

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

+ **Crl. Appeal No. 281/2001**

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Decided on: 26th April, 2011.

KIRAN PAL SINGH

..... Appellant

Through: Mr. Sunil K. Mittal, Mr. Harsh Khanna
and Mr. Abhishek Sharma, Advocates.

versus

STATE

..... Respondent

Through: Mr. Narender Mann, Spl. Public
Prosecutor, CBI

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 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. By this appeal, the Appellant lays a challenge to the impugned judgment whereby the Appellant has been convicted for offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the Prevention of

Corruption Act, 1988(in short the PC Act) and awarded a sentence of imprisonment for a period of six months and a fine of ₹2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month for offence punishable under Section 7. For the offence punishable under Section 13(i)(d) read with Section 13(2) of the P.C. Act, the Appellant has been sentenced to undergo simple imprisonment for a period of one year and a fine of ₹5000/- and in default of payment of fine to further undergo simple imprisonment for two months.

2. Briefly, the prosecution case is that the Complainant lodged a complaint Ex.PW2/A with the CBI alleging that the Appellant who was working as a supervisor with the Delhi Development Authority(DDA) and posted at Sriram Colony, demanded ₹500/- as bribe for permitting him to fill up the low lying area near his house. On the complaint of Prem Singh, PW5 a trap was laid by Inspector S.K. Bhati who associated Inspector S.R. Singh, PW10 and other staff members, and two panch witnesses Sanjay Khandpal and D.Sen Gupta both Junior Assistants in NDMC. Pursuant to the trap, 5 currency notes of Rs. 100/- denomination each were treated with the chemical. The complainant PW 5 along with PW 4 Sanjay Khandpal on the demand of the Appellant paid him the money, wheareafter he was trapped . His left hand wash and wash of the jacket's pocket gave pink colour and the Appellant was

thus arrested. After investigation, a charge-sheet was filed along with the sanction accorded by PW 3, Director(Personnel), DDA. Shri S.K. Bhati, trap laying Officer expired before his testimony could be recorded. Thus the testimony of Shri S.R. Singh, Inspector as the trap officer assisting Sh. S.K. Bhati was recorded. After recording of the prosecution evidence, statement of the Appellant under Section 313 Cr.P.C. and defence evidence, the Appellant was convicted as above.

3. Learned counsel for the Appellant challenging the conviction states that no valid sanction has been granted in the present case as PW3 in her cross-examination has stated that she merely signed the sanction order without going through any papers. Thus, the sanction is invalid in view of the non-application of mind. The Appellant never challenged the competency of PW3 to grant the sanction however, the learned trial court did not consider the issue of application of mind while grant of sanction but only considered the competency of PW3 to grant the sanction. Relying on *Mohd. Iqbal Ahmed vs. State of Andhra Pradesh*, AIR 1979 S.C. 677, it is contended that it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case of sanction has been made out constituting the offence. Reliance is placed on *State vs. Ravinder Singh* 1995 Cr.L.J. 3428 to contend that the sanction for

prosecution is a pre-requisite for taking cognizance of offence and in the absence of a valid sanction for prosecution, the accused cannot be prosecuted. Referring to *Deewan Chand vs. State* 1982 CrL .L.J. 720 it is contended that while sanctioning, the facts constituting the offence should be before the sanctioning authority and a sanction accorded in a mechanical manner cannot be consider as a valid and legal sanction. It is next contended by the learned counsel for the Appellant that the entire case of the prosecution is based on leading questions put by the learned counsel for the CBI to the prosecution witnesses which were not legally permissible. From the evidence adduced by the prosecution witnesses, neither any demand nor acceptance has been proved. There are material discrepancies in the statement of the witness PW5 the alleged complainant, who has contradicted himself on all material aspects. There are contradictions on the fact as to where the complaint was written and to whom the same was given. PW2 Rajbir Singh has deposed that the complaint Ex.PW2/A was written by him in his shop, whereas PW4 has stated that the complaint was written in the CBI office by Rajbir Singh PW5, the alleged complainant stated that he got the complaint written by Rajbir Singh in lal mandir situated near CRPF Camp in Siri Ram Colony. He further stated that Rajbir never went alongwith him to the CBI Office. PW8, panch witness stated that the complaint was written in the CBI office. The version of the complainant PW5 as regards the demand and acceptance has been

