

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

Judgment reserved on: October 01, 2010
Judgment delivered on: October 08, 2010

+ **CRIMINAL APPEAL NO. 809/2005**

ROSHAN LAL SAINI

....APPELLANT

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Anurag Jain, Advocate

Versus

C.B.I.

.....RESPONDENT

Through: Ms. Sonia Mathur, Advocate with Mr.
Sushil Kumar Dubey, Advocate.

WITH

CRIMINAL APPEAL NO. 813/2005

M.N.SHARMA

....APPELLANT

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

Versus

C.B.I.

.....RESPONDENT

Through: Ms. Sonia Mathur, Advocate with Mr.
Sushil Kumar Dubey, 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. M.N. Sharma and Roshan Lal Saini, the appellants herein have preferred above referred separate appeals against the impugned judgment dated 28.09.2005 of learned Special Judge, Delhi holding them guilty of the offences punishable under Section 120B IPC read with Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act and the consequent order on sentence dated 30.09.2005 in terms of which both the appellants were sentenced.

2. Briefly stated, the facts relevant for disposal of these appeals are that Vijay Kumar, a Document Writer, having a seat at the office of Sub-Registrar visited the office of CBI and submitted a written complaint (Ex.PW6/A) alleging that he had presented three sale deeds vide receipts dated 30th July, 1998, 06th August, 1998, 12th August, 1998 and a partition deed vide receipt dated 29th July, 1998 at the office of Sub-Registrar/Tehsildar, VI-C, Rampura, Delhi for registration. The concerned Sub-Registrar i.e. the appellant M.N.Sharma stopped the registration process of those documents and verbally asked him to bring 'No Objection Certificate' for the registration of the documents whereas there was no requirement of 'No Objection Certificate' in respect of transactions of properties situated in Old Gupta Colony and New Gupta Colony and that the appellant M.N.Sharma had earlier registered several documents/sale deeds of that area without insisting for NOC. Vijay Kumar, complainant further claimed in his complaint

that on 20th August, 1998, appellant M.N.Sharma demanded a bribe of ₹ 6500/- @ ₹ 2000/- per sale deed and ₹ 500/- for the partition deed for registering those documents and he made it clear that he would not register the documents till the money asked by him was paid to him. On the basis of said complaint, formal FIR RC/DA I/0047/98 47(A)/98 (Ex.PW7/A) was registered on 27th August, 1998 at about 11.30 a.m. and the investigation was entrusted to Inspector P.Balachandran (PW7) of Anti-Corruption Branch, CBI.

3. Inspector P.Balachandran, on receipt of the FIR, organised a raid and he went through the formalities of pre-raid proceedings in which the complainant produced Rs. 6500/- to be used for the bribe money. After making preparation for the raid, the trap party proceeded to office of Sub-Registrar Rampura. There they came to know that Sub-Registrar had left the office at 2.30 p.m. and he was expected to return to the office at 5.30 p.m. For that reason, the raid was called off and complainant Vijay Kumar and the witnesses Devender and Arshad Ali were asked to come again to the CBI office on the next day.

4. On 28th August, 1998, pre-trap proceedings were again conducted and respective handing over memos were prepared, detailing the proceedings conducted in the CBI office. After the necessary arrangements, the trap party reached at the office of Sub-Registrar, Ram Pura at about 1.30 p.m. The complainant Vijay Kumar

along with the shadow witness Devender was then sent to the room of Sub-Registrar to contact him. Other members of the trap party took position in the office compound on the side opposite to Room No. 12. Complainant and shadow witness were seen going to the Room No. 12 and coming out of the room. After about 10 minutes, one person approached the complainant Vijay Kumar and talked with him for about 5 minutes and aforesaid person and the complainant went to the Sub-Registrar's office in Room No. 12 and returned back within 15 minutes. Then, they came to the main gate of the office complex and the complainant informed the Trapping Officer that the other person was Jugal Kishore, who had come to him for registration of a sale deed which has been submitted in the office of Sub-Registrar. He also informed that the Sub-Registrar M.N.Sharma (appellant) had told him to meet him again at 2.45 p.m. in connection with the pending document. At about 2.45 p.m., the complainant and the shadow witness Devender were again sent to the office of the appellant and 5 minutes later, shadow witness Devender came out of the room. He approached Inspector P. Balachandran and informed that Sub-Registrar was bargaining with the complainant and he was directed to go outside to wait. At about 3.00 p.m., complainant Vijay Kumar came out of the office and informed Inspector Balachandran that the Sub-Registrar had reduced his demand to Rs. 6000/- and directed him to hand over the money to Roshan Lal, the other appellant. He also informed that LDC Jagbir Singh was also present in the office and he had kept the bribe

