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Decided on: 25th January, 2011

SRI CHAND GAUR

Through: Mr. K. B. Andley, Sr. Advocate with Mr.
Salim A. Khan, Advocate

versus

STATE OF DELHI CBI

Through: Mr. Vikas Pahwa, Standing Counsel for the
CBI with Mr. Tarun Verma, Advocate

Coram:

1. Whether the Reporters of local papers may be allowed to see the judgment?

Not necessary

2. To be referred to Reporter or not?

Yes

3. Whether the judgment should be reported in the Digest?

Yes

MUKTA GUPTA, J.

1. In the present appeal, the Appellant has laid a challenge to the judgment dated 10th April, 2001, convicting the Appellant for offences punishable under Sections 7 read with 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act (in short P.C. Act) and Section 201 IPC read with Section 511 IPC and the order dated 10th April, 2001 directing the Appellant to undergo the sentence of rigorous imprisonment for a period of three years and to pay a fine of ₹40,000/- and in default of payment of fine to further undergo simple imprisonment for a period of six months.

2. The prosecution case in nutshell is that the Appellant while working as Assistant Sub-Inspector at P.S. Kalkaji, arrested the Complainant in FIR No. 101/1993 under Section 307 IPC on 14th March, 1993 in which he was bailed out from the court at Patiala House on the 17th March, 1993. The Appellant demanded ₹2000/- as bribe from Shri Ram Saran Tripathi, PW 1, the Complainant to help him in the case and that in case he did not pay the bribe amount he would ensure his conviction. On a demand from the Appellant, the Complainant made a complaint to CBI vide Ex. PW1/A on 27th March, 1993. On the basis of this complaint, a trap was laid on 28th March, 1993 when the Appellant had come to receive the illegal gratification from the Complainant at his office. The version of the Complainant PW1 was supported by his uncle PW 4 Nand Bahadur Pandey who also stated about the demand made to him by the Appellant on the 15th March, 1993 when the Complainant was in custody. During the trap, two independent witnesses PW6 Sh. V. K. Jain, Executive Engineer and PW2 Sh. Ashok Yadav, Accounts Manager were associated as panch witnesses. Since the Complainant was to inform the Appellant on the money being arranged, on 28th March, 1993, the Complainant called up the Appellant from his office to tell him that the money had been arranged, on which the Appellant asked if he could come and the Complainant replied him to come. This conversation was heard by PW-6 Sh. V.K. Jain from the parallel line of the telephone in the office of PW1. The Appellant came within five minutes. The proceedings were witnessed and conversation was heard by the shadow witness PW2 Ashok Yadav. After the Appellant accepted the money on a signal being raised by the Complainant, the Trap Officer, Sh. S.K.

Peshin PW-8, Insp. Javed Shriraj and R.K. Chadha entered, caught hold of the wrist of the Appellant and apprehended him. His right hand was dipped in sodium carbonate solution which thereupon turned pink. However, the Appellant kicked the glass containing the right hand wash and thereafter the left hand wash and wash of the pocket was also taken which also turned pink. After completion of investigation, the charge-sheet was filed. Upon a trial of the Appellant he was convicted and sentenced as above.

3. Learned counsel for the Appellant contends that there is no evidence of alleged demand of bribe. As per Ex. PW1/A, initial demand was made on 27th March, 1993 whereas PW1 in his testimony before Court says that the Appellant demanded illegal gratification on 19th March, 1993 and 21st March, 1993 which dates are not stated in the complaint Ex. PW1/A. PW4 Sh. Nand Bahadur Pandey who is the maternal uncle of the PW1, has given an entirely different version of demand. He has deposed that on the 15th March, 1993 when PW1 was produced by the Appellant in the Patiala House Court, the Appellant demanded ₹2000/- from him and told him that in that event he would ensure that the licence of revolver of Ram Saran Tripathi i.e. PW1 will not be cancelled. The Appellant further told him that he would dilute the case against his nephew i.e PW1 and he would also dilute the case against him. The witness has further deposed that after his nephew PW1 was released on bail after 3/4 days and he told him about the said demand on which PW1 requested him to pen down a complaint on which he wrote the complaint Ex.PW1/A which was signed by his nephew PW1. Thus, from the

analysis of this contradictory evidence, produced on record, there is a doubt cast upon the fact of initial demand which onus has not been discharged by the prosecution as it has not been able to prove the initial demand by the Appellant. Even the acceptance of the money by the Appellant has not been proved. The right hand wash has not been proved by the prosecution and as per the testimony of the Complainant PW1, he was not aware as to who took the left hand wash and the pocket wash of the Appellant. Moreover, PW-6 Sh. V.K. Jain in his cross-examination has stated that the pocket wash of the accused contained a milky white solution with sediments. PW 8 Sh. S.K. Peshin in his cross-examination also stated that the contents of the bottle Ex. PW 23 relating to shirt pocket wash were milky white solution. Though the learned trial court has taken a note of this fact but the same has not been considered. In the absence of the hand wash solution being proved to contain phenolphthalein powder, it cannot be connected to the alleged acceptance of the illegal gratification by the Appellant. No recovery of tainted currency notes from the Appellant has been proved. There is also no evidence placed on record as to who recovered the money from the Appellant, PW 1 in his cross-examination on 8th July, 1997 has stated that he cannot tell as to who recovered the money from the pocket of the Appellant.

