

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

Judgment delivered on: February 28, 2011

+ **CRIMINAL APPEAL NO.224/2011 & CRL.M.(B) 283/2011**

UDAI SINGH

....APPELLANT

Through: Mr. K.B. Andley, Sr. Advocate with
Mr. M.L. Yadav, Advocate and Mr. Mohd.
Shamik, Advocate

Versus

STATE

.....RESPONDENT

Through: Ms. Fizani Husain, 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 impugned judgment dated 31st January, 2011 in corruption case CC No.22/2004, FIR No.55/2001 P.S. Anti Corruption Branch, Delhi and the consequent order on sentence dated 2nd February, 2011 whereby the appellant Udai Singh, Head Constable, Delhi Police has been convicted for the offences punishable under sections 7 & 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short P.C. Act) and sentenced to undergo R.I. for a period of one year and 6 months, besides fine of ₹4,000/-, in

default to undergo imprisonment for a period of six months for the offence under Section 13(2) read with Section 13(1)(d) of the P.C. Act.

2. Briefly stated, case of the prosecution is that on 10th October, 2001 complainant Mustafa (PW-4) visited Anti-Corruption Branch, Delhi and complained that S.I. Praveen Kumar of Police Post Pitam Pura had demanded bribe of ₹5,000/- from him to close the case pending against his nephew Mohd. Shakir. He also stated that he could arrange only ₹3,000/- and produced 6 GC notes of ₹500/- denomination each.

3. The complaint was reduced into writing and it was decided to organise a trap. Pre-raid proceedings were completed. One Rakesh Kumar (PW-7), LDC, Social Welfare Department was joined as a panch witness to the raid party. Thereafter, raid party reached at Police Post Pitam Pura. On that day, S.I. Praveen Kumar was not present and the complainant and the panch witness met the appellant in the office room at the police post. The appellant told the panch witness to go out of the office room and asked the complainant to remain there. Sometime later, the appellant told the complainant to come alone on the next day, i.e. 11th October, 2001 at 9.00 a.m.

4. On 11th October, 2001, the trap was again organized, pre-raid proceedings were conducted, a micro tape recorder with an ear phone loaded with a blank audio cassette was given to the panch witness and the complainant was given a micro phone. Panch witness was directed

to switch on the tape recorder and also hear the conversation between the complainant and the appellant through ear phone.

5. The raid party reached at the police post at around 9.05 a.m. The complainant was asked to go and contact the appellant and other members of the raiding party took up strategic positions outside the police post. The complainant contacted the raid officer at around 11.00 a.m. and told that he had gone to the office of the appellant on 3 or 4 occasions but the appellant had told him to wait, saying that he would do the needful after the arrival of the girl who had lodged complaint against Shakir and her mother. At around 12 noon, PW-3 Shabana and PW-1 Shabnam reached at the police post. They talked with the complainant and thereafter they all went into the office room and came out within 5 minutes. At about 2.00 p.m., those ladies and the complainant again went into the room of the appellant and a signal was given to the panch witness to switch on the recording system. At 2.30 p.m., panch witness told the raid officer that he had heard through microphone that someone was saying "*kitne hain*" and thereafter he heard a voice saying "*asli hain ya nakli*" from which it appeared that some monetary transaction had taken place. Thereafter the members of raiding party entered the office room of CAW Cell, Police Post Pitam Pura. In the said room, they found two ladies, complainant Mustafa and two other persons, namely the appellant and PW-6 Head Constable Ram Niwas. The complainant, when asked, told the Investigating Officer that he had given ₹3,000/- (tainted money) to

the appellant, out of which the appellant returned ₹2,000/- to him, saying that he should give that money to the girl and her mother. Thereafter, he took out 2 GC notes of ₹100/- denomination each and gave them to the complainant, saying that he should not tell anyone about the transaction and kept 2 tainted GC notes of ₹500/- denomination in the pocket of his shirt. Thereafter, the appellant obtained his signatures as also the signatures of those ladies on some documents and told him to pass on ₹2,000/- to Noor Jahan, PW-1 which he gave to her. Noor Jahan then remarked "*asli hain ya nakli*" and passed on said money to PW-6 Ram Niwas, who after checking those currency notes said that GC notes were genuine and gave the money back to Noor Jahan. Complainant also produced ₹200/- given to him by the appellant.

6. It is further the case of the prosecution that the appellant was searched but remaining ₹1,000/- were not recovered from his possession. His drawer etc. was searched and even the files lying in the room were searched but the money could not be recovered. It is further the case of prosecution that after keeping ₹1,000/- in his pocket, the appellant had gone outside the room for some time and perhaps he had concealed those GC notes somewhere outside the room.