amount of Rs. 6000/- on the table of the LDC and on receiving the instructions from the appellant M.N.Sharma, the other appellant Roshan Lal, Peon had picked up money from the table and counted it with both his hands and kept it in his pocket. On this trap party rushed to the office of the appellant M.N.Sharma and apprehended Roshan Lal. Roshan Lal got perplexed and he asked for forgiveness and stated that he had accepted Rs. 6000/- from the complainant Vijay Kumar Monga on the directions of M.N.Sharma and kept the money in his pocket. The money was recovered from the pocket of Roshan Lal Sharma. Thereafter, Roshan Lal was made to dip fingers of his respective hands in freshly made colourless solution of Sodium Carbonate and his respective hand washes turned pink. Same process was repeated with the pocket of shirt of appellant Roshan Lal and pocket wash also turned pink. Hand washes as well as pocket washes were transferred into clean bottles and bottles containing washes were sealed and taken into possession. Appellants were arrested.

5. On completion of formalities of investigation, both the appellants M.N.Sharma and Roshan Lal were challaned and sent to court for trial. Learned Special Judge charged both of them for the offences punishable under Section 120B IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988. Both the appellants pleaded innocence and claimed to be tried.

6. In order to bring home the guilt of the appellants, prosecution has examined 9 witnesses including complainant Vijay Kumar (PW6), shadow witness Devender Kumar (PW3), recovery witness Arshad Ali (PW4) and Jagbir Singh, LDC (PW8) besides the Trap Laying Officer P.Balachandran (PW7).

7. The appellants were examined under Section 313 Cr.P.C. to afford them an opportunity to explain the incriminating evidence against them. Both of them in their respective statements under Section 313 Cr.P.C, denied the prosecution version in totality. They claimed that they neither demanded nor accepted bribe money from the complainant and they have been falsely implicated in this case. None of them preferred to produce evidence in defence.

8. The learned Special Judge, on consideration of the evidence found the appellants guilty of the charges and convicted them accordingly for the offences punishable under Section 7 as well as Section 13(2) read with Section 13(1)(d) of the P.C.Act read with Section 120B IPC.

9. Learned Sh. K.B.Andley, Sr. Advocate appearing for the appellant M.N.Sharma and learned Sh. Sandeep Sethi, Sr. Advocate appearing for the appellant Roshan Lal have assailed the impugned judgment of conviction on the ground that it is based upon surmises and

conjectures, ignoring the fact that the prosecution has miserably failed to establish either the demand for illegal gratification by the appellant M.N.Sharma or acceptance of bribe money by the appellant M.N.Sharma indirectly through the appellant Roshan Lal in furtherance of a conspiracy between them.

10. As regards the demand for illegal gratification, it is submitted on behalf of the appellant that as per the case of prosecution, initial demand was made by the appellant M.N.Sharma on 20.08.1998, in respect of which the complainant Vijay Kumar (PW6) filed a hand-written complaint Ex.PW6/A with CBI. There is no mention of presence of any other witness at the time of initial demand in the complaint Ex.PW6/A. PW6 Vijay Kumar (complainant), in his testimony, has not testified that on 20.08.1998, appellant M.N.Sharma demanded illegal gratification of ₹ 6500/- from him for clearing the three sale deeds and one partition deed submitted by him in his capacity as Deed Writer for registration. Learned senior counsels submitted that in absence of categorical evidence in this regard, it cannot be said that the initial demand for bribe, which led to filing of complaint is established.

11. Learned counsel for CBI, countering the argument, submitted that the fact that complainant Vijay Kumar had himself gone to CBI office to lodge his hand-written complaint Ex.PW6/A by itself is sufficient proof of initial demand for illegal gratification made by the appellant M.N.Sharma. She submitted that if there was no demand, there was no

occasion for the complainant to file a complaint against the appellant M.N.Sharma, particularly when the complainant was working as Deed Writer in the Sub-Registrar office and he could not have taken a risk to file a false complaint against the Sub-Registrar to the detriment of his career. Learned counsel for the CBI further submitted that correctness of allegation in the complaint Ex.PW6/A cannot be doubted for the reason that there is nothing on the record to suggest any motive or reason on the part of the complainant to lodge a false report against appellant M.N.Sharma.

