

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

% CRL.A. 94/2000

+ Date of Decision: 1st May, 2013

NANAK CHAND Appellant

Through: Mr. K.B. Andley, Senior Adv. with
Mr. M.S. Shamikh, Advocate

versus

\$ STATE Respondent

Through: M.N. Dudeja, APP

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The appellant in this appeal has prayed for setting aside the judgment dated 20th January, 2000 by which the learned Special Judge, Delhi had held him guilty under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988(hereinafter to be referred as 'the Act of 1988') as also the order dated 24th January, 2000 by which he was awarded rigorous imprisonment for a period of six months under Section 7 and for a period of one year under Section 13(1)(d) in addition to fine on both counts.

2. Briefly stated, the facts of the case leading to the trial and conviction of the accused appellant are like this. Complaint (Ex. PW-5/A) was made to the anti corruption branch on 18th September,1990 by PW-5 Jai Parkash, who was working as a sweeper in Municipal Corporation of Delhi, against the accused appellant, who was working as a clerk in the West Zone Office of MCD in Rajouri Garden, that he wanted to have some part of his salary deducted for being deposited in G.P.F. and so he had approached the concerned clerk, accused appellant Nanak Chand and requested him to fill up his form so that deduction from his salary could start. The accused appellant however had demanded bribe of Rs.50/- from him for doing his job. When he told the accused appellant that he was poor person the amount of bribe was settled at Rs.40/-. Since PW-5 did not want to pay bribe he went to the Anti Corruption Branch and got his complaint recorded. It was recorded by PW-7 Inspector Abhey Ram who then decided to lay a trap upon the accused appellant. Two currency notes of Rs.20/- each were given by the complainant to PW-7 Inspector Abhey Ram for being used as bribe money during the raid which the Inspector decided to conduct to apprehend the accused appellant red handed while accepting bribe from the complainant. PW-7 then conducted pre-raid proceedings by recording the numbers of the two notes and treating them with phenolphthalein powder. The significance of treating the notes with phenolphthalein powder was told to the complainant and the panch witness(PW-6), who was a Government employee present there on duty to act as a panch witness in case some raid was to be conducted. It was told to them that in case the hands of the person who would handle those notes

would be dipped in a solution of sodium carbonate the same would turn pink. Then practical demonstration was also given PW-7. Instructions were also given to them as to how the raid was going to be conducted and they were expected to do at the time of the raid in the office of the accused appellant. All these things were recorded in the pre-raid proceedings prepared by PW-7. Raiding party was then organized.

3. After reaching the MCD office in Rajouri Garden the complainant and the panch witness went ahead while the remaining officials of the raiding party took their positions at appropriate place for receiving the pre-arranged signal from the panch witness after acceptance of bribe money by the accused appellant. As per the further prosecution case the accused appellant did demand bribe money from the complainant at the time of raid which was paid to him and those two tainted notes were accepted by him with his left hand and kept in left pant pocket. After getting pre-arranged signal the members of the raiding party entered the room of the accused appellant and PW-7 challenged the accused appellant that he had accepted bribe of Rs. 40/- from the complainant who then became nervous. On being told by the complainant that the accused after accepting the bribe money in his left hand had kept the same in the left side of his pant pocket, the raiding officer offered to get himself searched which offer was declined by the accused appellant and then PW-7 recovered the tainted notes from the left side pocket of the pants of the accused appellant. Numbers of the recovered two phenolphathlein treated notes tallied with the ones already mentioned in the pre-raid proceedings. The left hand of the accused appellant was then dipped in the solution of

sodium carbonate which turned pink. Pant of the accused appellant was got taken off and when its left pocket was dipped in another sodium carbonate solution the same also turned pink.

