

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

+ **CRL.A. 630/2002**

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Reserved on: 8<sup>th</sup> January, 2013  
Decided on: 2<sup>nd</sup> April, 2013

KUNWAR PAL SINGH

..... Appellant

Through

Mr. Sandeep Sethi, Sr. Adv. with Mr.  
Anurag Jain, Adv.

versus

C.B.I.

..... Respondent

Through

Mr. R.V. Sinha, Spl. PP with Mr. A.S.  
Singh, Adv.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present appeal the Appellant challenges the judgment dated 13<sup>th</sup> August, 2002 passed by the learned Special Judge convicting the Appellant for offences under Section 7 and Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 14<sup>th</sup> August, 2002 whereby he has been directed to undergo rigorous imprisonment for a period of four years with fine of Rs.500/- each under Section 7 and Section 13(2) of the PC Act. The fine amount has since been paid, the receipt whereof has been annexed with the present appeal.

2. Learned counsel for the Appellant contends that there are material contradictions and improvements from the complaint made by the complainant PW1 Riaz Khan to the CBI in his testimony before the Court.

The statement under Section 161 Cr.P.C. and the statement of the complainant before the Court are also contradictory. The same being material improvements the Appellant is entitled to the benefit of doubt. PW1 the complainant has alleged initial demands against ASI Rajender Singh and co-accused Azad Singh Malik whereas in the Court he has alleged the initial demand qua the Appellant. ASI Rajender Singh was never charge-sheeted and on the same set of evidence Constable Azad Singh Malik has been acquitted. Further there is discrepancy in the version regarding the dispute with Hardwari Lal, the material witness with whom the alleged dispute and settlement took place who was never examined as a witness. Further, even as per the prosecution case after the trap was laid and Appellant was apprehended, the entire proceedings were carried out at the shop of Parduman Kumar Jain and not at the Police post. However, this material witness was also not examined as a prosecution witness. The Appellant examined Parduman Kumar Jain as a defence witness and he clearly stated that no proceedings took place at his shop, however he was made to sign blank papers at the Police post. The alleged settlement got arrived at by the Appellant between the complainant and Hardwari Lal was sent to GQED for opinion, however PW5 expert could not render any opinion thereon and thus the entire basis of the prosecution case falls as the hand-writing has not been proved to be that of the Appellant. The Trial Court also expressed its doubts and having returned findings qua contradictions it still convicted the Appellant, though benefit of doubt ought to have been given. Even taking the evidence on its face value in the absence of initial demand, merely recovery itself is insufficient to implicate the Appellant. Hence the Appellant be acquitted of the charges framed.

3. Learned counsel for the CBI on the other contends that the Appellant has not challenged the demand or recovery in the cross-examination of the witnesses or in his statement under Section 313 Cr.P.C. Thus, the learned Trial Court was justified in raising the presumption in view of Section 20 of the PC Act as the demand and recovery stood proved.

4. I have heard learned counsel for the parties and perused the record. Briefly the case of the prosecution based on the statement of PW1 Mohd. Riaz Khan is that he was running a shop under the name and style of Heena Rolling Shutters at Usmanpur, Seelampur. PW1 gave welding work to one Hardwari Lal, a welder in the month of August, 1994 as he was not keeping well and suffering from tuberculosis which was to be performed at the house of Munna Khan. For this Munna Khan paid advance of Rs. 1000/- and the balance 1000/- was to be paid on the completion of work. When PW1 demanded the money from Munna Khan he stated that his work was not complete and he would make the payment only after completion of the work. PW1 asked Hardwari Lal to finish the work who showed his inability due to lack of time and asked PW1 to clear the dues in respect of the work already done. PW1 requested Tikka Ram, father of Hardwari Lal to wait for 10-15 days so that he could complete the work after getting well at the house of Munna Khan and on receipt of money he would settle the dues of Hardwari Lal. On 6<sup>th</sup> September, 1994 at about 12.00 noon Hardwari Lal visited the shop of PW1 in his absence and took away his welding machine. When PW1 reached his shop and found the welding machine missing, he made enquiries and thereafter proceeded to search for his welding machine. PW1 reached near Usmanpur Police post and saw Hardwari Lal taking away the