7. Thereafter, respective hand washes of the appellant and his shirt pocket wash were taken in sodium carbonate solution, which turned

pink and those washes were transferred into clean bottles and sealed with the seal of `sk'. Similarly, hand washes of Head Constable Ram Niwas were taken and those also turned pink which were also transferred into clean bottles and sealed with the seal of `sk'. Noor Jahan, when asked, told that Head Constable Udai Singh had got their matter settled and pursuant to the settlement, she had received ₹2,000/- from the complainant. She produced those four currency notes and the numbers of those GC notes were tallied with the numbers of GC notes recorded in pre-raid proceedings. Hand washes of Noor Jahan were also taken which also turned pink and were seized.

8. It is further the case of prosecution that the transcript of the recording and audio cassette could not be prepared as it was inaudible.

9. On completion of the investigation proceedings, the appellant was challaned and sent for trial. Learned Special Judge charged the appellant for the offences punishable under Section 7 and 13(2) of the P.C. Act. The appellant pleaded not guilty to the charge and claimed to be tried.

10. In order to bring home the guilt of the appellant, prosecution has examined as many as 15 witnesses. Out of them, PW1 Noor Jahan, PW3 Shabana, PW4 Mustafa and PW6 Ram Niwas are claimed to be eye witnesses and PW7 Rakesh is the panch witness, who according to the prosecution remained outside the office room and heard the conversation through the earphone provided to him.

11. The appellant, when examined under Section 313 Cr.P.C., denied the prosecution evidence in totality. He claimed that he neither demanded nor accepted illegal gratification from the complainant Mustafa. Appellant explained that he was looking into the complaint of PW3 Shabana pending with CAW Cell police post Pitam Pura. Shabana and the complainant Mustafa, who is the uncle of Shakir Ahmed had entered into a settlement and pursuant to that Mustafa had paid ₹2,000/- to Shabana which money was recovered from Noor Jahan, mother of Shabana and ₹2,000/- which was recovered from Noor Jahan, mother of Shabana. He also stated that he remained in his office room throughout till the arrival of the raiding party.

12. Learned Special Judge, on consideration of the evidence on record, found the appellant guilty of the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act, 1988. Thus, he convicted the appellant on aforesaid charges and sentenced him accordingly.

13. Learned Shri K.B. Andley, Sr. Advocate appearing for the appellant has submitted that the conviction of the appellant is based upon wrong appreciation of the facts. He contended that the trial court failed to appreciate that the original complaint Ex.PW4/A was against SI Praveen Kumar and not against the appellant. Therefore, there was no occasion for the trap officer to organise a raid against the appellant. Learned Sr. Counsel further contended that as per the case of the

prosecution, ₹3,000/- i.e. 6 GC notes of ₹500/- denomination each were used for trap. According to the testimony of PW4 Mustafa, at the time of trap, he gave those ₹3,000/- to the appellant, who counted the money and kept ₹1,000/- in the pocket of his shirt and gave him ₹2,000/- to be passed on to Noor Jahan and Shababa. Mustafa also stated that the appellant thereafter gave him ₹200/- from his pocket and told him not to tell anybody about the aforesaid transaction. Learned Sr. Counsel argued that if aforesaid version is true, then there should have been recovery of ₹3,000/- at the spot i.e., ₹2,000/- from Noor Jahan and ₹1,000/- from the appellant. However, it is admitted case of the prosecution that ₹1,000/- was not recovered either from the possession of the appellant or from his office drawers or from any of the files lying in the office. From this, learned Sr. Counsel for the appellant has urged this Court to infer that complainant Mustafa is not telling the truth and it is not safe to rely upon his version to conclude that the appellant accepted the tainted money. Learned Sr. Counsel for the appellant further submitted that it is admitted case of the prosecution that before the money was passed on to Noor Jahan, the appellant had handled the same. Therefore, there is nothing surprising in the hand wash of the appellant turning pink and this cannot be taken as an incriminating circumstance against the appellant to presume that he had accepted illegal gratification of ₹1,000/- from the complainant. Learned Sr. Counsel for the appellant has thus summed up that in the instant case, the prosecution has failed to establish the initial demand

or subsequent demand or acceptance of illegal gratification by the appellant. Even the recovery of tainted money is not established, as such, the appellant is entitled to acquittal.

14. Learned Ms. Fizani Husain, APP, on the other hand, has argued in support of the impugned judgment. She has submitted that it has come in evidence that on 10.10.2001, when the complainant visited the office of the appellant, the appellant became uncomfortable on seeing PW7 Rakesh Kumar along with him and he told the complainant to send PW7 Rakesh Kumar back home. Learned APP submitted that from the aforesaid conduct of the appellant, it can be inferred that he is guilty of receiving the tainted money. She further argued that as per the evidence, the shirt pocket wash of the appellant also turned pink, which is indicative of the fact that the appellant had accepted the tainted money and kept it in his shirt's pocket. As regards non recovery of ₹1,000/-, learned APP submitted that it has come in evidence of the complainant that during the raid proceedings, after taking ₹3,000/- from him, the appellant had gone outside his office room for some time. Therefore, it is possible that the appellant concealed ₹1,000/- somewhere outside his room and this explains non-recovery of the tainted money from the possession of the appellant. Thus, learned APP has urged for dismissal of the appeal.