4. PW-7 Inspector Abhey Ram prepared post-raid proceedings at the spot and took into possession and sealed the tainted notes and sealed the hand and pant wash solutions in separate bottles and prepared seizure memos. He then sent the ruqqa to the anti corruption branch for the registration of formal FIR and on the basis of that ruqqa FIR(Ex.PW-3/A) under Sections 7 and 13(1)(d) of the Act of 1988 was registered by PW-3. Investigation was then taken over by PW-8 Inspector B.M. Sharma. During the investigation the solutions of sodium carbonate which were prepared, used and sealed at the place of raid were sent to CFSL for chemical examination and as per the CFSL report those solutions confirmed the presence of phenolphthalein which in turn also confirmed that the accused appellant had taken the tainted money from the complainant at the time of the raid. On the completion of investigation necessary sanction for the prosecution of the accused was obtained from the competent authority and thereafter charge sheet was submitted in the Court of the Special Judge constituted to try corruption cases under the Act of 1988.

5. The accused appellant was charged and tried for the commission of offences noted already. The prosecution had sought to establish its case by examining eight witnesses, including the complainant Jai Parkash(PW-5), panch witness Ramesh Chand (PW-6) and the raid officer Inspector Abhey Ram (PW-7).

6. All the incriminating evidence was put to the accused appellant during his statement recorded under Section 313 Cr.P.C. He pleaded innocence and claimed that he had been falsely implicated at the instance of the complainant.

7. The learned Special Judge after analyzing the evidence adduced before it by the prosecution held the appellant accused to be guilty of demanding and accepting bribe from the complainant. Feeling aggrieved by the judgment of the Special Judge holding him guilty, the convicted accused filed this appeal.

8. Mr. K.B. Andley, learned senior counsel appearing on behalf of the appellant had sought acquittal of the appellant mainly on the ground that it was not a part of the job of the accused appellant to open Provident Fund Accounts of MCD employees and he was simply a Sanitary Guide in the Sanitary Department of MCD and so there could be no occasion for him to demand bribe from the complainant for showing any favour to him in the matter of opening of GPF account. In fact, it was the duty of the bill clerk to fill up the forms and since the prosecution had chosen not to bring the bill clerk Prabhu Dayal into the witness box the whole story of the prosecution becomes doubtful. Learned senior counsel in support of this submission placed reliance on a judgment of Punjab and Haryana High Court in **“Deepak Mattu vs State of Punjab”, 2009(4) C.C.Cases(HC) 193.**

9. Learned Additional Public Prosecutor Mr. M.N. Dudeja, on the other hand, fully supported the judgment of the trial Court and submitted that recovery of bribe money from the appellant accused was itself sufficient to

raise a presumption under Section 20 of the act of 1988 that money was accepted by him as illegal gratification for showing some favour to the complainant irrespective of the fact whether he could have, in fact, shown any favour to the complainant in discharge of his duties as a public servant or not. In support, Mr. Dudeja cited one judgment dated 13th September, 1985 in Crl. Appeal No. 180 of 1982 of this Court reported as **“Ramesh vs The State”, 1986 Crl.L.J. 1102** and one Division Bench judgment of Bombay High Court in **“Indur Dayaldas Advani vs The State of Bombay”, AIR (39) 1952 Bombay 58.**

10. During the course of hearing I was also taken through the relevant prosecution evidence. The complainant Jai Prakash was examined as PW-5. The relevant portion of the statement of PW-5 is reproduced under:

“During March 1990, I was confirmed as ‘Safai Karamchari’ in MCD. In Sept. 1990 I was working in Circle No. 39, Madipur, Delhi as a Sweeper. I wanted to get my GPF fund deducted from my salary and have it nominated in favour of my son. I met Nanak Chand accused present in the Court who was a clerk in the West Zone, Rajouri Garden office of MCD. I requested the accused for deducting my GPF fund with nomination in favour of my son. The accused demanded ` 50/- as bribe for doing the needful. He ultimately agreed to receive ` 40/- for this purpose.

On 18.9.1990, I came to the Anti-Corruption Branch where I made my complaint Ex. PW5/A, in the presence of the panch witness Ramesh Chand. My complaint was signed by me at point ‘A’. I gave ₹ 40/- to the Inspector in the form of two currency notes of ₹ 20/- each. Their numbers were noted down and powder was applied to those currency notes. Demonstration was given by touching my hand to the tainted currency notes and then washing it in a solution which was colourless. The solution turned pink. After explaining us the effect of the powders the currency notes were given back to me which I kept in my pocket.

