

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

+ **CRL.A. 124/2003**

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Reserved on: 25<sup>th</sup> April, 2013

Decided on: 2<sup>nd</sup> July, 2013

RAJINDER SINGH MEHTA

..... Appellant

Through: Mr. Ashok Sharma, Advocate.

versus

STATE (C.B.I.)

..... Respondent

Through: Mr. R.V. Sinha, Standing Counsel.

**Coram:**

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

1. By the present appeal the Appellant impugns the judgment dated 5<sup>th</sup> April, 2003 whereby he 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 'PC Act') and the order on sentence dated 6<sup>th</sup> February, 2013 directing him to undergo Rigorous Imprisonment for a period of four years with a fine of Rs. 500/- each under Sections 7 and 13 (2) of the PC Act. In default of payment of fine, the Appellant has been directed to undergo further Rigorous Imprisonment for a period of three months on each count.

2. Learned counsel for the Appellant contends that neither demand nor acceptance has been proved by the prosecution. There are material contradictions in the statement of the Complainant and the shadow witness. The statement of PW6 the Complainant is full of improvements and contradictions. Minor variations are possible by lapse of time however, major contradictions from the previous statement are not permissible.

Learned Trial Court erroneously held the said contradictions to be minor in nature. The conversation at the time of demand given in the statements under Section 161 Cr.P.C. recorded after the trap and in the Court is contradictory. The Complainant's wife was running a PCO which was disconnected as the monthly bill was paid by a cheque which bounced and in a case where the cheque bounces, as per policy, cash payment is taken and in the light of payment by cash even if the Appellant stated to the Complainant "paise laye ho" the same would not amount to demand of illegal gratification. PW9 Sanjay Rana, the shadow witness was declared hostile. This witness admitted that he appeared in around 20 cases for CBI and thus was a stock witness for the CBI. PW9 does not allege either demand or acceptance. On the contradictory testimony of PW6 the Complainant, no conviction can be based without any corroboration. Admittedly the Appellant is handicapped and his one hand is not functional thus he could not have taken money from both the hands. The Appellant has been falsely implicated by planting the money on him. The claim of the Complainant that there were sufficient funds in his account was falsified by the dishonor of the cheque. Reliance is placed on *Surajmal vs. State (Delhi Administration)* 1979 (4) SCC 725; *Banarasi Dass vs. State of Haryana*, 2010 (4) SCC 450; *Prem Singh Yadav vs. CBI*, 178 (2011) DLT 529 and *Roshan Lal Saini vs. CBI*, 2011 (1) JCC 104. In the alternative, it is stated that the sentence awarded to the Appellant is very harsh and the same be reduced.

3. Learned Standing Counsel for the CBI on the other hand contends that the prosecution has proved demand, acceptance and recovery of money. Since the recovery has not been denied, the presumption under Section 20 is

raised against the Appellant which onus he has failed to discharge. Hence no case for acquittal is made out and the appeal be dismissed.

4. I have heard learned counsel for the parties.

5. The case of the prosecution on the basis of statement of PW6 Pratap Singh, the Complainant is that his wife Smt. Manju Rani was running a PCO at 1798, Kotla Mubarakpur, New Delhi. The Complainant was managing the said PCO on behalf of his wife. In the year 1996 at around 2.00-3.00 p.m. the Appellant received telephone message regarding the disconnection of the aforesaid telephone connection due to non-payment. He went to the office of MTNL at Eastern Court after a week or ten days and met the Appellant. On enquiry the reason for disconnection of phone was informed to be that one of the cheques pertaining to payment of telephone bill had been dishonored. The Complainant told the Appellant that there was sufficient credit balance for payment of cheque amount and asked for the specific reason for dishonor of the cheque. However, the Appellant refused to disclose the same and told the Complainant that now he would have to pay three times the bill amount. The Complainant protested and went away. 15 days later, the Complainant again contacted the Appellant in his office and asked 'isme kutch ho sakta hai to bata dijiye'. On this the Appellant told him 'paanch so rupaye lagenge aapka kaam theek ho jayega'. On this, the Complainant went to the CBI office and lodged a complaint Ex. PW6/A. Thereafter with the permission of the learned Trial Court, the learned APP was permitted to cross-examine the witness. The witness in his further statement admitted the pre-trap proceedings, he further stated that they left the CBI office for trap some time after 1.00 p.m. and reached MTNL office, Eastern Court at about 2.00 P.M. The Complainant along with Sanjay Rana, the shadow witness went to

contact the Appellant. When they reached the room of the Appellant, he was not available there and they waited outside his office for about 5-10 minutes. After the Appellant came, they went into the office and thereafter the Complainant stated to the Appellant “hum aa gaye hain hamara kaam kar dijiye”. The Appellant asked ‘paise laye ho’. To this, the Complainant replied ‘ha laya hun’ and took out Rs. 500/- from his shirt pocket which were treated. Thereafter on the suggestion of the learned APP he described the trap proceedings. In the cross-examination, this witness reiterated that he had correctly mentioned in his complaint that the Appellant had demanded Rs. 500/- as bribe for the adjustment of his bill to restore the telephone connection.

6. PW9 Sanjay Rana, the shadow witness turned hostile and was also cross-examined by the learned APP. With regard to the demand and acceptance at the time of trap, this witness stated that he waited in the lobby for 30-40 minutes for the Appellant. When the Complainant saw the Appellant coming, they went inside the room where the Appellant was sitting. The Complainant showed his telephone bill to the Appellant and said “ye mera bill hai, aapne bola tha laya hun main.” The Appellant did not respond, on this the Complainant said ‘du kya me laya hoon’. Thereafter the Complainant took out the treated Rs. 500/- from his pocket and extended towards the Appellant. The Appellant accepted the said notes in his right hand and kept the same in the left front pocket of his shirt. Thereafter PW9 gave a pre-appointed signal to the trap party from the said hall where he was standing. This witness in his cross-examination clarified that the Appellant was physically handicapped with one hand and it was his left hand which was completely non-functional.

