

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

**RESERVED ON : 29th August, 2013
DECIDED ON : 6th November, 2013**

+ CRL.A.765/2001

OM PARKASH

..... Appellant

**Through : Mr.K.B.Andley, Sr.Advocate with
Mohd. Shamik, Advocate.**

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Navin Kr.Jha, APP.

+ CRL.A.742/2001

YOGENDRA SINGH BHARTWAL

..... Appellant

**Through : Pramod Kumar Dubey with
Mr.Shiv Chopra, Mr.Nitin
Saluja and Mr.Saurav Upadhyay,
Advocates.**

versus

STATE NCT OF DELHI

..... Respondent

Through : Mr.Navin Kr.Jha, APP.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Om Parkash (A-1) and Yogendra Singh Bhartwal (A-2) challenge correctness and legality of a judgment dated 29.09.2001 in CC No.10/93 arising out of FIR No.5/88 registered at Police Station Anti-Corruption Branch (ACB) of Delhi by which they were held guilty for committing offences punishable under Section 161 IPC read with Section 5 (1) (d) of POC Act and sentenced to undergo Rigorous Imprisonment for one year with fine ₹100 on each count. The factual matrix of the case are as under:

2. On 05.04.1988 Gulshan Lal (the complainant) looking after the construction on plot No.A/2-439, Sector 8, Rohini, belonging to his brother-in-law Ved Prakash moved an application in the office of DDA to inspect the construction completed upto DPC level. The dealing clerk gave the date of inspection as 07.04.1988 in between 10.30 a.m. to 1.30 p.m. The complainant requested A-2 to inspect it on 05.04.1988 itself to avoid its stoppage. A-2 demanded ₹200/- as bribe to carry out the inspection on the same day. The complainant agreed helplessly to make the payment of ₹200 after making arrangement. A-2 asked him to give money in between 2 to 5 p.m. The complainant approached ACB and lodged complaint (Ex.PW-6/A). PW-8 (Yog Raj Sharma), Raid Officer,

carried out the pre-raid proceedings and associated NK Abraham as 'panch' witness. The raiding team after completing the formalities went to the plot where the inspection was to be carried out. The complainant was informed by the mason working on the plot that the surveyor has visited the plot and had instructed him to ask Gulshan to come to DDA office before 05.00 p.m. with ₹200. On that, the raiding team reached at Project Office of DDA, Rohini and laid a trap. It is alleged that the complainant paid ₹200/- as bribe to A-1 on the direction of A-2 and he (A-1) accepted it. On getting pre-determined signal from the 'panch' witness, the raiding party apprehended A-1 and recovered the tainted money from the pocket of his pant. Post raid proceedings were conducted and A-2 was arrested. During the course of investigation statements of witnesses conversant with the facts were recorded. After completion of investigation a charge-sheet was filed against A-1 and A-2 for committing the aforesaid offences. The prosecution examined 12 witnesses to establish their guilt. In their 313 statements, the appellants pleaded false implication. DW-1 (Rakesh Kumar Sehrawat) was examined in defence. After appreciation of the evidence and taking into consideration the submissions of the parties, the Trial Court by the impugned judgment held

both of them perpetrators of the crime and sentenced them accordingly. Being aggrieved, they have preferred the appeals.

3. I have heard the learned counsel for the parties and have examined the record carefully. Gulshan Lal (PW-6) claimed to be Ved Prakash's attorney to supervise the construction on his plot in question as he himself resided in Gurgaon. He did not place on record any such power of attorney executed in his favour. Application for inspection moved on 04.04.1988 bears Ved Prakash's signature whereby a request was made to the Project Officer to inspect the plot as construction upto DPC level was complete. The dealing clerk gave the date as 07.04.1988. The Investigating Officer did not examine the dealing clerk who has received the application and has given the specific date for inspection. The complainant did not explain as to how the application for inspection was signed by Ved Prakash when he was not available and the entire construction was being supervised by him. During the course of investigation, no attempt was made to contact Ved Prakash or to examine him as a witness. Apparently, Gulshan Lal had no authority to visit the office to insist inspection of the plot in the absence of any authorization by the owner. Application to carry out inspection was moved on 05.04.1988 and it was not expected by the officials to inspect the plot on