machine on a rikshaw. PW1 apprehended Hardwari Lal, took him to Police post Usmanpur and lodged a complaint at the Police post. The Appellant and co-accused Azad Singh Malik who has been acquitted recorded the report. Appellant Kunwar Pal Singh gave beating to Hardwari Lal and took him outside. Azad Singh Malik also followed Kunwar Pal Singh. Later both the Appellant and Azad Singh Malik came back to the tent and made PW1 sit on the ground. They made PW1 sign blank papers. Appellant told him to sign papers of compromise with Hardwari Lal and told him to pay Rs.500/- to them and take away his machine. When PW1 refused to pay Rs.500/-, the Appellant threatened that in the event of non-fulfillment of demand they can turn an innocent into a Badmash and a Badmash into an innocent person. Co-accused Azad also abused PW1 and stated that PW1 should be challaned and arrested. On this the Appellant prepared a challan against PW1. On the PW1 protesting the Appellant and Azad Singh again demanded Rs.500/- from him. PW1 stated that he was ready to make the payment provided the challan against him was dropped. The Appellant stated that PW1 will have to pay money otherwise he would also be put behind the bars in the aforesaid challan. Co-accused Azad Singh gave beatings to him and made him sit in a posture of 'Murga'. On PW1 stating that he was not carrying Rs.500/- and he would pay later and requested to take the machine, the Appellant asked him to leave the machine at the Police post and fetch the money. Since PW1 was having Rs.325/- he paid the entire amount of Rs.325/- to Azad Singh who kept back Rs.300/- and returned Rs.25/-. When PW1 demanded the machine the Appellant stated that he would get the machine only after signing blank papers. Thereafter Appellant obtained signatures on blank papers and wrote a compromise thereon. On PW1 asking permission to take

the machine Azad Singh stated that in case the balance amount of Rs.200/- was not paid they will visit his shop on the next day. The Appellant stated that the remaining balance amount of Rs.200/- should be paid to him or in his absence to accused Azad Singh between 4.00 to 5.00 PM at the Police post.

5. Since PW1 did not want to pay the bribe he went to the office of CBI at around 12.00 O'clock on 7<sup>th</sup> September, 1994 where his complaint was recorded as Ex.PW1/A. PW1 gave Rs.200/- i.e. two notes of Rs. 100 denomination which were treated with chemical powder and he kept the two currency notes in his pocket. After all the pre-raid formalities being over a trap was laid with PW2 Kishan Pal as the shadow witness, PW3 Rajiv Bhatia as the recovery witness and PW8 S.K. Sinha as a trap laying officer. PW1 & PW2 Kishan Pal went to the Police post with the other officials and recovery officer keeping a watch from the distance when Appellant was found sitting in a rikshaw with a battery and a wireless near the Police post. PW1 wished the Appellant on which the Appellant enquired as to whether he had brought the money to which PW1 replied in the affirmative and said "Aage Se Mujh Ko Pareshan to Nahin Karo Ge". Thereafter the Appellant said "Laa Paise, Jaa Mauj Kar". PW1 took out the tainted Rs.200/- from his pocket and gave them to the Appellant who accepted the same in his right hand. PW2 gave the pre-arranged signal on which the official apprehended the Appellant. Thereafter the Appellant was taken to shop of Parduman Jain as the crowd had collected. PW3 Rajiv Bhatia took the money from the hand of Appellant and compared the currency notes with the numbers therein, which matched.

The hand wash of the Appellant was taken which turned pink which was also preserved.

