

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

+ **CRL.A. 30/2003**

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Reserved on: 1st May, 2013

Decided on: 10th July, 2013

PURAN PRASAD

..... Appellant

Through: Mr. Mahabir Singh, Sr. Advocate with
Mr. Rakesh Dahiya, Mr. Gautam
Awasthi and Mr. Gagan Deep Sharma,
Advocates.

versus

THE STATE

..... Respondent

Through: Mr. A. S. Singh, Advocate for Mr.
R.V. Sinha, Standing Counsel.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this appeal the Appellant lays a challenge to the judgment dated 2nd January, 2003 convicting him for offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') and the order on sentence dated 3rd January, 2003 whereby he has been directed to undergo Rigorous Imprisonment for a period of four years and a fine of Rs. 500/- each under Sections 7 and 13(2) of the PC Act and in case of default of payment of fine to undergo further Rigorous Imprisonment for a period of three months on each count.

2. Learned counsel for the Appellant contends that the material witnesses, that is, the Complainant, the shadow witness and the recovery witness have turned hostile and the learned Trial Court has passed the

judgment on the part testimony of the hostile witnesses. Reliance is placed on *Sat Paul vs. Delhi Administration, 1976 (1) SCC 727*. The allegations against the Appellant are that he demanded a sum of Rs. 15,000/- to complete the bail bond of the complainant pursuant to grant of anticipatory bail and since he could not arrange the money, the demand of bribe amount was reduced to Rs.5,000/-. The bail bond had actually been executed on 25th August, 1999. Thus the allegation of demand of bribe for completing the bail bond on 26th August, 1999 was wholly unfounded. PW2 the Complainant, and PW6 his brother are involved in a number of cases and the Appellant had in fact gone to recover Rs.90,000/- which they had snatched from the victim in case FIR No. 194/1996 under Sections 307/379/34 IPC and the Arms Act which the Appellant was investigating. There are contradictions in the testimony of the witnesses as to the time when they left the CBI office. The case of the prosecution is that the Complainant met the S.P., CBI however, the S.P., CBI has not been examined. Allegedly the conversation was tape recorded however, the tape recorded version has not been produced thus an adverse inference is required to be drawn against the prosecution. The Complainant has stated that he gave the signal by dialing from the mobile phone however, PW1, the recovery witness states that this duty was

assigned to PW3 K.P. Diwakar, the shadow witness. As the Appellant had gone for the recovery thus there was a clear motive attributable to the Complainant and his brother to falsely implicate the Appellant as they both along with their brother Naveen were accused in the FIR which the Appellant was investigating.

3. PW1, the recovery witness stated that the money was recovered from the envelope which is not the case of the other witnesses. There are glaring contradictions in the testimony of PW1 and PW2. The seals handed over to PW13 were not produced in the Court. Neither PW1 nor PW2 stated about the demand made at the time of acceptance. PW1 neither witnessed demand nor acceptance. PW3, the shadow witness who was given the responsibility to accompany PW2 has neither witnessed the demand nor acceptance as he left the room prior thereto. PW4 the SHO of the Police Station where the Appellant was working at the relevant time has clearly deposed that he directed the Appellant to recover the stolen amount and weapons. PW10 Inspector Vivek Dhir took over the investigation on 2nd September, 1999 and thus it is not known who investigated the case from 26th August, 1999 to 2nd September, 1999. The role of PW7, the trap laying officer Inspector Surender Malik was over on registration of FIR and thereafter he could not

have continued with the investigation upto 2nd September, 1999. This action of PW7 creates a doubt. Reliance is placed on *Megha Singh vs. State of Haryana, 1996 (11) SCC 709* wherein it was held that the practice of investigation by the very police officer who lodged the complaint should not be resorted to. By merely proving the recovery no conviction of the Appellant could have been based. Reliance is placed on *State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, 2009 (15) SCC 200*.

4. Learned counsel for the CBI on the other hand contends that there is no bar that the trap lying officer cannot be an Investigating Officer. Even if the witness turned hostile, his entire evidence cannot be discarded and conviction can be safely based on his part testimony. Reliance is placed on *Bhagwan Singh vs. State of Haryana, 1976 (1) SCC 389*. In view of the recovery effected from the Appellant, presumption is raised which onus the Appellant has failed to discharge (*Tarsem Lal vs. State of Haryana, 1987 (2) SCC 648*). The evidence of demand, acceptance and recovery is further corroborated by the result of the hand wash which gave positive for phenolphthalein. Even on the basis of the defence cross-examination, there was no reason for the Appellant to visit the house of the Complainant. Reliance is placed on *Krishna Ram vs. State of Rajasthan, 2009 (11) SCC*

708 to contend that once recovery is proved and the hand wash gave positive result, non-proving of demand was irrelevant. Reliance is placed on *B. Noha vs. State of Kerala and another*, 2006 (12) SCC 277.