15. I have considered the rival contentions and gone through the ocular and documentary evidence on record. On perusal of the

complaint Ex.PW4/A, it is apparent that the complaint was lodged against SI Praveen Kumar and no role has been ascribed to the appellant Udai Singh so far as initial demand is concerned. Now the question which needs determination is whether or not on the day of raid, i.e. 11.10.2001, the appellant demanded and accepted ₹1,000/- from the complainant.

16. It is significant to note that as per the case of the prosecution, during pre-raid proceedings, arrangement was made for recording the conversation between the complainant Mustafa and the appellant which might take place during raid proceedings. PW7 Rakesh Kumar was given the tape-recorder loaded with empty cassette and he was directed to switch on the same at the appropriate time. He was also given an earphone for hearing the conversation which might take place in the room of the appellant and the complainant was made to carry a concealed microphone. On perusal of testimony of PW5 Inspector Rajender Singh, it is obvious that during investigation, he called the complainant and the panch witnesses and in their presence he played the aforesaid audio cassette, but the cassette was inaudible. Thus, it is obvious that no incriminating evidence was recorded in the tape-recorder. So, I am left with the ocular testimony of the complainant Mustafa, PW1 Noor Jahan, PW3 Shabana and PW6 Head Constable Ram Niwas. PW1 Noor Jahan and PW3 Shabanna have not supported the prosecution story regarding ₹1,000/- having been retained by the appellant. They were declared hostile by learned APP, but nothing

incriminating came out in their cross-examination. Similarly, PW6 Head Constable Ram Niwas has also not supported the prosecution story so far as retaining of ₹ 1,000/- out of the tainted money by the appellant is concerned. Thus, I am left with the sole testimony of complainant Mustafa.

17. Complainant Mustafa has testified that on 11.10.2001 after the pre-raid proceedings, the raiding party reached at police post Pitam Pura. He was directed to go into the office of the appellant and start conversation with him. He was also directed that in the event of demand, he should pay the tainted money to the appellant. PW4 Mustafa has stated that the appellant had demanded ₹ 3,000/- tainted money from him and after counting, he returned ₹2,000/- to him to be given to Shabana and Noor Jahan and kept ₹1,000/- in his pocket. The appellant also gave him ₹200/- and instructed that he should not disclose about the aforesaid transaction to anyone. Thereafter, Noor Jahan and Shabana came inside his room and he handed over ₹2000/- to them. He further stated that in the meantime, members of raiding party came and the appellant was challaned by the officer. It is admitted case of the prosecution that ₹2,000/- out of the tainted money was recovered from Noor Jahan but remaining ₹1,000/-, which as per complainant Mustafa was kept by the appellant in his shirt pocket, was not recovered. The Investigating Officer Inspector Sudesh Kumari (PW3) has testified that she searched the appellant as well as his room, but remaining 2 GC notes of ₹500/- each could not be

recovered. She also testified that she even searched PW6 Ram Niwas who was sitting in the room, but money was not found in his possession. From this, it is evident that tainted money ₹1,000/-, which according to the prosecution were wrongfully obtained by the appellant from the complainant, were not recovered either from the possession of the appellant or from his room. It is not understandable when the tainted money was not found in possession of the appellant as well as Head Constable Ram Niwas, why the Investigating Officer did not search the complainant Mustafa. A possibility cannot be ruled out that complainant Mustafa might have retained ₹1,000/- with him and paid only ₹2,000/- to Noor Jahan and Shabana. Thus, under the circumstances, I do not find it safe to rely upon the sole testimony of PW4 Mustafa regarding acceptance of illegal gratification by the appellant.

18. Learned APP also contended that as per the evidence on record, the shirt pocket wash of the appellant turned pink, but there is no explanation from the appellant as to how the phenolphthalein powder came into the pocket of his shirt if he had not kept the tainted ₹1,000/- in his pocket. On the first blush, this argument appears to be attractive. However, merely on the evidence of shirt pocket wash turning pink, the appellant cannot be held responsible for demand of illegal gratification, particularly when the tainted ₹1,000/- allegedly kept by the appellant in his pocket were not recovered and also the Investigating Officer has not cared to search the complainant Mustafa

to find out if he had not retained said money with himself with a view to falsely implicate the appellant.

19. In view of the above, I am of the considered opinion that in absence of recovery of ₹1,000/- from the possession of the appellant or his room, it is not safe to find the appellant guilty of charge under Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act. Thus, I find it difficult to sustain the impugned judgment of conviction and the order on sentence.

20. The appeal is, therefore, accepted and the appellant is acquitted of charges under Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act, giving him benefit of doubt.

21. The fine, if any, deposited by the appellant be returned to him.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 28, 2011
ks/pst