

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

Judgment delivered on: September 21, 2010

+ **CRIMINAL APPEAL NO. 785/2010**
BHAGWAN SINGH

....APPELLANT

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

Versus

STATE OF NCT OF DELHI

.....RESPONDENT

Through: Mr. Pawan 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.(ORAL)

1. This appeal is directed against the judgment of the Special Judge dated 24th May, 2010 in terms of which the appellant has been convicted by the Special Judge, Delhi for the offences punishable under Section 7 and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C.Act') as also consequent order on sentence dated 25th May, 2010.

2. Briefly stated, case of the prosecution is that the appellant Bhagwan Singh while working as a Beldar in Delhi Jal Board office, North East-I, Shahdara, Delhi demanded a bribe of ₹ 2500/- from the

complainant @ ₹ 500/- p.m. for five months and threatened that in the event of the complainant failing to meet his demand, he would get the water connection disconnected or ensure an inflated bill against the water connection at the house of the complainant bearing No. 77A/40, Dilshad Garden, Delhi belonging to his mother Subhash Kaur. The complainant was not interested in giving the bribe so he went to Anti Corruption Branch of Delhi Police along with 5 currency notes of ₹ 500/- denomination each, where his complaint Ex.PW6/A was recorded by Inspector Mehar Chand which was also attested by the panch witness Arun Kumar (PW13).

3. Inspector Mehar Chand, in order to verify the complaint, organised a raiding party and completed the formalities of pre-raid proceedings. He also joined Arun Kumar Goel (PW13) in raid party, a panch witness. Raiding party thereafter reached at Delhi Jal Board Office, North East-I, Shahdara. Complainant and panch witness were asked to go and contact the appellant and other members of the raiding party took strategic position in the office of Delhi Jal Board.

4. It is further alleged that the appellant was present in the office and he accepted the aforesaid tainted currency notes from the complainant and put it in his pocket. On this, the panch witness gave the signal to the raiding party and Inspector Mehar Chand and party rushed to the spot and apprehended the appellant. On search, aforesaid 5 currency notes were recovered from the pocket of the

appellant. Sodium carbonate solution was prepared and the fingers of the appellant were dipped in the solution and on this, the sodium carbonate solution turned pink thereby confirming that the appellant has handled the currency notes. Thereafter, investigation was taken over by Inspector Bhori Singh (PW8), who completed the formalities of investigation and forwarded the charge sheet to the court. The appellant was charged for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the P.C.Act on 3rd September, 2008 to which he pleaded not guilty and claimed trial.

5. In order to bring home guilt of the appellant, prosecution has examined 13 witnesses including the complainant Sukhvinder Singh (PW6) and the panch witness Arun Kumar Goel (PW13).

6. The statement of the appellant under Section 313 Cr.P.C. was recorded, wherein he denied having demanded or accepted the bribe and claimed that on the date of raid, he had gone to the roof of his office to feed monkeys. As soon as he reached the roof, he noticed that something was inserted in his pocket by the complainant. He at once put his hand in his pocket and took out the money and extended it towards the complainant to give it back to him. In the meanwhile, raiding party reached and apprehended him. Thereafter, he was taken to Anti Corruption office and falsely implicated in this case.

7. On perusal of the record, it transpires that both the complainant (PW6) and Arun Kumar Goel (PW13) have not supported the case of

prosecution either on demand or acceptance of illegal gratification by the appellant. They were cross-examined by learned A.P.P. with the permission of the court but nothing incriminating could be elicited in their cross-examination. Learned Special Judge has returned the finding of conviction against the appellant for the offences under Section 7 and 13(2) read with Section 13(1)(d) of the P.C.Act. Relying upon the testimony of raid Inspector Mehar Chand (PW9) and the testimony of Inspector Bhori Singh who conducted investigation after the raid.

8. Before adverting to the submissions made on behalf of the appellant, it would be useful to have a look upon the testimony of Raid Officer Inspector Mehar Chand as well as the testimony of Inspector Bhori Singh.

9. Raid Officer Inspector Mehar Chand has testified that the complainant and panch witness went to the first floor of the office and he along with other members of the raiding party took position on the ground floor in the compound. At about 10.30 a.m., he noticed the appellant Bhagwan Singh going upstairs. Complainant and panch witness followed him to the roof of the first floor. After some time, the panch witness gave pre-determined signal and he along with the other members of the raiding party rushed to the spot i.e. the roof of the first floor of the office. Panch witness informed him that the appellant Bhagwan Singh had demanded and accepted ₹ 2500/- from the

complainant with his right hand and kept the money in the right pocket of his pant. He then disclosed his identity to the appellant and confronted him that he had accepted ₹ 2500/- from the complainant. The appellant got perplexed and then on the instruction, panch witness recovered the tainted money from the right pocket of the pant of the accused. He has further stated that solution of sodium carbonate was prepared and the appellant was asked to dip his right hand fingers in the said solution. The moment he dipped his fingers in the sodium carbonate solution, it turned pink. The same exercise was repeated to take the wash of right side pocket of the pant of the appellant and that wash also turned pink. According to him, the right hand wash of the pocket of pant of the appellant was transferred into clean bottles and sealed with the seal of 'MC'.

10. PW8 Inspector Bhori Singh has deposed that he had also accompanied the raid party on 28th March 2007 to the office of Delhi Jal Board. The Govt. vehicle was parked at some distance from the office. While he remained sitting in the vehicle, the other members of the raiding party proceeded for the raid. At about 1.00 p.m., he was called by Inspector Mahesh Chand to Delhi Jal Board at the first floor and handed him over the custody of the appellant Bhagwan Singh along with the bribe money sealed in a pullanda and the other case property.

