

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

+ **CRL.A. 491/2003**

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Reserved on: 25th April, 2013

Decided on: 04th July, 2013

JAGDISH SINGH

..... Appellant

Through Mr. Anurag Jain, Adv.

versus

C.B.I

..... Respondent

Through Mr. R.V. Sinha, SC.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Appellant impugnes the judgment dated 21st July, 2003 whereby he has been convicted 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 22nd July, 2003 whereby he has been directed to undergo simple imprisonment for a period of six months and to pay a fine of Rs. 500/- for offence under Section 7 PC Act and simple imprisonment for a period of one year with a fine of Rs. 1000/- under Section 13(2) r/w Section 13(1)(d) of PC Act.

2. Learned counsel for the Appellant contends that the only evidence of initial demand is of PW1, who has made substantial improvements in his statement before the Court from the earlier complaint and thus his evidence cannot be relied upon. In the complaint it is stated that he received the call from the Appellant in July, 1994 whereas before the Court he stated that he received the call 5-10 days before making the complaint on 20th October,

1994. The complainant PW1 has been cross-examined by the learned APP and there is no statement qua the demand and acceptance at the time of bribe. The version of the witnesses is not consistent either for pre-trap or for trap proceedings. PW1 has been specifically suggested by learned APP that the complainant deposed falsely on 30th July, 1997 to help the Appellant which suggestion is denied by the complainant. Though the trap was laid at the time when the public dealing was over, however still the witnesses say that there were lot of people. The visitor pass by virtue of which the complainant went to the office has not been proved in evidence. Thus, there is no proof of entry into the office. The Paan Shop owner who was a material witness has not been examined. PW6 Babu Ram Gupta, the shadow witness has also turned hostile and has been cross-examined by the learned APP. Even in the cross-examination by the learned APP he says that he does not remember who recovered the notes and who took the hand-washes. Even PW5 N.K. Sen the recovery witness has not supported the prosecution case. In view of the material contradictions, the appeal be allowed and the Appellant be acquitted.

3. Learned counsel for the CBI on the other hand contends that the recovery from the Appellant has not been denied. In view thereof the presumption under Section 20 PC Act is liable to be raised against the Appellant which onus he has failed to discharge. PW8 Shri S.N. Soni identifies the signature of the Appellant on Ex.PW1/B. On the application filed by the complainant there is no suggestion that the processing of the application was not part of the duty. Minor contradictions in the testimony

of the witnesses would not discredit the otherwise reliable prosecution case. Hence there is no merit in the appeal and the same be dismissed.

4. Heard learned counsel for the parties. Briefly the prosecution case as per the complainant PW1 Jasbir Singh Ahuja is that he received a call from the Appellant from the Accounts Branch of Darya Ganj Exchange in connection with non-payment of the telephone bill. He visited the telephone exchange Darya Ganj and met the Appellant who told that the telephone bill had not been paid, to which complainant stated that he had already made up to date payments. The Appellant told him that one bill amounting to Rs. 1254/- was still pending and he should pay the same. The complainant went downstairs to collect the duplicate bill from where he was informed that no such bill was pending. When the complainant came back to the Appellant and told him that no such bill was pending, he insisted on the pendency of the bill and prepared a duplicate bill in his own hand-writing and asked him to deposit the same at the cash-counter. The bill was exhibited as Ex.PW1/A. After paying the bill he went upstairs back to the Appellant. On the receipt it was noted that the telephone would not be disconnected for non-payment. 5-6 days, later the complainant checked the previous records and came across receipt of payment of Rs. 1254/- in respect of the same period for which the duplicate bill was got prepared. The complainant took the receipt to Darya Ganj Exchange and met the Appellant and showed him the payment of the bill of Rs. 1254/-. The complainant submitted a written application for the refund of the excess payment at the receipt counter Ex.PW1/B. The application was duly signed by the Appellant which signatures have been identified by PW8 S.N. Soni, the Accounts officer of