contradicted by him in his cross-examination and also by the other prosecution witnesses and hence no demand and acceptance has been proved. Though, the prosecution case is that PW5 Prem Singh is the complainant but the Appellant has successfully shown from the cross-examination of the prosecution witnesses that, in fact, Rajbir was the Complainant and the Appellant has been falsely implicated at the instance of Rajbir against whom the Appellant had already registered complaints. The Appellant gave a cogent explanation of false implication in his statement under Section 313 Cr. P.C. along with reply R-1 and has also examined defence witnesses. However, the learned trial court did not consider them. The incriminating evidence against the Appellant has been brought on record by answers to leading questions put by the learned APP. Relying on *Varkey Joseph vs. State of Kerala, AIR 1993 SC 1892*, it is contended that leading questions can be permitted only to draw the attention of the witness on questions which cannot otherwise be called to the matter under enquiry, trial or investigation. In the absence of demand or acceptance being proved, the legal presumption under Section 20(1) of the PC Act cannot be raised. The recovery of the tainted money from the Appellant is also doubtful in view of the contradictory versions of the witnesses. Even post-trap proceedings are doubtful as to where they were carried out as some of the witnesses have stated that the same was carried out on the spot and the

others stating it to be carried out at the CBI Office. It is thus prayed that the Appellant be acquitted of the charges framed against him.

4. Per-contra, learned counsel for the CBI states that PW3 in her testimony has stated that she had perused all the documents and statements of the witnesses before according sanction for prosecution against Kiran Pal Singh vide sanction order Ex.PW3/A. The fact that she applied her mind is also apparent from the sanction order Ex.PW3/A wherein all the facts in detail are mentioned and have been considered by the sanctioning authority. Relying on *State of Madhya Pradesh vs. Hari Shankar Bhagwan Prasad Tripathi, 2010 (8) SCALE 402*, it is contended that in a case where the sanction order itself speaks of the fact that the material on record has been examined by the officer before according sanction is sufficient to show that the sanction was accorded after due application of mind. Only in cases where the sanction order does not speak for itself, it must be proved by leading evidence that all particulars were placed before the sanctioning authority for it to apply mind. Reliance is also placed on Section 19(3)(a) of the Act to contend that notwithstanding anything in the Act no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court for any error or omission or irregularity in the sanction required unless in the opinion of the Court a failure of justice has, in fact, been occasioned. Relying on *State of*

Madhya Pradesh vs. Jiyalal, 2009 (15) SCC 72 it is contended that when the sanction order was passed in discharge of routine official duty and function, there is a presumption that the same was done in a bona fide manner. Reference is made to Section 19(4) of the Act to contend that to determine the omission or irregularity, regard will have to be taken to the fact that whether the objection was raised at any earlier stage in the proceedings. Learned counsel for the CBI next contends that even if the Complainant was acting on behalf of Rajbir Singh PW2, the same is immaterial as ultimately the Appellant has demanded bribe from PW 5 and has accepted the same from him. Reliance is placed on *Billa Nagul Sharief vs. State of Andhra Pradesh, AIR 2010 S.C. 3549* to contend that where specific and consistent demand of bribe is proved, the allegations that there was a quarrel between the Appellant and the Complainant *de facto* is of no consequence and also the plea of the Appellant that the money was thrust in his pocket cannot be believed. Even as per the evidence led, Rajbir Singh is only a scribe of the complaint as the Complainant was illiterate and animosity between Rajbir Singh and the Appellant is not relevant. The initial demand has been proved by the Complainant PW 5 followed by a demand at the time of trap which version of PW5 has been corroborated by the shadow witness PW4. The acceptance is proved by the direct testimony of PW5 the Complainant and PW4 the shadow witness and also by PW8 and PW10 who immediately thereafter apprehended

the Appellant with the tainted currency notes. This version of the prosecution witnesses is corroborated by the expert opinion of Sh. K.S.Chabra, PW1 who analysed the samples received by him with duly intact seals giving positive tests for presence of phenolphthalein and sodium carbonate. There is no motive attributable to PW4, PW5, PW8 and PW10 to falsely implicate the Appellant. It is further contended that minor discrepancies in the testimony of witnesses are bound to occur by passage of time. Considering the entire evidence produced by the prosecution and the defence of the Appellant, the only conclusion that can be arrived at is that the Appellant demanded and accepted illegal gratification whereafter this Court is duty bound to raise the presumption under Section 20(1) of the PC Act. Thus, the Appeal is liable to be dismissed being devoid of merit.

