

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

Judgment reserved on: July 27, 2010
Judgment delivered on: December 21, 2010

+ **CRL.A. No.413/2010 & CRL.M(BAIL) No.518/2010**

BRAHAM SINGH BHATI

....APPELLANT

Through: Mr. R.P. Luthra, Advocate with Ms. Reema Luthra, Advocate

Versus

STATE

.....RESPONDENT

Through: Mr. Pawan K. Bahl, APP

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 of Braham Singh Bhati is directed against the impugned judgment dated 16.03.2010 and consequent order on sentence dated 17.03.2010 passed by the Special Judge, Delhi in Corruption Case No.31/05 FIR No.54/04 P.S. Anti Corruption Branch, whereby the appellant has been convicted for the offences punishable

under Section 7 and 13(1)(d) read Section 13(2) of Prevention of Corruption Act, 1988 and sentenced under Section 7 of the P.C. Act to undergo RI for the period of 1½ years and a fine of ₹5,000/-, in default of payment of fine to undergo SI for the period of four months. Similar sentence has also been awarded to the appellant for the offence under Section 13(2) of the P.C. Act, 1988 with the observation that both the sentences shall run concurrently.

2. Briefly stated, case of the prosecution is that in October, 2004, appellant Braham Singh Bhati was working as LDC in the Office of SDM, Geeta Colony, Delhi. Complainant Om Prakash (PW5) had submitted applications of his sister Birmati and brother-in-law Vijay in the office of SDM, Election requesting for issue of voter certificates in their favour. On 12.10.2004, complainant Om Prakash met the appellant in that connection and the appellant demanded a bribe of ₹200/- and a bottle of liquor for issuing the certificate. The complainant told the appellant that he would come to collect the certificate on the next day and on this, the appellant told him that in case he was not available in the office on 13.10.2004, the complainant may collect the certificate from Bhopal Singh, who was also working in the office, after paying him the bribe money. The complainant was not interested in giving illegal gratification. He went to Anti Corruption Branch and submitted his complaint Ex.PW5/A.

3. Inspector Sukhbir Singh (PW14) decided to organise a raid to catch the appellant red-handed. He joined one Swaran Singh in the raid party. In the pre-raid proceedings, the trap officer recorded serial numbers of the currency notes provided by the complainant. Phenolphthalein powder was applied to the GC notes and a demonstration was given to the members of the raid party to explain the parties by treating the GC notes with Phenolphthalein powder. Panch witness Swaran Singh (since expired) was asked to touch the Phenolphthalein treated GC notes and then put his fingers in freshly prepared solution of sodium carbonate. When the panch witness dipped his fingers after touching the GC notes into phenolphthalein powder, the solution turned pink. Thereafter, demonstration solution was thrown away. Both the complainant and the panch witness were searched to ensure that they were not carrying money or something else. The phenolphthalein treated GC notes were then handed over to the complainant and he kept them in the front left pocket of his shirt. Complainant was directed that he should pay those GC notes to the appellant only in the event of his demand. Panch witness was directed to remain close to the complainant during the raid so that he could hear the conversation between the complainant and the appellant and see the transaction of passing of money. He was also directed that after the completion of transaction, he should give signal to the raid party by raising his hands. Thereafter, all the members of the raiding party including the complainant and the panch witness washed their

hands with soap and water. Relevant material required for investigation were kept in the investigation bag and the bottle containing remaining phenolphthalein powder was handed over to the duty officer. Pre-raid proceedings were reduced into writing (Ex.PW5/B) and it was signed by the complainant as well as the panch witness Swaran Singh.

4. It is also the case of prosecution that the raid party left Anti Corruption Branch for the office of SDM, Geeta Colony/ Preet Vihar in a government vehicle and they reached there at 2:05 pm. Government vehicle was stopped at a distance of 100 mtrs from the office of SDM. Inspector K.S. Pathania and the Driver remained in the vehicle. Complainant and panch witness were sent to the SDM office and raid officer along with other members of raiding party followed them and took suitable positions near Room No.4 of the SDM office.