I was instructed to give the currency notes to the accused on his specific demand, in the presence of the panch witness. Panch witness

was asked to remain with me, watch the transaction and give signal by moving his hand on his head when he was satisfied that accused had accepted the money as bribe. We all washed our hands. The pre-raided proceedings were recorded which are Ex. PW5/B. Some officials of AC Branch were also joined in the raiding party besides us by the raiding officer.

The raiding party then left the AC Branch in Govt. vehicle and went to MCD Office, West Zone, Rajouri Garden. The office of the accused was situated on the 2nd floor in Room No. 204. I and panch witness were sent to contact the accused and other members took positions outside the office room. Accused was not found present in the room and we waited for him. After about half an hour the accused came there. The accused asked me if I had brought the money. I told the accused that I had brought the money. I had asked the accused to do my work and to fill up my form and accused had then demanded the money. I gave the money to the accused. Accused took the money in his left hand and kept it in the left side pocket of his pants. The panch witness gave the signal by moving his hand over his head. The police party came there and secured the accused.

The Inspector Abhey Ram disclosed his identity to the accused and challenged him that he had accepted bribe. Accused became nervous and said that he did not have any money. He had not taken any money. Inspector Abhey Ram showed his empty hands to the accused and recovered the money from the left side pocket of pants of the accused and numbers of the notes were tallied with those already recorded and were found to be the same.

Left hand of the accused was washed and the solution turned pink. This solution was transferred into two glass bottles which were sealed and labeled.

The left side pocket of the pant of the accused was washed in another solution and the solution turned pink.....”

11. The testimony of the complainant PW-5 could not be shaken by the defence in the cross examination also. The whole conversation which took place between the complainant and the appellant was narrated by the complainant without any deviation. A suggestion was put to the complainant PW-5 in his cross examination that the accused did not accept

any money nor kept any money in his pocket which suggestion was denied by the complainant.

12. Now I come to the evidence of the panch witnesses. PW-6, Ramesh Chand, after narrating the pre-raid proceedings in the office of anti corruption branch deposed about the actual raid proceedings and the relevant portions of his statement are as under:

“.....I and Jain Prakash went to the room of the accused while other members of the raiding party stood outside the room. Accused's office was on the 2nd floor. He was not present in his room. He waited outside. After 45 minutes, accused came there. The accused went in and we followed him into the room. The complainant asked the accused to do his work, and to take the money. I could not hear what accused said. Complainant gave money to the accused. Accused took money in his left hand and kept them in the left side pocket of his pants. I gave pre-arranged signal to the raiding party. Members of the raiding party came in, apprehended the accused and raiding officer disclosed his identity to the accused. He challenged the accused that he had taken bribe. Accused kept mum. Inspector offered his search to the accused. He refused to take search. Money was recovered from the leftside pants pocket. Number of the notes tallied with the pre-raid report.

Left hand of accused was washed and solution turned pink.....”

13. PW-7 Inspector Abhey Ram is the raid officer. He had deposed about the pre-raid proceedings conducted by him at the anti-corruption branch and then about the actual raid he deposed as under:

“..... The raiding party then went to MCD office, Rajouri Garden, West Zone in govt. vehicle.

Complainant and panch witness were sent to contact the accused. They went to the second floor. Other members followed them at

discreet distance and positioned themselves outside the room and around the office.

At 12.45 p.m. on receipt of appointed signal, I along with other members of the raiding party went inside the office room and apprehended the accused. I disclosed my identity to the accused and challenged him that he had obtained bribe of ₹ 40/- from the complainant. Accused became perplexed and kept mum. I offered my search. Accused refused to take my search. I showed my empty hands to the accused and recovered tainted currency notes from the left side pants pocket. The currency notes were tallied and their numbers were found to be the same as recorded in the pre-raid proceedings.

The left hand of the accused was washed and the solution turned pink and was preserved in two bottles. The bottles were sealed with the seal of ND and labeled and marked LH-I and LH-II.

Pants of the accused was taken off and its left side pocket lining was washed in another solution of sodium carbonate. This solution also turned pink and was transferred into another two glass bottles. These bottles were also sealed with the same seal and labeled and marked LP-I and LP-II.....”