4. Lastly, it is contended on behalf of the Appellant that the prosecution has also not been able to prove a valid sanction. PW 7 Sh. Alok Kumar Verma who has passed the sanction order in his cross-examination has stated that he does not remember if the sanction order was prepared on his dictation or it was drafted by

his staff. He deposed that he did not remember whether or not any draft sanction order was received along with the request of sanction. He did not even remember if the statement of the witnesses put before him were recorded in Hindi or English or if those were handwritten or typewritten. Thus this is a case where the sanctioning authority i.e. PW-7 did not apply its independent mind and has merely signed the draft order prepared by his subordinate officers. Reliance is placed on *Niranjan Khatra vs. State of Orissa 1990 Crl. L.J. 2790(Orissa)* to contend that grant of sanction is a solemn act and in the present case in the light of the testimony of PW7 and the fact that the sanction order does not even bear the date, it can safely be held that the essential solemnity is lacking. Thus, the accused is entitled to be acquitted. 5. Learned Special P.P. for the CBI on the other hand contends that all the ingredients to prove the prosecution case beyond reasonable doubt have been duly proved in the present case. It is urged that the initial demand has been proved by PW1 Sh. Ram Saran Tripathi & PW 4 Sh. Nand Bahadur Pandey. There is no inconsistency in their statements as PW 4 has stated about the demand made by the Appellant to him on the 15th March, 1993 when the Complainant was produced before the Court in judicial custody, whereas PW1 has stated that the Appellant demanded money on the 19th March, 1993 & 21st March, 1993 from him. It is stated that Ex. PW1/A is a complaint on which the FIR has been lodged and the FIR is not required to be an encyclopedia of the entire prosecution case. Thus, fine details of each and every date when the initial demands were made by the Appellant were not required to be stated in the complaint. The prosecution has been able to prove the demand and acceptance at the time of trap from the

testimony of PW-1, PW2, PW6 and PW8. Furthermore, the Appellant went to the premises of PW 1 and prior to that a telephonic conversation took place between the two regarding the money having being arranged and thus the Appellant asking whether he could come. This conversation was heard on the parallel line by PW-6 Sh. V.K. Jain. It is urged that the incident of accepting bribe money was witnessed by PW2 Sh. Ashok Yadav. The testimony of the witnesses is duly corroborated by the hand wash solution of the Appellant which turned pink. Though, PW1 has stated that hand wash turned 'Berang'. But he has clarified this fact that by 'Berang' he means 'pink'. This version of the witnesses is also corroborated by the testimony of PW-3 Sh. V.S. Bisaria, the Senior Scientific Officer who has proved his report Ex. PW3/A wherein it has been opined that the hand wash solution which turned pink give positive result for the presence of Phenolphthalein and sodium carbonate. Since the Appellant kicked the right hand wash glass and broke it, thus the Appellant was convicted for the offences punishable under Section 201 read with Section 511 IPC. Moreover, the left hand wash and the pocket wash solution have duly proved the case of the prosecution. It is also urged that the conduct of the Appellant in breaking the glass with hand wash solution is relevant under Section 8 of the Evidence Act.

6. Replying to the contention raised by the learned counsel for the Appellant in regard to validity of the sanction, it is urged that the testimony of the PW 7 Sh. Alok Kumar Verma was recorded on 20th August, 1999 i.e. after a period of nearly six years from the date of the incident and the grant of sanction. Thus, his

evidence wherein he has forgotten the minor details as to who drafted it and whether the statements were in English or Hindi or typewritten should not be given much importance. This witness has clearly stated that he had perused the entire record and then granted the sanction. Thus the sanction was granted validity after due application of mind. Reliance is placed on *State of Madhya Pradesh Vs. Hari Shankar Bhagwan Prasad Tripathi*, 2010 (8) SCC 655.