5. At about 2:30 pm, complainant and panch witness came out of the office and told the raid officer that the appellant was not available in the office and he would come after one hour. Raid officer advised them to wait for the appellant. Complainant and panch witness again went inside Room No.4 of SDM office. At about 3:30 pm, panch witness gave pre-determined signal and on this, the raid officer along with his team rushed into Room No.4. Appellant Braham Singh was present in the room. Panch witness informed him that the appellant had demanded and accepted ₹200/- from the complainant and the money

was in his right fist. The raid officer challenged the appellant that he has taken illegal gratification of ₹200/- and offered his search as well as search of other members of the party. The appellant declined the offer and admitted his guilt. On the direction of raid officer, panch witness recovered the bribe money of ₹200/- of two GC notes of ₹100/- denomination each from the right hand fist of the appellant. On comparison, the numbers of the recovered GC notes tallied with the numbers recorded in pre-raid report Ex.PW5/B. Those GC notes were taken into possession vide Memo Ex.PW5/6. Sodium carbonate solution was prepared and the appellant was asked to put his right hand in said colourless solution. The right hand wash of the appellant turned pink and the said pink solution was transferred into two clean bottles and sealed with the seal of "SS". The bottles were labelled as RHW-I-II. Raid officer prepared the sample seal and the said two sealed bottled as well as sample solutions were taken into possession vide Memo Ex.PW5/D. Raid officer further prepared post raid proceedings Ex.PW5/E as well as rukka Ex.PW14/A, which was sent to the Police Station through Constable Kishan Pal for the registration of the FIR.

6. Investigation, thereafter was handed over to Inspector K.S. Pathania (PW15), who took over the custody of the accused, case property, recovered GC notes, the bottles of hand wash as well the seizure memos of the raid report. Inspector K.S. Pathania prepared the rough site plan Ex.PW15/A at the instance of the complainant and the

panch witness. He arrested the appellant and conducted his personal search vide memo Ex.PW5/H. The Investigating Officer also seized the applications of Vijay Singh and Birmati Exhibits PW and PX1, besides extracts of electoral rolls Exhibits PY1, PY2, PY3 and PY4 from the office of SDM. Case property was deposited at Malkhana on the same day. The Investigating Officer arranged for samples of hand wash to be sent to FSL for chemical analysis and as per the report of FSL Rohini, the sample gave positive test of the presence of phenolphthalein. On completion of investigation, Investigating Officer obtained sanction for prosecution of the appellant under Section 19 of P.C. Act, 1988 and on receipt of sanction order Ex.PW1/A, he filed the charge sheet in the court.

7. The appellant was formally charged for the offence punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988. Appellant pleaded not guilty to the charge and claimed to be tried.

8. In order to bring home the guilt of the appellant, prosecution examined 15 witnesses. The panch witness, unfortunately, died before he could be examined as a witness. Thus, case of the prosecution is essentially based upon the testimony of the complainant Om Prakash.

9. PW5 complainant Om Prakash has testified that in October, 2004 his sister Birmati and her husband Vijay Singh were residing with him at Villager Khichripur. He claimed that they were registered in the

electoral roll as voters and since they required voter certificates for getting pension, they had applied for issue of voter certificates in the electoral office. The complainant claimed that on 12.10.2004, he visited SDM office to find out about the progress of the applications. There, he met the appellant Braham who told him that the certificates were ready, but for getting the certificates he will have to pay the appellant illegal gratification of ₹200/- and a bottle of wine. The appellant told him to come on the next day with the money and also stated that in case the appellant was not available in the office, he should give the bribe money to Bhopal Singh and collect the certificates from him. PW5 Om Prakash further stated that he was not interested in paying the bribe, therefore, he went to Anti Corruption Branch on 13.10.2004 and submitted a written complaint Ex.PW5/A detailing the facts. He also narrated the details of the pre-raid proceedings and stated that at about 1:30 pm, the raid party including him and panch witness left Anti Corruption Branch in a government vehicle and reached the electoral office (SDM Preet Vihar) within 25 minutes. The government vehicle was left at some distance from the office and he as well as panch witness were sent to the SDM office. He claimed that he along with panch witness went to Room No.4 of the SDM, but the appellant was not present there. He was told that appellant would be coming after one hour as he had gone for some official work. He informed the raid officer in this regard, who decided to wait and asked them to wait for the arrival of the appellant in his

