

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

+ **Crl. Appeal No. 964/2010 & Crl.M.B. 1143/2010**

% Reserved on: 2nd August , 2011

Decided on: 13th October, 2011

HARI KISHAN Appellant

Through: Mr. Raj Kumar, Adv.

versus

STATE Respondent

Through: Mr. C.L. Gupta, APP for State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

- | | |
|--|---------------|
| 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 judgment dated 21st July, 2010 convicting him for offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (in short P.C. Act) and order on sentence directing him to undergo Rigorous

Imprisonment for a period of four years and a fine of Rs. 20,000/- on each count and in default of payment of fine to further undergo Simple Imprisonment for a period of six months on each count.

2. Learned counsel for the Appellant contends that the initial demand has not been proved in the case. The most important witness that is the complainant has not been examined. PW4 is a shadow witness and PW5 a panch witness. PW4 Kashmir Singh has nowhere stated as to when they met and where they met. PW4 does not even say that they went to meet in the office of the accused on the 31st January, 2006 along with complainant Hukam Singh where the alleged bribe amount was settled. It is contended that the testimony of this witness is not reliable as he retracted and changed his statement. In inquiry he has stated that it was 30th January, 2005 when he and Hukam Singh met the accused after knowing that the Appellant was on leave on 31st January, 2005. As per the statement of the raiding officers and others it was PW7 Kalyan Singh in whose presence the demand was made and money was given. However, in his cross-examination PW7 has stated that the Appellant did not demand and accept any bribe in his presence. The version of PW4 cannot be believed as the site plan Ex.PW6/A does not show his presence. According to PW8 Inspector Sunil Kumar the proceedings were completed by 7.15 PM whereafter the rukka was sent. However the most

material witnesses Ct. Kishan Pal and driver of the vehicle have not been examined who could prove the sequence of events. PW5 SI Om Prakash has however stated that Ct. Kishan Kumar reached by 8.00 PM along with the Rukka sent by Inspector Sunil Kumar and it took about 2 hours to write down the FIR. He has further stated that no one asked about the FIR number from him by means of telephone. Thus, it is apparent that the entire team would have waited for Ct. Krishan Kumar till 10.30 PM. PW8 has stated in his cross-examination that Hukam Singh did not give him any papers. He also did not try to ascertain the identity of Hukam Singh and Kashmir Singh from any independent source before proceeding for raid. PW6 Inspector Jai Prakash has stated that he along with Inspector Sunil Kumar and panch witness left the Anti-corruption office at about 1.30 PM. This testimony of the witness is contrary to that of the other witness. Thus, the testimony of three witnesses i.e. the PW4, PW6 and PW8 is not reliable and two important witnesses have been withheld by the prosecution. The Appellant be acquitted of the offences charged.

3. Learned APP on the other hand contends that the demand and acceptance has been proved by the prosecution. PW4 Kashmir Singh has clearly deposed about the incident and the accused demanding bribe. The presumption under Section 20 of the P.C. Act comes into operation as accused

was found in possession of the notes. The Appellant has not discharged the onus put on him to prove his innocence. In his statement under Section 313 Cr.P.C. he has simply denied the alleged incident. Even though the complainant has not been examined, the case of the prosecution has been proved beyond reasonable doubt by the clear and cogent testimonies of other witnesses.

4. I have heard learned counsel for the parties and perused the records. In the present case the complainant Hukam Singh died before he could enter the witness box, thus his testimony could not be recorded. However, the testimony of PW4 Kashmir Singh who is the relative of Hukam Singh and had accompanied him on 2nd February, 2006 to the Anti-corruption Branch has proved the initial demand, the demand at the time of raid and the acceptance of the money. He has stated that on 2nd February, 2006 he had gone to the Anti-corruption Branch along with his relative Hukam Singh. Hukam Singh had got his statement recorded to one Inspector vide Ex.PW4/A which bears his signatures at point 'A' and handed over 20 GC notes of Rs. 5,000/- each to him who recorded their serial numbers. Thus, the complainant having alleged the initial demand as set out in the complaint has been proved by this witness as he has stated that the statement was made in his presence and he has signed at point 'A' on the Ex.PW4/A.

5. PW4 Kashmir Singh has further stated that after completion of the pre-raid formalities by 1.30 PM he along with Hukam Singh, the panch witness raid team officers and other members of the raiding party left Anti-corruption Branch and reached Vikas Bhawan ITO at about 2.15 PM. The Government vehicles were left at some distance and he along with Hukam Singh and panch witness went to the Land and Building Department, Vikas Sadan. When they reached the office of Tehsildar they came to know that he had gone somewhere. They waited outside the office up to 3.30 PM. When they again went to the office of the Tehsildar they came to know that he had arrived. He along with panch witness and Hukam Singh were in his office where the Appellant while sitting on his chair asked them to wait for some time outside and also asked to come in the office of L.A. Branch after 15 minutes. They went after 15 minutes to the office of L.A. Branch at about 4.30 PM. The Appellant enquired about the presence of the person who had accompanied him i.e. the complainant and panch witness and he introduced PW7 Kalyan Singh (the Panch witness) as his son. Thereafter, the Appellant enquired from Hukam Singh whether he had brought money, on which Hukam Singh replied that he had brought Rs. 10,000/-. The Appellant told him that he had to give Rs. 20,000/- on that day on which the complainant replied that he would give him Rs. 10,000/- on the next Friday. Thereafter, the complainant gave the

treated currency notes in the right hand of the Appellant. The other panch witness went outside the room and gave a pre-determined signal on which the raiding party rushed and apprehended the Appellant. Despite extensive cross-examination the testimony of this witness could not be discredited.

6. Despite the fact that the panch witness PW7 has turned hostile, however his testimony corroborates the testimony of PW4 to the extent of the complainant and PW4 coming to the Anti-Corruption Branch and giving complaint. Also he has deposed that on the relevant date he joined his duty as Panch witness and accompanied complainant and PW4 to the office of Tehsildar and they went to the L.A. Branch. This witness has stated that he could not hear the conversation between the complainant and the accused as the voice was low. PW7 has admitted that the Raiding Officer seized the GC notes and took the right hand wash of the accused and it turned pink. He has also admitted his signatures on the post raid proceedings. Thus the recovery of notes from the accused stands proved by the testimony of the witnesses. Merely because PW7 has not completely supported the prosecution case and turned hostile on the aspect of demanding the bribe the same will not belie the otherwise convincing and cogent testimony of PW4.

7. Further the testimony of PW4 is corroborated by the CFSL report wherein one set of wash solution sent to CFSL gave positive test for

phenolphthalein powder. Also the right hand wash and pocket wash of the accused's pant gave positive result for the presence of phenolphthalein powder. Thus, in the present case the demand and acceptance stands proved by the cogent testimony of PW4 and there is recovery of currency notes from the accused person. Hence presumption under Section 20 of P.C. Act comes into play for offence under Section 7 of the P.C. Act and the onus shifts on the accused to prove his innocence. The case of accused is of total denial and nothing has been placed on record to discharge this onus. Hence the prosecution has well established its case beyond reasonable doubt against the accused.

8. I find no illegality in the impugned judgment. The appeal and application are dismissed being devoid of merit.

(MUKTA GUPTA)
JUDGE

October 13, 2011
'ga'