5. I have heard learned counsel for the parties.

6. PW2 Brij Mohan the complainant in the present case was an accused in FIR No. 194/1999 along with PW6 Dharam Dev and Naveen Kumar. They were granted anticipatory bail by the Court of learned Additional Sessions Judge. On 25th August, 1999 the Appellant came to the shop of the Complainant at about 6.00 p.m. and demanded Rs. 15,000/- to complete the bail bond pursuant to grant of anticipatory bail. As the Complainant could not arrange the amount, the demand of bribe was reduced to Rs. 5,000/- and the Appellant stated that he would come on the next day in the evening to collect the money. Thus on 26th August, 1999 at about 10.00 a.m. the Complainant went to CBI office, however could not meet the S.P. as he was not there. After about 1½ hour he was called by Shri R.P. Aggarwal/R.K. Aggarwal the exact name he did not remember and on listening to him the S.P. called Inspector Surender Malik PW7. PW7 made initial enquiries from the Complainant, thereafter went to meet the S.P., CBI again and called two witnesses PW1 Gyan Chand and PW3 K.P. Diwakar. Rs. 5,000/- were taken

from the Complainant consisting of nine GC notes of Rs. 500/- denomination and five GC notes of Rs. 100/- denomination. The same were treated and on touching the treated notes and dipping the fingers in the solution the solution turned pink. After completion of pre-trap proceedings Ex. PW1/A, they left the CBI office at around 3.00 p.m. and reached Tri Nagar after 1½ hours. The Complainant and PW3 K.P. Diwakar sat inside the drawing room of the Complainant and waited for the Appellant who came at about 8.00 p.m. The other CBI officers were outside the drawing room near the window. The Complainant asked the Appellant to complete the bail bond on which he stated that he would complete the bail bond, first he should give the money. The Appellant accepted the money in his right hand and after transferring the money in left hand kept the same in his right side pocket of his pant. On this PW2 gave the signal, the officers rushed into the drawing room and caught hold of the Appellant at the door of the drawing room with his wrists. His hand wash and pocket wash were taken and the solutions turned pink.

7. PW2 deposed all the facts relating to pre and post-trap proceedings except that he did not state about some minor details as he did not identify the GC notes in his examination-in-chief and thus he was cross-examined by the learned A.P.P. During cross-examination this witness stated that he had

met the S.P. two-three days prior to 26th August, 1999 and some instrument was fitted in his telephone and the SP tried to hear if there was demand of bribe or not. During these telephone calls the S.P. heard the demand of bribe. He stated that he could not state whether the Appellant demanded the bribe a week or three months before for the first time. On 25th August, 1999, the Appellant was talking to his brother and when he came down, he met the Appellant and on his demand he told him to collect the money on next day. He stated that he showed the complaint to the S.P. prior to 26th August, 1999 but S.P. stated that let the demand be made. However this witness denied that on 25th August, 1999 itself his bail bond was completed by taking the surety bond of Chaman Kumar. The Complainant clarified it and stated that the Appellant stated that he should give money first and then only the bail bond will be filled up. PW2 admitted that he had a licensed pistol in his name. He admitted that cases were registered by the police after 11th June, 1999 and before that he had one case in which he had been acquitted. He stated that the other four cases were of DD entries under Sections 107/151 Cr.P.C. He admitted that in case FIR No. 194/1999, the allegations against him and his brother were of assault and taking Rs. 90,000/- from the Complainants of the said case. He denied that the Appellant called him or

visited his house any time earlier for the recovery of stolen amount or the pistol.

8. The version of PW2 is supported by PW3 in his examination-in-chief only to the extent of pre-trap proceedings. As regards the trap proceedings in his examination-in-chief PW3 K.P. Diwakar stated that he had gone out of the room at the relevant time and thus he was cross-examined by the learned APP. In the cross-examination by the learned APP, PW3 admitted that PW1 recovered the tainted money from the left side pocket of the pant worn by the Appellant and both PW3 and PW1 compared the recovered GC notes with the numbers noted down in the handing over memo. This witness in the cross-examination deposed about the post trap proceedings also, however, he did not remember whether the seal after use was handed over to PW1 Gyan Chand.