office. At about 3:30 pm, the appellant came to the office. Thereafter, he (complainant) and the panch witness met him in his office. The appellant demanded ₹200/- from him. He enquired about his work from the appellant and the appellant confirmed that his work has been done. Thereafter, he handed over the phenolphthalein treated GC notes to the appellant who accepted the money with his right hand. On this, panch witness gave the pre-determined signal to the raiding party and the raid officer, along with members of the raiding party came into the room and confronted the appellant that he has taken bribe from the complainant. Thereafter, on the instructions of raid officer, panch witness searched the appellant and recovered those two GC notes of ₹100/- denomination each from his right fist. Serial numbers of the GC notes were compared with the numbers of GC notes recorded in the pre-recorded report and the numbers tallied. Thereafter, hand wash of the appellant in the colourless sodium carbonate solution was taken which turned pink. Said hand wash was transferred into the clean empty bottles which were sealed with the seal of raid officer. Bottles were labelled and he appended his signatures on the labels. Complainant further stated that the GC notes as well as those bottles were seized vide seizure memo Ex.PW5/D. Raid officer, thereafter prepared the post raid proceedings (Ex.PW5/E) which were signed by him at point "A". He further submitted that the original applications of Smt. Birmati and Vijay Exhibits PX and PX1 and photocopies of the despatch register and electoral certificates Exhibits

PY1 to PY4 were also seized from the office of SDM vide memo Ex.PW5/B. Photocopy of attendance roll was also taken into possession vide memo Ex.PW5/G. The appellant was arrested and his personal search was conducted vide memo Ex.PW5/H. This witness identified the GC notes Exhibits P1/1 and P1/2, bottles of hand wash Exhibits P2/1 and P2/2.

10. PW11 Birmati and PW12 Vijay Singh have stated that in the first week of October, 2004, they had given applications for issue of voter certificates so as to enable them to vote in elections. Birmati stated that her name was registered as a voter in the voter list at Serial No.1288 and Vijay Singh stated that his name was there in the voter list at Serial No.1289.

11. PW14 Inspector Sukhbir Singh is the raid officer who has reiterated the prosecution story in his testimony. PW15 Shri K.S. Pathania is the Investigating Officer.

12. Appellant, in his statement under Section 313 Cr.P.C. has denied the prosecution story. He claimed that he has been falsely implicated by the complainant for the reason that the complainant was annoyed with him as he had refused to accept the marriage proposal of the daughter of the complainant with his son saying that there was no comparison between the status of his family and family of the complainant. He further stated that when he came to the office, the complainant shook hands with him and thereafter he was suddenly

'gheraoed' by a number of persons and taken to Anti Corruption Branch despite of the fact that other persons present in the office protested against the act of the raid party.

13. In defence, appellant has examined Shri Uday Pal (DW1) who stated that he knows the appellant as well as the complainant. Preeti, the daughter of complainant was of marriageable age, as such, the complainant had approached the appellant with the proposal of marriage of his daughter with the son of the appellant. The appellant declined the offer saying that he would think about marriage of his son after the marriage of his daughter. Thereafter, appellant took him aside and told him that there was no comparison between the family of the complainant and his family.

14. Learned Special Judge, on consideration of the evidence on record, found the appellant guilty of demanding and accepting illegal gratification of ₹200/- and convicted and sentenced him for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the P.C. Act.

15. Shri R.P.Luthra, Advocate appearing for the appellant has assailed the impugned judgment on the ground that it is based upon the wrong appreciation of evidence. Learned counsel contended that case of the prosecution is essentially based upon the testimony of the complainant Om Prakash, who is not a reliable witness. Dilating on the argument, learned counsel for the appellant drew my attention to the

cross examination of complainant Om Prakash wherein he has stated that one Bhopal Singh in the SDM Office had prepared the relevant electoral certificates in favour of his sister and brother-in-law. He further stated that he had met Bhopal Singh 7/8 days prior to the date and at that time certificates were ready. When he demanded those certificates from Bhopal Singh, he told that the appellant had snatched away those certificates from him and this fact was revealed by Bhopal Singh four days prior to the raid. PW-13 Shri V.P.Singh, the then SDM, Preet Vihar, in his cross-examination has admitted the suggestion that the relevant certificates were prepared and placed before him by Head Clerk Bhopal Singh for his signatures on 8th October 2004 and those certificates were returned by him on the same day. He also stated that it was the duty of Bhopal Singh to deliver those certificates. Learned counsel urged that from aforesaid evidence, it is clear that prior to the filing of the complaint, the complainant was aware that the certificates have been prepared and signed by the SDM and those had been snatched by the appellant from Head Clerk Bhopal Singh. This fact, however, is not reflected in the complaint Ex.PW-5/A wherein the complainant has alleged that on 12th October 2004 he visited SDM Office, Geeta Colony to find out about the electoral certificates of his sister and brother-in-law and there he found that the applications of his sister and brother-in-law were lying with the appellant who said that the certificates were ready and those were only to be signed by the SDM, which job would be done latest by the evening and thereafter the

appellant demanded bribe of ₹200/- and a bottle of liquor. Learned counsel submitted that in view of the aforesaid material contradictions in the allegation in the complaint and the evidence, testimony of the complainant cannot be relied upon, particularly when there is no independent corroboration to the said evidence.