11. Learned Sh. K.B.Andley, Sr. Advocate appearing for the appellant has submitted that the impugned judgment is unsustainable as the

prosecution has failed to prove beyond doubt either the demand or acceptance of illegal gratification by the appellant. Expanding on the argument, learned Senior Counsel submitted that as per the case of the prosecution, initially, demand was made from the complainant and subsequent demand and acceptance took place at the office of Delhi Jal Board in presence of the complainant (PW6) and Arun Kumar Goel (PW13). Both the complainant (PW6) and punch witness (PW13) in their testimony, have not supported the case of the prosecution on the demand and acceptance of illegal gratification. Despite that, learned Special Judge has convicted the appellant, on the basis of sole testimony of PW19 Inspector Mehar Chand pertaining to the recovery of the tainted money from the pocket of the appellant and the evidence relating to the hand wash and pocket wash of the appellant having turned pink. Learned counsel submitted that the learned Special Judge has failed to consider that the appellant in his statement under Section 313 Cr.P.C. has successfully explained as to how the money came into his pocket and also the presence of phenolphthalein power on his right hand fingers and the right side pocket of his pant by stating that the money was thrust into his pocket by the complainant and when he took out the said money from his pocket and extended it towards the complainant to return, the police officials came and apprehended him.

12. Learned APP, on the other hand, has drawn my attention to Section 20 of the P.C. Act which provides that where a public servant

accepts some gratification other than legal remuneration, there is a presumption unless it is proved to the contrary that he accepted or obtained the aforesaid gratification or the valuable thing as a motive or reward such as money under Section 7 of the P.C. Act. Learned APP submits that from the testimony of PW9, Inspector Mehar Chand and even from the statement of the appellant under Section 313 Cr.P.C., it is established on record that the appellant had accepted ₹2500/- from the complainant. Once the aforesaid acceptance of money is established, there is a presumption of law under Section 20 of the P.C. Act that the appellant accepted that money as a motive or reward for the purpose under Section 7 of the P.C. ACT, 1988 and as such in absence of any reasonable explanation in this regard from the appellant, his conviction under Section 7 as well as Section 13(2) read with Section 13(1)(d) of the P.C. Act is correct.

13. I have carefully considered the submissions made on behalf of the respective parties and perused the material on record. Ex.PW6/A is the complaint statement of PW6 Sukhvinder Singh wherein he has stated that the appellant who delivers bills of Delhi Jal Board had demanded bribe of ₹2500/- @ ₹500/- p.m. for five months from him and he had told him to bring the money on 28th March 2007 at 10:00 am. This allegation, however, is not substantiated by PW6 Sukhvinder Singh in his testimony wherein he has stated that he was told by his mother that the person who delivers the water bill has demanded bribe of ₹2500/- as they were using residential connection for commercial

purpose. This version of the complainant is at divergence with the allegations in the complainant, therefore, it is not reliable. Otherwise also, if this version is to be believed, the demand, if any, was made from mother of the complainant who has not been produced as a witness and the version of the complainant falls within the category of hearsay evidence which is inadmissible in law. Since the complainant has not categorically stated that the appellant demanded bribe from him, the story of the demand by illegal gratification by the appellant is not substantiated.

14. Coming to the issue of demand and acceptance of bribe by the appellant at the time of raid. Neither PW6 Sukhvinder Singh nor PW13 Arun Kumar has supported said story. PW6 complainant Sukhvinder Singh has stated that he followed the appellant upstairs and voluntarily put the tainted money in his pocket. PW13 Arun Kumar has deposed that he could not hear the conversation between the complainant and the appellant nor he saw passing of money from the complainant to the appellant. As regards the version of only other witness PW9 Inspector Mehar Chand, it is suffice to say that he is not the witness either to the demand at the time of raid or acceptance of bribe. His version relates only to the recovery of the money from the right pocket of the appellant and regarding the hand wash and pocket wash of the appellant. In this regard, the statement of the appellant assumes importance. The appellant has explained that on the relevant day, he had gone upstairs with bananas and grams to feed monkeys. He was

followed by the complainant who inserted something in his pocket. As a reaction, he put his hand in the pocket and took out the money and when he was in the process of extending the same towards the complainant to return it, the raid party came and apprehended him. This explains the presence of sodium carbonate powder on the right hand of the appellant as well as in his pocket. Thus, under the circumstances, in absence of firm evidence to establish demand and acceptance of illegal gratification by the appellant, I do not find it safe to hold the appellant guilty of the charges merely on the basis of evidence of recovery of tainted money from the appellant, for which he has given a reasonable explanation in his statement under Section 313 Cr.P.C. and which fact is also corroborated by the testimony of PW6 who has admitted in his cross-examination that he parted the tainted money into the pocket of the appellant. Though the recovery of money raise some doubt that appellant might have demanded and accepted the bribe, but the doubt itself cannot replace the proof. The appellant, therefore, is at least entitled to the benefit of doubt. Thus, I find it difficult to sustain the conviction of the appellant.

15. In view of the above, the appeal is accepted. The conviction of the appellant for the offence under Section 7 and Section 13(2) of the P.C. Act, 1988 is set aside and the appellant is acquitted giving him benefit of doubt.

16. The appellant is reported to be in jail. A copy of this judgment be sent to the concerned Jail Superintendent with the direction that the appellant be released forthwith, if not required in any other case.

17. The appeal is disposed of.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 21 , 2010
ks