

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

+ **CRL.A. 207/2003**

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Reserved on: 9th May, 2013

Decided on: 11th July, 2013

K.L. BAKOLIA

..... Appellant

Through: Mr. Mohit Mathur, Mr. Jaspreet S.
Rai, Mr. Rohit Nagpal, Advs.

versus

STATE THR C.B.I.

..... Respondent

Through: Mr. R.V. Sinha, SC for CBI.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Appellant impugnes the judgment dated 26th March, 2003 whereby he has been convicted for offences punishable under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 27th March, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of 4 years with fine of Rs. 500/- each under Section 7 and 13(2) PC Act and in default of payment of fine to further undergo rigorous imprisonment for 3 months on each count.

2. Learned counsel for the Appellant contends that there is total non-application of mind while granting the sanction. Neither the demand nor acceptance has been proved. The prosecution witnesses have not supported the prosecution version. The recovery is highly doubtful in view of the contradictory statement of the prosecution witnesses. The recovery was

made from beneath the sofa. The hand-wash allegedly taken was also doubtful. The audio equipment was not exhibited. Further S.I. Vipin Kumar and PW2 went out to get the copies of the audio recording made and thus material evidence was permitted to go out in unsealed condition. The voice in the audio equipment has not been proved to be that of the Appellant. Material witnesses like S.I. Vipin Kumar have not been examined. The cassettes of the alleged recording were not sealed. Tampering is not ruled out. The Appellant was not in a position to do what the complainant wanted him to do. Hence the motive has not been proved. PW4 stated that he did not remember if wash of anything else was taken. Further during the search he had gone to the gypsy of the CBI. The alleged demand was made on 2nd April, 1996 whereas the contract of the complainant Shamsheer Singh had expired on 1st April, 1996 and he had been served with one month's notice as per PW8. Even accepting the transcript to be true the words "laye hoo" are not there. Thus, no demand at the time of acceptance has been proved. PW4 in his cross-examination stated that he provided 80 security personnels to IARI whereas PW8 the Joint Director, Administration Shri Chetan Swaroop Isser stated that not more than 50 personnel can be given. He further stated that the contract of M/s. Colonel Security expired on 31st March, 1996. PW4 in his cross-examination admitted that he met the Appellant for the pending bills and not for extension of the contract. PW4 further admitted that the Appellant did not personally demand the amount from the complainant but one staff person followed him when he came out of the office and stated that if the complainant paid Rs. 50,000/- work will be done. Thus, there was no initial demand from the Appellant.

3. PW4 stated that no document was signed in CBI office but the same was done in the gypsy of the CBI parked outside. Vide letter dated 9th February, 1996 itself the complainant was informed about the poor performance. The complainant denied that on 2nd April, 1996 exchange of hot words took place between the complainant and the Appellant. Though the complainant states that the complaint was written a day prior, however the complaint is dated 4th April, 1996. PW2 Brij Bhusan Sharma, the recovery witness has not supported the prosecution case. He stated that he did not remember who recovered the money. He further stated that the money was lying scattered on the sofa. PW5 Captain R.K. Marwah who authenticated the sanction on behalf of the sanctioning authority President ICAR stated that he did not know the details of the documents which were considered before granting sanction for prosecution. Thus there is total non-application of mind. He further admitted that a draft sanction order was put up before him along with the approval of President ICAR and thereafter he signed on behalf of the President ICAR. The impugned judgment is more in the form of rebuttal arguments of the Appellant than the prosecution case. Since no demand has been proved, the presumption under Section 20 PC Act is not available to the prosecution. PW4 does not say that he washed the hands, after the pre-trap proceedings. Further there is no evidence on record to show that demand money was reduced from 50,000/- to Rs. 20,000/-. Reliance is placed on *Suraj Mal Vs. State (Delhi Administration)* (1979) 4 SCC 725, *Banarsi Dass Vs. State of Haryana* AIR 2010 SC 1589 and *Rakesh Kappor Vs. State of Himachal Pradesh* 2013 (1) Crimes 92 SC.

4. Learned counsel for the CBI contends that the trap proceedings were conducted in the year 1996 and the material witnesses were cross-examined after 5 years in the year 2001. Thus some contradictions were bound to be there. The contention that motive has not been proved is wholly incorrect. PW8 stated that since no approval for substitute was provided, the contract of the complainant continued and notice for termination of contract to the complainant was sent only on 15th April, 1996 whereas the trap was laid on 4th April, 1996. Thus motive of the Appellant to demand money stands duly proved. The complainant and the Trap Laying Officer have proved the prosecution case beyond reasonable doubt. For conviction under Section 7 PC Act, no demand or direct demand is necessary. Any error in the sanction would not vitiate the trial in view of Section 19(3) of the PC Act.

