between appellant and the accused at the time of trap and other containing the specimen voice of the appellant, by applying the technique of auditory and voice spectrography and found that the specimen voice in the cassette SV as well as the questioned voice in the cassette voice QV were the voices of the same person. He has proved his report Ex.PW-6/A. This report of PW-6 Dr.Rajinder Singh is not of much help to the prosecution for the reason that in order to take advantage of this report, the prosecution has to prove beyond doubt that the specimen voice of the appellant was actually taken as claimed by the prosecution and that the questioned voice recorded in the cassette seized at the time of trap is not manipulated.

27. Ex.PW5/B is the Voice Specimen Memo, which according to the prosecution was prepared at the time of recording specimen voice of the appellant. On perusal of this document, it transpires that the appellant V.C.Jain was given the text of the transcript of conversation which was recorded on 20.9.2002 between the complainant and the

accused, with the instructions to read the same for the purpose of recording and he obliged by following the instructions. If this is true, then the transcript of the conversation between the appellant and the accused must have been prepared prior to the recording of voice specimen of the appellant. This, however, is not the case. The specimen voice of appellant was admittedly recorded on 21.9.2002 whereas as per the statement of Investigating Officer PW9 Inspector Alok Kumar, the transcript of the recording of conversation between the appellant and the complainant during trap was prepared on 30.9.2002. This is also confirmed by recorded voice transcription memo Ex.PW-2/H prepared by Inspector Alok Kumar. It is not clear how Trap Laying Officer Inspector Balachandran, on 21.9.2002 could provide the transcript of the conversation recorded at the time of trap on 20.9.2002 to the appellant for recording the specimen voice when the said transcript, as per the Investigating Officer, was prepared on 30.9.2002. Further, as per the voice specimen memo Ex.PW-5/B, Trap Laying Officer Inspector P.Balachandran gave transcript of the conversation which took place at the time of trap on 20.9.2002 to the appellant and asked him to read the same for recording the specimen voice for comparison. It is not understandable as to why the appellant was made to read the exact transcript of the conversation. This circumstance raises a strong possibility that the voice specimen recorded on 21.9.2002 might have been used for fabrication of the audio record of conversation between the complainant and the

appellant which took place at the time of trap. The doubt is compounded for the reason that if the transcript was already available on 21.9.2002, there was no occasion for the I.O. Inspector Alok Kumar to prepare another transcript on 30.9.2002. Thus, in my view, audio recording of the conversation is suspect and the prosecution cannot take advantage of said recording.

28. Coming to the hand washes and pocket wash turning pink, it is explained by the version of the complainant, wherein he stated that when the appellant did not accept the offered money, he had forced the money into the right side pocket of the pant of the appellant and the appellant took out that money and place it on the table. This explains the presence of phenolphthalein powder in the pant pocket as well as on the hands of the appellant. Thus, in the absence of direct evidence regarding the demand and acceptance of bribe by the appellant, I find it unsafe to base the conviction of the appellant on the basis of statement of Panch witnesses and trap officer who have neither heard the conversation nor seen the transaction of passing of the bribe money, more so for the reason that as per the prosecution case, the complainant persuaded the I.O. to send him alone to the house of the appellant for paying the bribe.

29. In view of the discussion above, I am of the view that the prosecution case is full of doubt. Therefore, I find myself unable to sustain the impugned judgment of conviction and consequent order on

sentence. Appeal is, accordingly, accepted. Impugned judgment and order on sentence are set aside and the appellant is acquitted on both counts, giving him benefit of doubt.

30. Appeal is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 24, 2010
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