the same day. PW-6 (Gulshan Lal) admittedly working as Junior Intelligence Officer in IB insisted to get the inspection carried out on the same day. There was no occasion for the complainant not to wait till 07.04.1988 and to get the inspection carried out on the same day on payment of ₹200/-. The complainant approached the ACB on 05.04.1988 and trap proceedings were conducted the same day. In the complaint (Ex.PW-6/A) A-1's name does not figure though in the cross-examination, the complainant admitted his acquaintance with him as he had taken the measurement of the plot. Additions and alterations at point 'X' and 'Y' on Ex.PW-6/A remained unexplained. The complaint does not reveal as to at which specific place bribe amount of ₹200/- was to be accepted by A-2. When the raiding team went to the 'plot' at the appointed time, neither A-1 nor A-2 was present there to receive the bribe amount. It is alleged that 'mason' present at the spot informed the complainant about the visit of surveyor and gave direction to the complainant to visit the office before 05.00 P.M. The raid officer admittedly did not visit the plot and examine the mason. He was unaware if any such information was conveyed by the mason to the complainant. Complainant and panch witnesses have given completely contradictory statements in this regard. Panch witness PW-7 (N.K.Abraham) deposed

that when the complainant inquired from the labourers working on the plot if anybody had come to meet him, the reply was given in the negative. The Investigating Officer did not attempt to ascertain the name of the mason or the labour who had conveyed the information. Thereafter, the raiding team went to the office where ₹200/- were allegedly accepted as bribe by A-1 on A-2's directions. All the witnesses have contradicted each other on this aspect and have given inconsistent version. PW-7 did not implicate A-2 at all and asserted payment of ₹200/- by the complainant to A-1 only. He denied that he had given any predetermined signal to the raiding team. He was cross-examined by learned Additional Public Prosecutor after court's permission as he resiled from the previous statement recorded under Section 161 Cr.P.C. He elaborated that A-2 was arrested after he was named by A-1 who disclosed that money was to be given to him. PW-7 did not adhere to the prosecution's case that on specific demand by A-2 from the complainant in the office, A-1 was sent out to collect and accept the bribe amount on his behalf. The complainant did not offer any plausible explanation as to why the alleged bribe amount which he was supposed to offer to A-2 was not given in the office and why he opted to come out of the office to give the bribe amount to A-1. In the examination-in-chief he did not depose that A-2 had directed him to

pay the bribe amount to A-1 outside the office. Apparently, there was no demand by A-1 and no acceptance by A-2. PW-6-complainant, PW-7-panch witness and PW-8-raid officer were unable to narrate the entire facts completely in their examination-in-chief and were able to recollect after they were given specific suggestions in cross-examination by Addl. Public Prosecutor.

4. In the light of conflicting versions and suspicious features on crucial aspects, complainant's version does not appear to be wholly reliable. Neither the demand nor the acceptance alone is sufficient to establish the offence. Mere recovery of tainted money divorced from the circumstances under which it was paid is not sufficient to convict the accused. The complainant's testimony is lacking to prove that A-1 accepted the bribe amount with the tacit approval of A-2. No other independent public witness was associated in the investigation from the office of the accused where the alleged transaction took place. The prosecution was unable to establish that both A-1 and A-2 shared common intention to demand and accept the bribe amount from the complainant. Conviction of the appellants cannot be founded on the basis of inference.

5. In the light of the above discussion, the impugned judgment cannot be sustained and is set aside. The appeals are allowed. Benefit of doubt is given to the appellants and they are acquitted in this case.

6. Trial Court record along with a copy of this order be sent back forthwith.

(S.P.GARG)
JUDGE

November 06, 2013
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