5. Heard learned counsel for the parties. Brief exposition of facts which form the basis of the prosecution case is that PW4 the complainant was the sole proprietor of Ms. Colonel Security Services. He got the contract for providing security staff to IARI Pusa New Delhi on annual basis from 1st March, 1993. The said contract was subsequently renewed on year-to-year basis up to 31st March, 1996. The contract ought to have been renewed on 1st April, 1996 however it was not renewed. Thus the complainant met the Appellant who was Director Administration at IARI Pusa, regarding clearance of some of his pending bills and for renewal of his contract. When the complainant asked for payment of his outstanding bill and renewal of his contract, the Appellant demanded a sum of Rs. 50,000/- as illegal gratification for the same. The complainant stated that he was not in a position to pay Rs. 50,000/- and thus demanded amount was reduced to Rs.

20,000/- . The Appellant told him to make the payment on 3rd April, 1996. As he was not interested in paying the bribe, he visited the CBI office and narrated the facts. The complainant was asked to come on the next day with Rs. 20,000/- by the CBI officer. In the evening on 3rd April, 1996 the Appellant rang up and enquired as to why he did not contact him on the said date, on which the complainant replied that he would come to his residence on the next day between 1 to 2 PM. On 4th April, 1996 he again visited the CBI office at 10 AM when he was asked to submit his complaint in writing. The complainant noted down the complaint Ex.PW4/A and handed it over to Inspector Sharma and Inspector Bhatia. Raiding party was constituted and pre-trap proceedings were conducted with Rs. 20,000/- consisting of 40 GC notes of Rs. 500/- denomination each. The complainant alone was supposed to go and contact the Appellant and a two piece recording system consisting of a recorder and a mic-cum-transmitter was arranged along with audio cassette. The audio cassette was played to show that there was no voice. Thereafter the mic-cum-transmitter was kept in the pocket of the complainant and he switched on the same while going inside the residence of the Appellant. The complainant was directed to give signal to the trap party by saying “Gin Leejiye” The Trap team reached the Pusa complex at about 1.45 pm and the complainant after switching on the mic-cum-transmitter went inside the house of the Appellant, who welcomed him. After some conversation the Appellant, enquired from the complainant “Laye Ho” and the complainant replied in the affirmative. Thereafter tainted GC notes of Rs. 20,000/- were passed on to the Appellant. The Appellant raised the cushion of the sofa and insisted that he should keep the tainted money under cushion. As the complainant insisted that the money should be handed-over

in the hand, on which the Appellant took the tainted money in his right hand and kept it under the cushion of his sofa, on which he gave the signal “Gin Lejiye”. Where after the CBI officials rushed into the drawing room of the Appellant and conducted the trap proceedings. The defence of the Appellant is that he did not demand money and while at one point of time both the Appellant and his son were not in the drawing room, the complainant put the money beneath the sofa.

6. With regard to initial demand though in the examination-in-chief, the complainant stated that the money was demanded by the Appellant, in cross-examination the complainant stated that the Appellant demanded illegal gratification 2 – 3 days before 2nd April, 1996. On 2nd April, 1996 when he visited the office of the Appellant one more person was sitting in his office. When the complainant came out of the office of the Appellant after talking to him, the said person also came outside the office and said that his work would be done if he paid Rs. 50,000/-. He further stated that on 2nd April, 1996 the Appellant did not personally demand Rs. 50,000/- from him at his office. It is thus clear that with regard to the initial demand the complainant has contradicted his version in the cross-examination.

7. As regards sanction, learned counsel for the Appellant states that the same was without application of mind. PW5 Captain R.K. Marwah who proved the sanction stated that the file was sent to the Director General, ICAR and then to the President ICAR who approved the sanction for prosecution. In his cross-examination he admitted that the sanction order Ex.PW5/A was not drafted by him. He stated that actually a draft sanction order was put up before him along with the approval of the President ICAR.

In *Indu Bhushan Chatterjee Vs. State of West Bengal AIR 1958 SC 148* it was held that when the sanction order contains all facts and material constituting the offence and showed adequate consideration thereon, merely because a draft sanction order is placed before the sanctioning authority, the same would not imply that there was non-application of mind.

8. As regards the demand at the time of acceptance, PW4 Shamsheer Singh the complainant stated that when he went to the house of the Appellant, he welcomed him and took him to the drawing room. They had some conversation and during the said conversation the Appellant enquired from him “Laye Ho” to which he replied in the affirmative. Thereafter he took out the tainted GC notes of Rs. 20,000/- and passed on to the Appellant. The Appellant raised the cushion of the sofa and insisted that he should keep the money under the cushion, however the complainant insisted and tried to hand-over the tainted notes. The Appellant, who took the money in his right hand, put the money under the cushion of the sofa. Then he gave the signal “Gin Leejiye” on which the CBI officials rushed into the drawing room of the Appellant and caught him. This witness was suggested that in the drawing room he was offered tea, however he requested for water and thereafter the accused called his son to bring the water and when the son did not come back with the water for some time, the accused himself went to fetch the water. PW4 categorically denied this suggestion and stated that he was in the drawing room for 15 minutes and the Appellant remained with him on the same sofa.