5. I have heard the learned counsel for the parties and perused the record. On perusing the sanction order Ex.PW3/A and testimony of PW3, I do not find any merit in the contention of the learned counsel for the Appellant that the sanction is vitiated on account of non-application of mind. PW3 in her examination-in-chief had stated that she has perused all documents and statements of witnesses before according sanction of prosecution of Kiran Pal Singh and the sanction order Ex.PW3/A bears her signature on each page of

the sanction order. In her cross-examination, she has stated ; and it would be appropriate to quote the relevant portion of the cross-examination:

“I had not seen any paper. I did not receive any draft sanction from CBI, Vigilance Deptt., might have received the same, Vigilance Deptt. had produced before me the sanction order and I had signed on the same. I had applied my mind before according sanction in this case”

6. Thus, from the cross-examination of PW3, it is apparent that what is denied is having received the draft sanction from the CBI but may be a draft had been produced by the Vigilance Department which she had signed, however, she reiterates that she applied her mind before according sanction to the case. From the sentence, “I had not seen any paper”, no inference can be drawn that the question put to her, the reply whereof she had given by the statement related to the papers for grant of sanction. Even from the cross-examination of PW3 it can be safely adduced that she applied her mind before according her sanction and signed the draft sanction order produced before her by the Vigilance Department. It is settled legal position that draft sanction order can be placed before competent authority along with the material and if the competent authority after perusing the material signs the draft sanction order, it cannot be said to suffer from non-application of mind. In *Indu Bhusan Chatterjee vs. State of West Bengal, AIR 1958 SC 148*, wherein the sanction order was prepared by the police and put before the sanctioning

authority by the personal branch of his office and that before according the sanction he went through all the relevant papers put before him, it was held by the Hon'ble Supreme Court to be a valid sanction. In *Mohd. Iqbal*(supra), the Hon'ble Supreme Court was dealing with the sanction accorded by the Standing Committee of the Corporation by way of resolution. Since, the resolution did not depicts the facts on the basis of which the prosecution was sanctioned, it was held that it was incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority which could be done in two ways either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (ii) by adducing evidence aliunde to show that the facts placed before the sanctioning authority and the satisfaction arrived at by it. However, in the present case, the sanction order Ex.PW3/A is a complete narration of sequence of events and re-produces the facts. Thus, the reliance of the Appellant on *Mohd. Iqbal*(supra) is misconceived. In the light of law laid down in *State of Madhya Pradesh vs. Hari Shankar (Supra)* it can be safely held that the sanction order is eloquent enough to show that there has been application of mind. This is further strengthened by the testimony of PW3 who in her examination-in-chief and cross-examination has clearly stated that she applied her mind before according sanction in the case. Much has been sought to be made by the learned counsel for the Appellant on the leading

question put by the learned counsel for the CBI to this witness. Even ignoring this leading question which is put to her after her examination-in-chief and cross-examination and which is permissible under Section 142 of the Evidence Act, there is sufficient material on record to show that PW3 accorded sanction after due application of mind.

7. I also do not find any merit in the contention that the Appellant has been falsely implicated at the instance of Rajbir Singh who was the *de facto* complainant in the case as the Appellant had earlier lodged complaint against him. Learned counsel for the Appellant lays a lot of emphasis on the fact that though as per the prosecution case the complainant is PW5 Prem Singh however, from his cross-examination, it has been elicited that Rajbir Singh not only scribed the complaint but was also present in the CBI office and at the time of raid along with the Complainant. Undoubtedly, as per the defence of the Appellant which he has taken in his statement under Section 313 Cr. P.C. along with the reply R-1 and by way of defence witnesses, the Appellant on 6th January, 1997 lodged a complaint vide Ex. DW/1/A and vide DD No. 13 dated 1st January, 1997 lodged 'Ittalla Peshbandi' Ex. DW2/A at P.P. Sri Ram Colony that Rajbir Singh who is the supplier of building material, brought an iron gate which he did not permit and this man can implicate him in a false case. The scribe of the complaint with whom animosity has been

alleged i.e. Rajbir Singh has been produced by the prosecution as PW2. PW2 in his cross-examination has clarified that on 1st January, 1997 he was bringing a gate to be taken to Sonia Vihar as this route through Sri Ram Colony to Sonia Vihar was shorter by 4/5 kilometers but the Appellant did not permit so he took through the longer route. Even assuming that from the complaint Ex. DW2/A, animosity is born out with Rajbir Singh, the same does not mitigate the Appellant's action of demanding and accepting bribe from PW5 for permitting him to carry material on his 'bhainsa baggi'. In *Billa Nagul Sharief(supra)* the Hon'ble Supreme Court negated the defence of the alleged quarrel between the Appellant and the de facto Complainant on the 30th December, 1996 as of no consequence in view of the specific and consistent evidence about the demand and payment of bribe unfolded by the prosecution witnesses on 18th January, 1997. Thus the grievance of the Appellant that his response in his statement recorded under Section 313 Cr. P.C. wherein he filed a written reply has not been considered is also unmerited and deserves to be rejected.