MTNL. The Appellant told that it would take 3-4 months to process the application. 3-4 months later when the complainant again contacted the Appellant, the Appellant told him that for getting the refund he will have to do some 'Sewa Pani'. Thereafter the Appellant demanded Rs. 300/- for getting the refund. The complainant told him that he was not having any money on that day and would pay the money within 2-4 days. Since the complainant did not want to pay the bribe amount he went to lodge a complaint Ex.PW1/C. Pursuant to the complaint, pre-trap proceedings were conducted and a trap was laid on the next day. As the complainant did not give the complete details of the pre-trap proceedings, learned APP cross-examined him with the permission of the Court and thereafter he narrated the trap proceedings.

5. According to the complainant they left the CBI office for MTNL office at Darya Ganj at about 1.30 PM. The shadow witness accompanied him in his car and the CBI officials were in their official car which stopped at some distance. Since public dealing was over, Inspector Rajesh Kumar told the complainant to give a call to the Appellant. Accordingly the complainant rang up the Appellant from nearby Paan Shop. The Appellant was not on his seat. Later on, the complainant saw the Appellant coming outside the office. Thereafter again suggestions have been made by the learned APP wherein he stated that he did not remember the complete details. On the suggestion of learned APP he stated that it was correct that the Appellant came out of the office at about 3.20 PM and he introduced the shadow witness with him as his manager. He requested the Appellant "*Maire Baara so Chuwan Rupee Jaldi Se Refund Karwa Do*". On this the

Appellant replied” *Thik Hai hamari Sewa Paani Kar do*”, and also stated that “*Teen Sau Rupee De Di Jiye*”. The Appellant did not accept the money there and asked him to first bring the duplicate bill pertaining to his telephone connection and then he would get the amount of Rs. 1254/- adjusted against the aforesaid bill. He further told that he would not get the refund either by cheque or any cash. On this the shadow witness went to collect the duplicate bill from the computer section of the MTNL office, Darya Ganj, however came back with duplicate bill relating to some other connection. On seeing the duplicate bill the Appellant told the complainant to accompany him for collecting the duplicate bill. Thereafter, they went inside the MTNL office and the Appellant collected the duplicate bill from computer section where there was huge rush. The Appellant kept that current duplicate bill with him and stated that he would get it corrected and told the complainant to pay him the money. On this the complainant took out the tainted GC notes from his pocket and the Appellant stated that the same be placed in some file like thing which he was holding in his hand. This witness was further cross-examined by the learned APP.

6. During further cross-examination the complainant stated that he asked the Appellant “*Mere Cheque Qaya Hua*”. The Appellant replied “*Tumara cheque nahi bana*”. He further admitted the suggestion that he asked “*Kyun Kaya Ho Gaya*” to which the Appellant replied “*Tumne Kuch Kiya Hi Nahi*”. The Appellant further responded “*Teen Sao se kam Nahin Hoga, Diwali ka time hai aur tum to transporter ho tumhe kya farak parta hai, Chalo Aao Andar Chale*”. Inside the office he demanded money by saying “*Lao Sardarji Paise Nikalo*”. The complainant replied “*Kuch Kam Karloo*” on

which the Appellant replied “*Nahi teen sao se kam nahi hoga, refund ka kaam bhi to karana hai*”. The Appellant further stated “*Sardarji Purane note kahan se laye ho aur purane note de rahe ho*”. According to the complainant after accepting the GC notes with his right hand and counting the same with both his hands he kept the money in the pocket of his shirt. On this the shadow witness PW6 Babu Ram Gupta gave a signal and Inspector Rajesh Kumar apprehended him. He further stated that the hand-wash solutions were taken which turned pink. Further the Appellant was made to remove his shirt. The inner lining of the front side pocket was dipped into the solution which turned pink. He stated that the recovery memo Ex.PW1/E detailing the proceedings was prepared at the spot which wore his signatures.