9. PW1 Gyan Chand, the recovery witness also deposed about the pre-trap proceedings. He further stated that after about two hours of their reaching the complainant's residence, they received a signal and the trap team members rushed towards the drawing room. He also stated that the CBI officer caught hold of the Appellant Puran Prasad with his wrist. The CBI officer took the search of the Appellant and money in the envelope was

recovered from the pocket of the Appellant however, he did not remember from which pocket the money was recovered. He stated that the numbers on the GC notes were tallied by him and K.P. Diwakar PW3. The numbers on the GC notes tallied with those mentioned in the handing over memo Ex. PW1/A. He also deposed about the post trap proceedings.

10. PW6 Dharam Dev, brother of PW2 who was also an accused in FIR No. 194/1999 along with Naveen deposed regarding the initial demand. He stated that on 25th August, 1999 the Appellant Puran Prasad came to their house and stated that they will have to pay Rs. 15,000/- and he would get case cancelled against them by making favourable report, otherwise he would get the order of bail cancelled. At that time PW2 was present and he stated that they did not have Rs. 15,000/- and would pay Rs. 5,000/- and further balance later on. On this the Appellant stated that he would come on 26th August, 1999. The testimonies of PW2 and PW6 clearly prove the initial demand. Learned counsel for the Appellant has sought to assail the same on the ground that as per the testimony of PW4 the bail bonds had already been prepared and filled and PW4 directed the Appellant to recover the stolen cash and weapon of offence. A perusal of the cross-examination of PW4 shows that the bail bond of two accused Dharam Dev and Brij

Mohan had been filled however, the bail bond of their third brother Naveen Kumar was yet to be filled. Further even if the Appellant had gone for the recovery of Rs. 90,000/- he could not have demanded any amount from the Complainant. Thus the initial demand stands proved beyond reasonable doubt.

11. The demand at the time of acceptance of money has been proved beyond reasonable doubt by PW2 the Complainant. The contention of the learned counsel for the Appellant that since this witness has turned hostile thus his testimony cannot be looked into is fallacious. As regards the demand and acceptance at the time of raid, this witness did not turn hostile. In fact he deposed about the entire prosecution case and he only forgot to depose regarding the comparison of GC notes after the recovery. Merely because the version of this witness is not corroborated by PW3 his testimony on the point of demand and acceptance cannot be discarded. The version of PW2 is further corroborated by the recovery of the GC notes from the Appellant which has been deposed to by PW7 the trap lying officer and PW1 the recovery witness. Learned counsel for the Appellant has sought to assail the recovery also due to contradictions in the testimony of PW1 who stated that the money was recovered in an envelope and the other witness who did

not state that the money was in the envelope. PW7 Surender Malik stated that PW1 recovered the money from the pocket of the Appellant and counted the same. Both PW1 and PW3 compared the number of recovered notes. Further the right hand of the Appellant when dipped in the solution the solution turned pink. It is thus clear that the money was not recovered from the envelope but otherwise.

12. Learned counsel for the Appellant has also sought to raise a contradiction in the time of departure from the CBI office as PW2 stated that they left the CBI office at about 3.00 p.m. whereas PW7 stated that they left about 5.00 p.m. Minor contradiction in the time of departure cannot be used to discard the otherwise credible testimony of the witnesses. The evidence on record does not suggest that at the time of initial demand or at the time of trap, a tape recorder was there. The version of PW2 is that before his complaint was registered on 25th August, 1999 he had gone to S.P., CBI who fitted the recorder. Thus the same was a part of enquiry by the officer to satisfy himself about the complaint. Further the same was prepared prior to registration of FIR and thus the non-production of the same would not materially effect the prosecution case as the same was not relied upon by the CBI.

13. Learned counsel for the Appellant laid stress on the fact that since the Appellant was the Investigating Officer in a case against the complainant, there was a clear motive of the Complainant and his brother to falsely implicate him. In the present case, the Appellant had gone to the house of the Complainant. It is not the case of the Appellant that he had gone to serve any notice or that he was examining any accused or had gone to search the house. No case diary has been produced in this regard by the Appellant in defence. Thus mere allegation of motive would not be enough to discard the testimony of the complainant and his brother.

14. No doubt the trap laying office should not investigate the matter however, the same does not vitiate the trial and cannot result in setting aside the same or the judgment of conviction as the Appellant has not been able to demonstrate any prejudice caused to him.

15. In view of the aforesaid discussion I find no illegality in the impugned judgment of conviction and order on sentence. The appeal is dismissed. Bail bond and the surety bond are cancelled.

(MUKTA GUPTA)
JUDGE

JULY 10, 2013
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