12. There is no merit in the submission of the learned Prosecutor. Filing of complaint with CBI by the complainant cannot be taken as a substitute for the evidence of proof of allegations contained therein. The complaint Ex.PW6/A is a document containing allegation of demand of illegal gratification made by the appellant M.N.Sharma. Prosecution was required to prove the allegation made in the complaint by convincing evidence, which the prosecution has failed to do. Therefore, I find it difficult to accept that the prosecution has been able to establish the initial demand.

13. Next question for determination is whether or not prosecution has been able to establish the subsequent demand for illegal gratification by the appellant M.N.Sharma. The case of the prosecution, as per the charge sheet is that at the time of the raid, complainant Vijay Kumar negotiated the bribe amount with the

appellant M.N.Sharma, who ultimately reduced the demand from ₹ 6500/- to ₹ 6000/- and directed him to pay the demanded money to his Peon Roshan Lal (other appellant). To prove this, prosecution examined the complainant Vijay Kumar (PW6), Shadow Witness Arshad Ali (PW4) and Jagbir Singh, LDC (PW8).

14. Complainant Vijay Kumar has deposed that on 28.08.1998, on reaching of office of Sub-Registrar Rampura, he met one of his clients who requested him to help him for some work. He got his work done and thereafter, he met the Sub-Registrar M.N.Sharma (appellant) and told him that certain documents submitted by him with the office were pending for registration. Appellant M.N.Sharma told him to come after lunch. Thereafter, at 3.30 p.m., he along with the shadow witness again went inside the office of Sub-Registrar and enquired from him about his documents pending registration. The Sub-Registrar enquired about the identity of the shadow witness, whom he introduced as his employee and thereafter the Sub-Registrar asked him, shadow witness and others to go out of the office and come one by one for their work. Five/Seven minutes later, when those people left, he again entered the office of Sub-Registrar and insisted that the shadow witness may be allowed to be present in the room but the Sub-Registrar did not agree. Vijay Kumar (complainant) further stated that since 2/3 persons were sitting at the table of Sub-Registrar, he directed him to go and talk with the dealing clerk. Thus, he went to the seat of dealing clerk and enquired about his documents. On this, the dealing clerk asked him if

he had brought the money to which he replied in the affirmative. Thereafter he showed the slips pertaining to those documents and the money to the dealing clerk, who told him to put the currency notes on the table. He accordingly placed the tainted ₹ 6000/- on the table and the dealing clerk, after verification of the slips handed over by him took out his documents. Jagbir Singh, LDC (dealing clerk) was examined as PW8. According to him, on 28.08.1998, complainant Vijay Kumar Monga came to Sub-Registrar office for registration of documents and after depositing the registration fee, he took the receipt and left after leaving the documents which were to be registered. Complainant came again to the office of Sub-Registrar after 2 or 2½ hours and he took out some receipts from his pocket pertaining to some documents earlier submitted by him for registration. Along with those receipts, he took out the shadow money and placed it on the table. Thereafter, he handed over receipts to him and on the basis of those receipts, he took out the relevant documents and directed Roshan Lal, appellant to stamp those documents.

15. There is a marked contradiction in the testimonies of complainant Vijay Kumar and PW8 Jagbir Singh in respect of the manner in which the transaction took place. Therefore, I do not find it safe to rely upon the testimony of either one. Otherwise also, neither complainant Vijay Kumar nor PW8 Jagbir Singh has stated that M.N.Sharma negotiated the amount of bribe with the complainant and reduced his demand from ₹ 6500 to ₹ 6000/-, nor anyone of them has stated in so many

words that he had directed the complainant to go and pay money either to PW8 or to the appellant Roshan Lal. So far as shadow witness is concerned, his stand is that he was not allowed to remain in the room, therefore, he could not witness the transaction of subsequent demand at the time of raid, if at all, it was made.

16. The learned Special Judge has raised an inference of the demand made by appellant M.N.Sharma on the strength of testimony of TLO and the evidence regarding the hand wash and pocket wash of appellant Roshan Lal having turned pink, as also the CFSL report which certified that the samples of hand washes tested positive for the presence of phenolphthalein and sodium carbonate.