7. PW6 Babu Ram Gupta the shadow witness turned hostile and has stated nothing qua the demand and acceptance by the Appellant. On cross-examination by the learned APP, this witness stated that on reaching Darya Ganj office, the complainant gave a ring to the Appellant from downstairs. The Appellant came downstairs and thereafter the three of them proceeded to Bhola Pan Bhandar. The complainant asked the Appellant about the position of refund on which the Appellant stated that “*Tumne Kuch kiya to hai nahi*”. Thereafter the complainant gave him Rs. 300/- and pleaded to the Appellant that some amount may be given back. The Appellant kept the amount in his pocket but he did not know in which pocket. He asked the complainant to come on Monday or so. PW6 gave the pre-determined signal after which the Appellant was apprehended. In further cross-examination by the learned

APP this witness admitted the conversation that took place between the complainant and the Appellant as stated by PW1.

8. PW5 N.K. Sen the recovery witness was cross-examined by the learned APP. In cross-examination by the learned APP this witness stated that one CBI official searched the Appellant and recovered some money from his pocket. He further stated that he could not either admit or deny if on the directions of Inspector Rajesh Kumar he searched the upper pocket of the shirt of the Appellant and recovered Rs. 300/-. However, this witness admitted the suggestions with regard to the hand-wash and the shirt pocket wash taken. He identified his signatures on the pocket of the Appellant's shirt and on the recovery memos etc. With regard to recovery, the other witness Inspector Rajesh Kumar the Trap Laying Officer has supported the prosecution case.

9. Learned counsel for the Appellant has pointed out various contradictions such as the difference in the time of departure from the CBI office, in making the call by the complainant to the Appellant and the response of the Appellant to the call made by the complainant as to who took out the money from the pocket of the Appellant. The contradiction with regard to the time of departure and who made the call and what was the response are minor in nature. The initial demand has been proved by the complainant. Regarding the demand at the time of acceptance, though PW1 has given two versions however the latter is corroborated by PW6. Though the complainant initially stated that the Appellant asked for the money which he took out from his pocket and the Appellant asked him to place it in some file like thing which he was holding, on the other hand he stated that the

tainted GC notes were kept by the Appellant in his front shirt pocket. The version of PW6 Babu Ram Gupta the shadow witness qua demand was that after proceeding to Bhola Pan Bhandar, the complainant asked the position of refund on which the Appellant stated, “*Tum Hai Kuch Kiya To Hai Nahi.*” Thereafter the complainant gave Rs. 300/- and pleaded that some amount be given back. The Appellant kept the money in the pocket. Thus, he does not corroborate the version of the complainant except to the extent that he kept the money in the pocket. Thus, the only contradiction is whether Appellant said that the money be kept in file which he later corrected.

10. With regard to recovery, PW1 stated that witness N.K. Sen PW5 had conducted the search of the Appellant and recovered Rs. 300/- in the form of three GC notes from the shirt of the Appellant. However, PW5 N.K. Sen the recovery officer stated that he could neither deny nor admit that if on the directions of Inspector Rajesh Kumar he searched the upper pocket of the shirt of the Appellant. He also stated that one CBI official searched the Appellant and recovered the money from his pocket. Further PW6 the shadow witness on a suggestion by the learned APP stated that it may be correct that Shri N.K. Sen my companion witness was directed to take out the money from the pocket of the Appellant and he did it accordingly. Further PW9 Inspector Rajesh Kumar stated that on his direction N.K. Sen took the search of the pocket of the Appellant and recovered three GC notes of Rs. 100/- denomination each. A perusal of the evidence on record would show that both PW1 the complainant and PW9 the Trap Laying Officer have supported the prosecution case, and have proved the demand, acceptance of bribe and recovery of the tainted notes.

11. In view of the evidence on record, the prosecution has proved the offences under Sections 7 and 13(2) PC Act read with Section 13(1)(d) PC Act beyond reasonable doubt. I find no reason to interfere with the judgment of conviction and order on sentence. The appeal is dismissed.

(MUKTA GUPTA)

JULY 04, 2013
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