16. Learned counsel further submitted that if the version of the complainant is to be believed, at the time of initial demand one Ramesh was present in the office and aforesaid Ramesh had advised him to get the appellant trapped. If it is true, then the question arises as to why the prosecution has not cited or examined Ramesh to corroborate the aforesaid version of the complainant. From this, learned counsel for the appellant has urged the court to infer that Om Prakash is not a truthful witness and it is not safe to convict the appellant on his uncorroborated testimony.

17. Learned APP, on the other hand, has argued in support of the impugned judgment. He has contended that learned Special Judge has rightly relied upon the testimony of PW-5 Om Prakash (complainant) which is fully supported by PW-14 Inspector Sukhbir Singh (Raid Officer). Learned APP submitted that there is nothing on the record to suggest any motive or reason on the part of the raid officer to falsely implicate the appellant. He states that from the testimony of the complainant, it transpires that he was told by Bhopal Singh, Head Clerk that the appellant had snatched the electoral certificates from him and

the recovery of those electoral certificates at the time of raid from the table of the appellant provides enough corroboration to the testimony of the complainant.

18. I have carefully considered the rival contentions and the evidence on record. I am not convinced with the submissions made by learned APP for the reason that there is no explanation to the above referred mismatch between the allegations in the complaint and the evidence of the prosecution. If the version of the complainant is to be believed, then before filing of the complaint, he was aware that the certificates were ready and those were snatched by appellant from Head Clerk Bhopal Singh. Had this been the case, there was no occasion or reason for demand of bribe by the accused. Further, from the evidence of PW-13, the then SDM, it is apparent that it was the duty of Head Clerk Bhopal Singh to deal with the applications of Birmati and Vijay Singh for grant of electoral certificates. That being the case, it was necessary for the Investigating Officer to find out as to how and in what manner those certificates reached in the hand of the appellant. There could be two possibilities; either Bhopal Singh, Head Clerk was the accomplice of the appellant or the appellant somehow managed to get hold of the certificates which were got signed from the SDM by Head Clerk Bhopal Singh on 8th October 2004. In the event of the first possibility, Bhopal Singh should have been arrayed as an accused with the appellant, which is not the case and if he has not been arrayed as an accused, then Bhopal Singh obviously was a material witness to throw light upon

the case of the prosecution. He has not been cited as a witness. This circumstance casts a doubt upon the fairness of investigation and correctness of prosecution story. Further, Ex.PW-5/F is the seizure memo pertaining to the seizure of the original applications of Birmati and Vijay Singh and the certificates issued pursuant to those applications by the Chief Electoral Officer. This memo records that aforesaid documents were seized by the Investigating Officer from the table of the appellant. On careful reading of the seizure memo, it appears that the words 'table of' in the seizure memo is an interpolation done subsequent to preparation of the document. This further compounds the suspicion against the correctness of prosecution case. The defence taken by the appellant is that he has been falsely implicated by the complainant for the reason that he rejected the proposal of the complainant to marry his son with the daughter of the complainant saying that there was no comparison between the status of their respective families. In the light of the above infirmities in the prosecution case, a possibility cannot be ruled out that the defence of the appellant might be correct that he has been falsely implicated by the complainant.

19. In view of the above, I find it unsafe to rely upon the prosecution evidence and conclude that the appellant is entitled to benefit of doubt. I, accordingly, accept the appeal and set aside the impugned judgment. The appellant is acquitted of the charges, giving him benefit of doubt.

20. Appeal stands disposed of.

21. Appellant is on interim bail. Since he has been acquitted, no further action is required against him.

22. Copy of the order be sent to the Jail Superintendent concerned for information.

(AJIT BHARIHOKE)
JUDGE

DECEMBER 21, 2010

pst/ks