17. While dealing with the issue of subsequent demand, the learned Special Judge arrived at a conclusion favourable to the prosecution and observed as under:-

“32. In respect of the post trap proceedings, the complainant has stated before this court that when he first contacted the accused No. 1 i.e. the Sub-Registrar, accused No. 1 asked him to come after lunch as it was public dealing time and when he went after lunch at about 3.00 or 3.30 pm alongwith the shadow witness and inquired about the registration of the documents from accused No. 1, the Sub-Registrar inquired about the identity of the shadow witness and though he introduced the shadow witness as his employee, the accused No.1 asked shadow witness to go outside despite the fact that he insisted to let him be present, the Sub-Registrar did not agree and sent the shadow witness out. This conduct of accused No. 1 in asking the complainant first to come after lunch and then insisting for shadow witness to go out despite being insisted by the complainant that he is his employee, is a strong circumstance to infer that there was some secret deal to be conducted between accused No. 1 and the

complainant and presence of shadow witness was considered unwanted at that time by accused No. 1. Further the statement of the complainant that as directed by Sub-Registrar i.e. accused no. 1, he contacted the Dealing Clerk who inquired if he had brought the money to which he replied in affirmative and Dealing Clerk gesticulated with his hand asking him to put the notes on the table and then he put the notes on the table and thereafter the Dealing Clerk took out the respective documents, is sufficient to indicate that purpose of asking for the GC notes was to fulfil the demand of bribe and not otherwise. Here the improvement made by the complainant in the initial case of the prosecution is only to the extent that instead of naming the accused No. 2 to be the person who lifted the bribe money and kept in his shirt pocket, he has named Jagbir Singh, the Dealing Clerk who has been examined as PW-6 in this case. Here the question arises that who has received the bribe and whether that person has received the bribe at the instructions of accused No.1. The washes of hand and left side shirt pocket of accused Roshan Lal have given positive test for presence of phenolphthalein and sodium carbonate. The presence of PW-6 Sh.Jagbir Singh at the time of trap has been admitted by the panch witnesses and he has also signed the recovery memo Ex.PW 3/f. Obviously the complainant has named Jagbir Singh to be the person who asked for the bribe for the reason that he wanted to show favour to the accused persons. In the complaint Ex.PW6/A, the demand was allegedly made only by accused no.1 and there was no occasion for the prosecution to arrest the Peon, Roshan Lal(A2) in this case had the recovery not been effected from him. So far as statement of Jagbir Singh is concerned, he has nowhere stated that he asked from the complainant whether he has brought the money or gesticulated with hand to demand the bribe. The statement of the complainant that he was under instructions and the Dealing Clerk was in the process of taking the documents and he had put the notes on the table, he gave signal to the witnesses who further transmitted the same to the raiding party, is sufficient to prove that the bribe money has been given by the complainant only on the instructions of accused no.1 and on completion of transaction, the signal was given. So the improvement in this regard by the complainant by replacing Jagbir Singh with Roshan Lal seems to be with a view to help the accused persons, otherwise the complainant would have raised objection at the spot itself as to why a Class-IV employee ie. Roshan Lal, Peon is being arrested when he had no role to play in the matter and why the real culprit i.e. the Dealing Clerk Sh.Jagbir Singh is not being arrested though he was demanding the bribe under instructions from accused

No.1. The trap was laid in August, 1998, but till his examination as a witness before this Court on 11.8.2003, the complainant has not brought either to the notice of department of the accused persons or to this Court that PW8 Jagbir had demanded and accepted the bribe who has been let of by CBI and accused No.1 has been falsely implicated.”

18. The above observations of the learned Special Judge are based upon surmises and conjectures. Learned Special Judge has ignored the fact that neither the complainant nor PW8 Jagbir Singh has supported the theory of subsequent demand at the time of raid. The Trial Judge has tried to build up a theory on the basis of certain incriminating circumstances which fall short of proof beyond the shadow of reasonable doubt. Merely for the reason that the appellant M.N.Sharma had asked the shadow witness and other persons to go out of the room, it cannot be inferred that he had guilty intent, particularly when according to the complainant there were 2 or 3 persons sitting in the same room at the relevant time. A possibility cannot be ruled out that the appellant asked the shadow witness to go out of the room as he did not want unnecessary rush of people in his office at the time of work. Further, according to the complainant, when he asked about his documents pending registration, the appellant M.N.Sharma directed him to contact the dealing clerk. This circumstance by no logic can give a rise to an inference that the complainant was forwarded to the dealing clerk with an ulterior motive. Admittedly, the documents in question were submitted for registration much earlier and as per the

complainant, he had been given receipts for deposit of those documents so that after the completion of registration work, he may come and collect those documents. Since the complainant asked the appellant M.N.Sharma about his documents submitted for registration, it was natural for him to direct the complainant to go and contact the dealing clerk and take his documents, if those were ready, after giving the receipts. Thus, in my view, the prosecution has failed to establish subsequent demand beyond reasonable doubt.