7. I have heard learned counsel for the parties and perused the record. On a perusal of the testimony of PW1 and PW4, I find that the prosecution has proved beyond reasonable doubt the initial demands made by the Appellant. No different versions have been given by the two witnesses as urged by the learned counsel for the Appellant. As per the testimony of these witnesses when the Complainant PW1 was in custody, the Appellant demanded the money from his uncle PW4 and after his release, Appellant made continuous phone calls to the Complainant on which he made a complaint against the Appellant. Merely because the dates of the initial demands i.e., 19th March, 1993 and 21st March, 1993 are not stated in the complaint Ex. PW1/A, the same would not belie the testimony of this witness before the Court. The law in this regard is well-settled as laid down by the Hon'ble Supreme Court in *Jarnail Singh & Ors. vs. State of Punjab* (2009) 9 SCC 719:

“17. Undoubtedly, in the FIR Appellants' name have not been mentioned. The FIR is not the encyclopedia of all the facts relating to crime. The only requirement is that at the time of lodging FIR, the informant should state all those facts which

normally strike to mind and help in assessing the gravity of the crime or identity of the culprit briefly.”

The purpose of the first information report is to set the criminal law into motion. Each and every detail giving date-wise description of the entire sequence of events is not essentially required to be mentioned in the FIR. This fact of initial demand is further corroborated by the testimony of PW6, Sh. V.K. Jain who is the independent witness and had heard the conversation between PW1, the Complainant and the Appellant on the telephone on the parallel line prior to the trap. This witness in his testimony has deposed that during the said telephonic conversation after accepting the greetings in the form of ‘Hello’, police officer at the other side asked “PAISE TAYAR HAI KYA, MAIN AA JAUN” on which PW1 the Complainant replied “AAP AA JAIYE”. Thereafter, said person replies “MAIN PANCH MINUTE MEIN PAHUNCH RAHA HUN”. Thus, I find no merit in the contention of the learned counsel for the Appellant that there is no initial demand proved against the Appellant.

8. When the Appellant reached the office of the Complainant, on the demand of the Appellant, the Complainant gave the tainted currency notes which fact was witnessed by PW2 Ashok Yadav the shadow witness, sitting in the adjoining room. Thereafter the pre-appointed signal was raised by the Complainant and the Appellant was caught red-handed accepting the bribe. The acceptance of the money also stands proved by the testimony of PW1 duly corroborated by the statement of PW2. This acceptance of illegal gratification is further corroborated by the evidence of the witnesses PW6 and PW8 who have deposed about the fact

that when the Appellant was apprehended, the currency notes were tallied and the right hand wash of the Appellant was taken which turned red, the Appellant kicked the glass containing the right hand wash. The witnesses have further deposed that the pieces of the broken glass tumbler were picked up and sealed with the seal of CBI. Thereafter fresh solution of sodium carbonate was prepared and the left hand wash and pocket wash of the Appellant were taken which turned reddish. I have also perused the testimony of PW-1 who has deposed that the solution turned 'Berang'. Further this witness in the next line of his testimony clarified the fact that by 'Berang' he means the solution turned pink. Also in his cross-examination this witness has negated the suggestion given to him that the said solution did not turn pink. Thus, there is nothing on record to show that there is any discrepancy in the statements of PWs which point out the fact that said solution was planted or that the said solution did not connect the Appellant to the acceptance of the tainted currency notes. Moreover, the testimony of PW 4, Shri V.S. Bisaria, the Senior Scientific Officer and his CFSL report Ex. PW3/A also prove the presence of phenolphthalein and sodium carbonate in the two solutions i.e. the left hand wash and the pocket wash of the Appellant. Thus, the prosecution has proved beyond reasonable doubt the demand and acceptance at the time of trap.

9. The only issue which now remains to be considered is the validity of the sanction. After perusing the testimony of the sanctioning authority PW 7 Alok Kumar Verma and the sanction order Ex. PW7/A, I find no merit in the contention of the learned counsel that the sanction was not valid. The law on the said issue is

crystal clear and as held by Their Lordships in *State of Madhya Pradesh vs. Hari Kishan (supra)* the court should look at the sanction order to find out whether there has been application of mind and the sanction order in question evidently shows that all facts and material were duly considered by the sanctioning authority whereupon the said sanction order was passed. As regards the contention that the sanctioning authority i.e. PW7 in his testimony has deposed that he does not remember as to who drafted the sanction order and whether the statements were in English or Hindi or handwritten or typewritten, I find force in the reply of the learned counsel for the CBI. Since the testimony of this witness was recorded after a period of more than six years, certainly omissions and variations are bound to take place. Such omissions in the testimony cannot be given undue emphasis nor can the same invalidate the sanction order. Thus, keeping in view the testimonies of all the witnesses and the exhibits placed on record, in my opinion, the prosecution has been able to prove its case against the Appellant beyond reasonable doubt.

10. For the reasons stated above, I find no merit in the appeal, the same is, accordingly, dismissed. The Appellant, who is on bail, be taken into custody to serve the remaining sentence. The bail bond and the surety bond are cancelled.

(MUKTA GUPTA)
JUDGE

JANUARY 25, 2011
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