8. The next contention of the learned counsel for the Appellant that in view of the contradictions in the testimony of the witnesses, no reliance can be placed on the same and hence from the evidence on record neither the demand nor acceptance has been proved, is wholly misconceived. The

contradictions pointed are as to the place where the complaint was written i.e. PW2 saying the same to be written at his shop, PW 4 stating it to be written at the CBI Office, PW5 stating it to be written by PW2 at Lal Mandir, PW 8 stating it to be written in the CBI office and PW 10 stating that the same was not written in his presence. From the facts it is apparent that as per PW2 and PW5 when the Complainant went to the office of the CBI, he already had a written complaint with him whereas two shadow witnesses say that the same was written in the CBI Office. But what is material is that these two shadow witnesses do not say that the complaint Ex. PW 2/A was written by him in the CBI Office. Thus, there is no contradiction in the testimony of the witnesses as to the place where the complaint Ex.PW2/A was scribed.

9. The contention of the learned counsel for the Appellant that from the testimony of the witnesses it is not clear as to whom the Complainant gave the complaint in the CBI office, as the complaint was marked to S.P., CBI who made an endorsement on Ex.PW2/A “Inspector S.K. Bhati to lay the trap and report” is also unmerited. The contradiction in this regard is sought to be brought out from the testimony of PW5 who has stated that he went to the CBI office along with the complaint and met one official Sh. S.K. Bhati. Merely because Mr. S.K. Bhati or the S.P. who made the endorsement and

marked the matter to Sh. S.K. Bhati has not been examined, the same would not discredit the prosecution case.

10. The contention that the acceptance of the bribe money has not been proved in view of the contradictory testimony of the witnesses is also meritless. The factum of acceptance is sought to be discredited by the learned counsel for the Appellant in view of the testimony of PW4 who stated that he gave the pre-appointed signal, though in his cross-examination he has stated that the raiding party was not visible from inside the tent where they were sitting, and on the other hand, PW5 had stated that on acceptance of the bribe money by the Appellant, he came out of the tent and gave a signal by scratching his head. In this regard, it would be relevant to note the testimony of PW10 Inspector S.R. Singh, the trap laying officer with Sh. S.K.Bhati who has stated that the Complainant PW 5 and PW4 were sent inside the tent and PW4 gave the pre-appointed signal whereafter they entered the tent. Even, the suggestion to PW4 is that the Complainant wanted to insert the tainted G.C. notes in the pocket of jacket of the Appellant and the Appellant was refusing to accept the same and in this process the G.C. notes touched the hands of the accused and at once the CBI officers came and apprehended the Appellant. Thus, this suggestion itself accepts the presence of PW4 along with the Complainant PW5 inside the tent. Thus this contention warrants

rejection. The prosecution has proved beyond reasonable doubt that the Complainant and PW4 had gone inside the tent and PW4 after coming out gave the pre-appointed signal pursuant where to the raiding party went inside. The contention of the learned counsel as regards the discrepancy in the statements of the witnesses qua recovery also deserves to be rejected. Having regard to the testimony of PW10, PW4 and PW5, it is proved beyond reasonable doubt that on instructions of Inspector S.K. Bhati, PW8 the shadow witness took out the money from the pocket of the jacket of the Appellant. Though, PW8 in his testimony says that Inspector S.R. Singh took out tainted G.C. notes from the pocket of the jacket of the Appellant, however, this minor discrepancy does not cast a doubt on the entire prosecution case as this witness was examined on 28th January, 2000, three years after the incident and minor variations are bound to take place with passage of time. Even the contradiction as regards the testimony of the witnesses as to whether the documents were prepared whether on the spot or in the CBI office deserves to be rejected, because all the witnesses have consistently stated that the proceedings were conducted at the spot. The witness PW4 in his cross-examination has clarified that since the matter is old, he does not remember as to where the memo were signed and it was possible that these were prepared and signed at the spot.

11. The contention of the learned counsel for the Appellant that the entire prosecution case is based on leading questions put to the prosecution witnesses by the learned counsel for the CBI thus impermissible under the Evidence Act, also deserves to be rejected. In this regard, it would be relevant to note Section 142 of the Evidence Act which states: -

“142. When they must not be asked: - leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court”.

As per this provision, the prosecutor can put leading questions to the prosecution witnesses with the permission of the Court. Such questions should be either explanatory or in the opinion of the Court already sufficiently proved. As shown above, leading questions have been put by the learned counsel for the CBI only when they have been sufficiently proved and were in the form of re-examine of the witnesses on particular aspects.

12. The appeal is, accordingly, dismissed. The bail bond and the surety bond of the Appellant are cancelled. The Appellant be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

APRIL 26th 2011/dk