19. Learned Prosecutor has contended that the complainant was working as a Deed Writer in the office of Sub-Registrar and his profession depended upon the goodwill and amicable relationship with the staff working at the Office of Sub-Registrar. Therefore, it is highly improbable that the complainant would have filed a false complaint against the appellant M.N.Sharma unless a demand for illegal gratification was made. The argument of learned Prosecutor, at the first blush, appears to be attractive but there is a flip side to this argument. A possibility cannot be ruled out that the complainant was nursing some grudge against the appellant M.N.Sharma in respect of some previous official dealing and for that reason, in order to teach a lesson to the appellant, he lodged a false complaint against the appellant. Thus, filing of complaint Ex.PW6/A by the complainant cannot be taken as a proof of demand of illegal gratification by the appellant M.N.Sharma in absence of any evidence for demand of illegal gratification made by the appellant M.N.Sharma or the other appellant.

20. Coming to the recovery of tainted money, case of the prosecution is that when the raiding party entered the office of the appellant M.N.Sharma on the receipt of signal, the appellants got perplexed and appellant Roshan Lal asked for forgiveness, saying that he had accepted the money on the directions of appellant M.N.Sharma. Aforesaid statement of Roshan Lal, if at all he made it, is inadmissible in evidence being the confessional statement made in presence of a police officer. Coming to evidence of recovery, neither the complainant Vijay Kumar nor panch witnesses Devender Kumar and Arshad Ali nor PW8 Jagbir Singh, LDC have supported the case of prosecution regarding the recovery of tainted money from the possession of Roshan Lal. The case of the prosecution thus rests on solitary testimony of Trap Laying Officer, which remains uncorroborated. Perusal of the recovery memo Ex.PW3/F reveals that besides the aforesaid four public witnesses, other members of the raiding party, namely, Inspector P.K.Gunwant, SI Alok Kumar, Inspector Virender Trehan and Madhusudan Singhal, DSP are also signatories of the recovery memo. Though, as per the case of prosecution, they were present at the time of recovery of tainted money, none of them have been examined by the prosecution to corroborate the version of Trap Laying Officer P. Balachandran. Prosecution has not been able to give any cogent reason for non-production of above referred trap team officers to corroborate the version of PW7 P.Balachandran, particularly when all the public witnesses had failed to support the prosecution

case. In absence of any explanation in this regard, I find it unsafe to rely upon the solitary testimony of Inspector P.Balachandran (PW7) particularly when he also has not categorically stated in his testimony that tainted money was recovered from the possession of appellant Roshan Lal nor has he stated the name of the person who recovered the tainted money from the possession of the appellant Roshan Lal.

21. Learned Special Judge found the testimony of Trap Laying Officer reliable as it found corroboration from the fact that the respective hand washes and shirt pocket wash of the appellant, when taken in sodium carbonate solution, turned pink and those washes on chemical analysis, as per the CFSL report, gave positive test for presence of phenolphthalein and sodium carbonate. Thus, it appears that from this learned Special Judge inferred that the prosecution has been able to establish the presence of phenolphthalein on the hands as well as pocket of the shirt of appellant Roshan Lal, which could be possible only if Roshan Lal had handled the tainted money and kept in his pocket. No doubt, this circumstance gives rise to a suspicion that appellant Roshan Lal might have accepted the tainted money from the complainant, however, suspicion by no means is a substitute for proof. Thus, in absence of any definite evidence of acceptance of tainted money by the appellant Roshan Lal, I find that the prosecution has failed to even prove the recovery and acceptance of tainted money by the appellant Roshan Lal.

22. In view of the above, I find that the prosecution has failed to establish either the demand of illegal gratification by the appellant M.N.Sharma or acceptance of illegal gratification by the appellant Roshan Lal on the direction of the appellant M.N.Sharma. Thus, I find it difficult to sustain the impugned judgment of conviction and order on sentence. Both the appeals are allowed. The impugned judgment of conviction and order on sentence are set aside and the appellants are acquitted of the charges under Section 7 and 13(2) read with Section 13(1)(d) of the P.C.Act as well as Section 120B IPC, giving them benefit of doubt.

23. Appeals are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

OCTOBER 08, 2010

akb/pst/ks