14. From the evidence of these three material witnesses it stands established beyond any doubt that the accused appellant had demanded ₹ 50/- initially from the complainant and then he had agreed to settle the deal for ₹ 40/- and then at the time of raid also he had demanded money from the complainant and obtained ₹ 40/- from him. Evidence of these witnesses could not be demolished in cross-examination nor any attempt was made before me by the learned senior counsel for the accused appellant to point out any deficiencies in their evidence which could discredit them. Now, the point which needs to be considered and which only Mr. Andley had seriously urged is whether it is necessary for the prosecution in such like cases to establish that the accused public servant was actually in a position to show any favour to the complainant and if this

fact is not established then no offence would be made out even if it is proved by the prosecution that public servant had demanded and obtained, as is established in the present case from the prosecution evidence, money which was not his legal remuneration from someone after telling him that he would show some favour to him in case some money(bribe) was paid to him. In the judgments of this Court and of Bombay High Court, cited by the learned prosecutor, it was clearly held by a that if the accused public servant makes a representation, express or even implied, to the complainant in such like cases that he was in a position to show him some favour in discharge of his official functions and then obtains money, then the offence of demand and acceptance of bribe would be complete. Here the complainant approached the accused appellant with a request to help in opening of Provident Fund account and then the accused appellant had not told him that it was not his job and instead he demanded money from him. In the judgment relied upon by Mr. Andley it was not held that if actually the accused public servant is not in a position to show any favour to someone from he allegedly demanded bribe no offence would be made out. In that the accused public servant was acquitted by the High Court because the prosecution evidence in respect of recovery of bribe money from the accused public servant was not found to be reliable.

15. Even otherwise also, there is a presumption against the person charged for the offence punishable under Section 7 and Section 13(1)(d) of the Act of 1988 and from recovery of money which was not his legal remuneration is established that he had received the money as illegal

gratification for showing favour to the person from whom money was taken in discharge of his functions as a public servant unless it is proved to the contrary by the accused himself that the recovered money was his legal remuneration. This statutory presumption is provided in favour of the prosecution under Section 20 of the Act of 1988 which reads as under:

“20. Presumption where public servant accepts gratification other than legal remuneration.-

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so

trivial that no inference of corruption may fairly be drawn.”

Therefore, in the present case, the accused appellant cannot be acquitted on the ground that he was not the concerned official for the opening of GPF accounts of employees of MCD and so he could not have demanded bribe from the complainant.

16. It was also the contention of the learned senior counsel for the accused appellant that the raiding officer(PW-7) could not have laid a trap as there was no proper authorization in his favour to conduct the raid nor had he obtained permission of the Magistrate as provided under Section 17 of the Act of 1988. He contended that investigation could be done only by a police officer not below the rank of Assistant Commissioner of Police while PW-7 was only an Inspector. This was a serious infirmity on the part of the investigating agency which vitiated not only the investigation but the trial also and on this ground also the accused appellant was entitled to be acquitted.

17. However, this submission also of Mr. Andley cannot be accepted in view of the judgment of the Supreme Court in the case of **“H.N. Rishbud and Anr. v. State of Delhi”**, AIR 1955 SC 196, wherein it was held that a defect or illegality in investigation, howsoever serious, cannot lead to setting aside of the result of trial unless the illegality in the investigation can be shown to have caused prejudice to the accused. In **“ Khandu Sonu Dhobi and Anr. v. The State of Maharashtra”**, 1972 Cri.L.J. 593 also the Supreme Court had held that unless it is shown that any prejudice has been

caused to the accused the trial would not be vitiated resulting in conviction of the accused on the ground of irregularity in investigation. In the present case, no prejudice can be said to have been caused to the accused appellant for want of special authorization in favour of the raid officer by the State Government to conduct the raid or the permission of the Magistrate.

18. I am, therefore, of the view that the learned Special Judge has rightly held the appellant guilty of the offences punishable under Sections 7 and Section 13(1)(d) of the Act of 1988. Therefore, this appeal is dismissed and the appellant is ordered to be taken into custody and lodged in jail to serve out the sentence awarded to him. His bail bonds stand cancelled.

P.K.BHASIN, J

May 01, 2013