7. Learned counsel for the Appellant has pointed out the contradictions in the statement of the Complainant qua the initial demand. It may be noted that the Complainant in his statement stated that when he went to the office of the Appellant 15 days later and met him, the Complainant had asked ‘isme kutch ho sakta he to bata dijiye’. On this the Appellant told the Complainant ‘paanch so rupye lagenge aapka kaam theek ho jayega’. Whereas in the statement recorded under Section 161 Cr.P.C. it is recorded that the Complainant stated ‘ji kal me aapke paas aaya tha aur aapne aaj bulaya tha’ to which the Appellant replied ‘ha theek hai laye ho’. The Complainant said ‘ji ha pure paanch so rupaye laya hun’. It may be noted that the two conversations do not relate to the same period. The earlier one related to the initial demand and the subsequent recorded under Section 161 Cr.P.C. related to the demand at the time of trap in the presence of the shadow witness Sanjay Rana. As regards the conversation at the time of trap the Complainant in his testimony before the Court has stated that when he went and met the Appellant he stated “hum aa gaye hain hamara kaam kar dijiye” on which the Appellant asked “paise laye ho”. Thereafter the Complainant said ‘ha laya hun’ and took out the powder treated Rs. 500/- from his shirt pocket and passed on to the Appellant who took the same in his right hand and kept in the upper left pocket of his shirt. A perusal of this conversion with the previous statement does not show any material contradiction. I am not in agreement with the contention of the learned counsel for the Appellant that this is a material contradiction and not an error in stating the exact words from loss of memory due to passage of time.

8. In the present case the recovery has been proved beyond reasonable doubt by PW11 Inspector D.K. Singh. Inspector S.K. Bhati the trap laying

officer had passed away before he could be examined in the Court however, Inspector D.K. Singh was throughout present with Inspector S.K. Bhatti and thus was competent to depose. He deposed about the calling of two independent witnesses and conducting the pre-trap proceedings. He stated that at about 2.45 p.m. the shadow witness gave a signal and all the members of the team including the recovery witness Surinder Kumar went to Room No. 320. He identified the Appellant as the person who was sitting. Inspector Bhatti challenged the Appellant disclosing his identity that he had accepted the bribe from the Complainant and the Appellant kept mum. On the directions of Inspector Bhatti, PW4 Surinder Kumar recovered the tainted currency notes from the front shirt pocket of the Appellant. The notes were tallied with the numbers written down in the handing over memo. The right hand wash of the Appellant was taken and the same turned pink which was transferred in a clean glass bottle and sealed with the seal of CBI. The shirt of the Appellant was also taken out and the left front pocket of the shirt was dipped in a solution which turned pink. Nothing material could be elicited in the cross-examination of this witness. The testimony of this witness is further corroborated by the testimony of PW10 Inspector Shobha Dutta, who stated about sending the bottles of right hand and shirt pocket washes to the CFSL and collection of documents like the dishonored cheque Ex. P12 vide seizure memo Ex. PW10/V, the file pertaining to telephone no. 464714, the telephone bill, bank slip disclosing date of dishonor.

9. In State of *U.P. vs. Zakaulla*, 1998 (1) SCC 557 it was held that the conviction can be based even on the evidence of the trap laying officer without corroboration.

“10. The necessity for “independent witness” in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicated person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependant of the police or other officials for any purpose whatsoever. [*Hazari Lal v. State (Delhi Admn.)*] [(1980) 2 SCC 390: 1980 SCC (Cri) 458: (1980) 2 SCR 1053].]

11. The most important evidence is that of PW 4 Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphthalein powder on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test is conducted for his conscientious satisfaction that he was proceeding against a real bribe-taker and that an officer with integrity is not harassed unnecessarily.

12. The evidence of such a witness as PW 4 can be acted on even without the help of any corroboration [vide *Prakash*

*Chand v. State (Delhi Admn.)* [(1979) 3 SCC 90: 1979 SCC (Cri) 656: (1979) 2 SCR 330]; *Hazari Lal v. Delhi Admn.* [(1980) 2 SCC 390: 1980 SCC (Cri) 458: (1980) 2 SCR 1053].”

10. The contention of learned counsel for the Appellant is that since the cheque of the Complainant bounced thereafter the payment is to be taken only by cash and the Appellant did not misconduct himself in demanding the money from the Appellant. A perusal of the testimony of the Complainant shows that no such suggestion was given to him in the cross-examination. Further this is not the explanation rendered under Section 313 Cr.P.C. by the Appellant.

11. In view of the fact that the recovery has been proved beyond reasonable doubt and from the part testimony of the Complainant and the shadow witness it has been proved beyond reasonable doubt that the Appellant demanded and accepted money, I find no illegality in the impugned judgment. However, in view of the amount of bribe involved and the fact that the Appellant is handicapped, the sentence of rigorous imprisonment for a period of four years to the Appellant is modified to the period of Rigorous Imprisonment for a period of one year and a fine of Rs. 10,000/- and in default of payment of fine to undergone Simple Imprisonment for a period of three months. Appeal is disposed off accordingly. The bail bond and the surety bond are cancelled.

**(MUKTA GUPTA)**  
**JUDGE**

**JULY 02, 2013**  
**‘vn’**