6. The testimony of PW1 is corroborated by the testimony of PW2 Kishan Pal the shadow witness who has stated that after the pre-raid formalities they reached the Police post at about 4.45 PM. PW1 and PW2 went ahead to meet the Appellant who was found on a rikshaw and the conversation as stated by PW1 took place between the parties. Thereafter PW1 took out the tainted Rs.200/- and passed on to the Appellant who accepted the same and kept the same in the front pocket of his shirt. On the pre-appointed signal the CBI officials apprehended the Appellant. This witness has further stated about the post-raid formalities and that the Appellant was first taken to shop of Parduman Kumar Jain as people had gathered and thereafter brought back to the Police post New Usmanpur. This witness however has not stated anything against Constable Azad Singh Malik.

7. PW3 Rajiv Bhatia has also stated about the pre-raid formalities and that when PW1 and PW2 went ahead to contact the Appellant they noticed the Appellant coming on a rikshaw which was stopped near the PW1 and PW2. After some conversation the Appellant extended the right hand for taking the money and accepted the money. He also fortified that since the crowd collected at spot, the Appellant was taken to the shop of Parduman Kumar Jain and the two G.C. notes each of Rs. 100 denomination were recovered from front pocket of his shirt and from the shop he was taken to the Police post.

8. As regards the contention of the learned counsel for the Appellant that co-accused Azad Singh Malik has been acquitted by giving the benefit of doubt whereas Appellant had been convicted, it may be noted that at the time of acceptance of the bribe of Rs.200/- neither Constable Azad Singh Malik was present nor ASI Rajender Singh and they had no role to play therein. Thus, in view of the fact that the role of Constable Azad Singh Malik was limited to the initial demand of Rs. 500/- and receipt of Rs.300/- on 6<sup>th</sup> September, 1994 the learned Trial Court granted him the benefit of doubt. Be that as it may, the same cannot enure to the benefit of the Appellant against whom there is overwhelming evidence of acceptance of Rs.200/- on 7<sup>th</sup> September, 1994.

9. As regards the contention of learned counsel for the Appellant that Parduman Kumar Jain was not examined as a witness, it may be noted that this witness was examined by the Appellant in the defence. As DW1 he also stated that CBI officials took the said gentleman who was called by them to his shop but they did not enter his shop and instead asked him to accompany them to Police post Usmanpur where they prepared some documents and he was made to sign. Thus, the only version which is not supported by DW1 is that part of post-raid formalities were conducted at his shop.

10. As regards the contention of the learned counsel for the Appellant with regard to improvements in the testimony before the Court from that in the complaint and the statement under Section 161 Cr.P.C., though it was suggested to PW1 that he had stated to CBI that ASI Rajender Singh had told him to pay Rs.500/- failing which he would be implicated in a false case, however no confrontation has been made from his earlier complaint or the

statement under Section 161 Cr.P.C in this regard. The confrontation is with regard to the portion of the statement where it is recorded that ASI Rajender Singh had told him to bring the balance Rs.200/- on the next evening. Be that as it may, even if as per the evidence on record on 6<sup>th</sup> September, 1994 besides the Appellant the demand was made both by Azad Singh Malik and Rajender Singh it may be noted that on 7<sup>th</sup> September, 1994 when the trap was laid both of them had no role to play. The same would thus not absolve of the Appellant of the offence committed by him.

11. Further since the factum of demand, acceptance and recovery of Rs.200/- as bribe has been proved beyond reasonable doubt. Further in view of acceptance being proved the presumption is raised against the Appellant under Section 20 of the PC Act for offence under Section 7 PC Act and thereafter the onus shifts on the Appellant to prove that the said money was as legal remuneration which the Appellant failed to prove. Further in his statement under Section 313 Cr.P.C. the Appellant has stated that PW1 shook hands with him after greeting him while he was in the process of moving away in a cycle rikshaw with a battery meant for repair, thus taking the plea that the hand-wash turned pink for this reason. However, a perusal of the testimony of PW1 does not show that any such suggestion has been made to PW1 in this regard.

12. In view of the facts and circumstances of the case I find no merit in the appeal. Appeal is accordingly dismissed.

**(MUKTA GUPTA)**

**APRIL 02, 2013**  
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