9. The version of PW4 is further corroborated by scientific evidence. PW9 C.K. Jain, Senior Scientific Officer Gr.I CFSL New Delhi appeared in

the box and stated that he received three sealed parcels, two parcels contained questioned voice sample and the third parcel contained specimen voice sample. According to this witness the auditory analysis of recording on the cassettes was similar to the specimen sample voice of the Appellant in their acoustic cues, narrow band characteristics and fundamental frequencies, and thus the voice in the questioned audio-cassette was probable voice of the Appellant. The only question put to this witness in cross-examination was whether the CFSL was under the control of CBI and a suggestion that the report was not correct. Thus the accuracy, sealing etc. of the audio-cassette stands proved beyond reasonable doubt. The conversation as recorded in the audio-cassette played during the examination of PW4 has been assailed by the learned counsel for the Appellant on the ground that the same does not contain the words "Laye Ho". A perusal of the transcript shows that there were initial conversations regarding who was Director at that time and where was he. Thereafter the cassette was blank for a few seconds and there was some inaudible conversation. The complainant then stated "Dun Sir" on which the Appellant stated "Hu". The complainant again stated "Dun" on which the Appellant stated "Marzi Hai Apki". On this the complainant stated "Apne demand ki hai, marzi kya hai" and then the complainant stated "Gin Leejiye". The complainant also stated the number of notes as 40 and again stated "Gin Leejiye" to which the Appellant stated "Rakh Do". The complainant stated "Gin Leejiye, Achchaa rahta hai, kabhi garbar ho jati hai-- meri apse request hai". On this the Appellant stated "Pure ho gaye hain". There is further conversation with regard to the fact that the amount of 50,000/- was more, however the same is irrelevant. Thus, a perusal of the transcript shows that even if the words "Laye Ho" are not audible, the

conversation shows a demand with acceptance of the bribe money. The version of complainant is duly corroborated by this transcript even in the absence of shadow witness being there along with him.

10. Learned counsel for the Appellant has assailed the cassette on the ground that they were handed over to S.I. along with the complainant to get the copies prepared thereof and thus authenticity of the cassette was doubted. A perusal of the cross-examination of PW9 C.K. Jain who examined the audio-tapes shows that no such suggestion was given that the cassettes were tampered with. Hence the fact that copies of the cassettes were prepared would not affect the case of the prosecution.

11. The version of PW4 the complainant is further corroborated by PW7 Inspector A.K. Kapoor, the Trap Laying Officer who stated about the trap formalities and also stated that after the signal "Gin Leejiye" they went inside and saw the complainant sitting on the right side and the Appellant on the left side on a three-seater sofa. The maltrek cassette was obtained from the complainant and put in the recorder and the conversation heard. The Appellant was apprehended by Inspector S.K. Bhati and Harish Karmyal from his wrist. The GC notes were recovered from beneath the cushion of the sofa. The right hand and left hand wash of the Appellant was taken and both turned pink. The cushion wash was also taken which also turned pink.

12. PW1 K.S. Chabra, Senior Scientific Officer proved that the bottles containing liquid with sediments were marked RHW, LHW, SCW and EPW. Though bottle Ex. LHW contained colourless liquid the other three bottles contained pink liquid. On analysis all the samples gave positive test for presence of phenolphthalein and presence of sodium bicarbonate. It is thus

evident that even if LHW turned colourless, the presence of phenolphthalein was proved. It is not unnatural for the solution to turn colourless when kept stored for a long time.

13. Learned counsel for the Appellant has also laid stress on the fact that the contract for Security Services had already expired, thus there was no motive to take bribe. It may be noted that PW8 stated that though the contract of M/s. Colonel Security expired on 31st March, 1996, however since they had not received sponsorship of any Security agency by DGR, the contract of Colonel Security was extended initially by 15 days and then up to 30th April, 1996. Further the termination notice was given on 15th April, 1996 as stated by PW4 in his cross-examination. Thus, when the demand and acceptance took place on 4th April, 1996 the complainant was trying for renewal of his contract and there was a clear motive attributable to the Appellant who was dealing with the said file as per PW3 Manoj Jain.

14. Learned counsel for the Appellant states that since demand has not been proved, the presumption under Section 20 PC Act cannot be raised. Presumption under Section 20 PC Act is raised once there is an acceptance of money under Section 7 of the PC Act. Further demand or obtainment of illegal gratification need not be by express words and can be also inferred from the circumstances.

15. In the present case the cassette was inaudible on some points, however from the attending conversations, the version of PW4 the complainant regarding demand and acceptance is fully corroborated. Though the complainant visited the CBI office on 3rd April, 1996, however his complaint was taken only on 4th April, 1996 and is thus of the same date which PW4

the complainant has duly proved. In view of the evidence on record I find that the prosecution has proved the offences under Sections 7 and 13(2) read with 13(1)(d) PC Act against the Appellant beyond reasonable doubt. The appeal is accordingly dismissed. Bail bond and surety bond are cancelled.

(MUKTA GUPTA)

JULY 11, 2013
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