

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

+ CRL.A. 84/2003

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Reserved on: 2nd May, 2013

Decided on: 29th July, 2013

PUSHPAL CHANDER BHASKAR Appellant

Through: Mr. M.L. Yadav, Adv.

versus

STATE OF DELHI Respondent

Through: Mr. Manoj Ohri, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Appellant lays a challenge to the judgment dated 30th January, 2003 whereby he has been convicted for offences punishable under Section 7 and Section 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 31st January, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs. 8000/- on each count. He was further directed to undergo rigorous imprisonment for a period of 5 months on each count in default of payment of fine.

2. Learned counsel for the Appellant contends that the story of the prosecution is without any basis. The case of the prosecution is that the Appellant threatened for cancellation of license of the complainant in case his demand of money was not fulfilled. This demand was made on 11th December, 1996 whereas the Appellant had already surrendered his license

for fair price shop in the year 1994. Thus the alleged motive for demand of bribe by the Appellant was false and baseless. The most material witness i.e. the raid officer was not examined. Neither demand nor acceptance has been proved. The bribe money was allegedly recovered from the dash board. The shadow witness PW10 S. Natrajan stated that he was not present near the complainant and the Appellant when the demand and acceptance was made because he was stopped by the Appellant and complainant from coming near to them. It is not known as to how then PW10 gave the pre-arranged signal. PW10 the shadow witness is otherwise a stock witness as he himself admitted that he accompanied the raid parties on 8 to 10 occasions. The version of PW8 and PW10 as to where the post-trap proceedings were conducted is contrary. PW8 stated that the hand-wash and the dash board wash of the car were taken at the spot near the shop whereas PW10 the shadow witness stated that these proceedings took place in the office of the anti-corruption branch. The investigation was conducted by an officer of the level of Inspector which is not permissible. The defence of the Appellant was that a civil suit was pending against Rattan Lal DW1 the friend of complainant whose cheque was allegedly transacted in the account of the complainant. Since an out of Court settlement was arrived at between the parties, the Appellant had gone to recover the installment of Rs. 10,000/- from DW1 who stated that the same be taken from PW8. The Appellant has produced Rattan Lal who has admitted all these facts in his defence besides DW2 who has also proved the defence of the Appellant. In view of the fact that the prosecution has not been able to prove its case beyond reasonable doubt and the defence put forward by the Appellant has been proved even beyond preponderance of probability, the Appellant be acquitted of the

charges framed. Reliance is placed on *V. Venkata Subbarao Vs. State (2006) 13 SCC 305* and *Pyare Lal Vs. State 149 (2008) DLT 425*.

3. Learned APP for the State on the other hand contends that PW8 the complainant has proved the case of the prosecution beyond reasonable doubt. The version of PW8 is further corroborated by PW9 Kuldeep Kumar his neighbor from whom the complainant and Appellant had gone to demand Rs. 5000/- as the complainant did not have the full amount of Rs. 10,000/-. PW10 the shadow witness has clarified the entire incident. He states that initially he was prevented from accompanying them, however the actual demand and acceptance took place when he was present and on acceptance PW10 the shadow witness gave the pre-arranged signal. PW2 has clearly stated that the cheque no. 905908 i.e. the cheque in question amounting to Rs. 1,29,729/- was referred to the Appellant who was the Branch Manager and in this regard he has exhibited the relevant photocopy of the cheque along with the endorsement. The version of DW2 relates to another account number which could be another Rattan Lal whose parentage etc., is not mentioned. In view of the clear testimony of PW8 the complainant and PW10 the shadow witness, demand, acceptance and recovery have been proved beyond reasonable doubt. The raid officer could not be examined as he had gone out of the country and thus he was not available for examination before the Court. In the absence of raid officer the second I.O. PW14 who was present at the time of raid was duly examined and had proved the facts. The defence of the Appellant has not been proved as he has not exhibited the proceedings in the civil suit. Further there is no evidence on record to show that the parties had arrived at a settlement. Even otherwise it was not the job

of the Branch Manager to go to the shop of an individual to collect the money even if a settlement had been arrived at. The hand-wash and the dash board wash have been proved beyond reasonable doubt. There being no merit in the appeal the same be dismissed.

4. Heard learned counsel for the parties. Briefly the case of the prosecution is that the complainant PW8 Raghunath was running a ration shop with the license from FCI till 1994. Thereafter all the ration cards of his shop were transferred to the shop of his friend Rattan Lal. However, payments to FCI continued to be made by the complainant from his bank account in the name of his firm M/s. N.K. Enterprises. The said bank account was in Raghubir Nagar Branch of State Bank of India where the Appellant was posted as a Branch Manager. The complainant issued a cheque dated 28th October, 1996 from his said account for Rs. 1,29,780/- in favour of SBI A/c FCI and the said cheque was received in the Raghubir Nagar Branch for clearance on 14th December, 1996. The payment was cleared from the account of the complainant, however on 5th December, 1996 the Appellant called the complainant to his Branch. The complainant went to meet the Appellant on 6th December, 1996 where he asked the complainant as to why he has written 'B' cheque i.e. Bankers Cheque on the aforesaid cheque. Though the explanation of the complainant was that he had not written the same and the same was either written by the bank or FCI, however the Appellant did not pay heed to his explanation and threatened the complainant and demanded bribe of Rs. 10,000/- or else he would get his license with the FCI cancelled for having committed fraud with the bank. On the complaint Ex.PW8/A lodged on 11th December, 1996 a raid was

conducted. The Appellant was caught red-handed with recovery of Rs. 5000/- from the dash board of his vehicle.

5. PW8 the complainant reiterated his allegations made in the complaint. He further stated that the Appellant debited service charges to the tune of Rs. 3000/- from his account and demanded Rs. 10,000/- for rectifying the fault of the cheque, failing which he would get the FCI license cancelled. Pre-trap proceedings were conducted wherein PW10 S. Natrajan was associated as a shadow witness. After the pre-raid formalities the complainant kept the money in his left hand side pocket and all the members of the raiding party reached the shop of the complainant situated at Rajdhani Market, Tagore Garden Extension. The raiding team officers were at a distance and the shadow witness along with the complainant were in the shop of the complainant. At about 6.00 PM the Appellant came in his Maruti Van No. DL 3C 7818 white colour. After coming to his shop he asked the complainant about money as to whether he had managed the money or not. On this the complainant stated that he could only arrange Rs. 5000/- on which the Appellant stated that he could take the money from the neighbourers. Thereafter the complainant and the Appellant went to the shop of neighbourer Kuldeep Kumar PW9, however Kuldeep Kumar also could not arrange the balance Rs. 5000/-. Thus they came back to the shop of the complainant. Thereafter, the Appellant sat down on the driver's seat and the complainant remained standing on the other side of the window. The complainant stated that he would arrange the money and thereafter give him, however the Appellant insisted and said that he should give Rs. 5000/-. The complainant took out the money from the pocket of his coat and the same

was accepted by the Appellant by his left hand and thereafter the money was kept in the dash board of his car. On this PW10 the shadow witness gave the signal to the members of the raiding party who immediately arrived at the spot. They challenged the Appellant and disclosed their identity. The raid officer took out the money from the dash board and the same was taken in possession vide memo Ex.PW10/8. Left hand-wash and dash board wash were taken with the help of sodium carbonate solution and the same turned pink.

6. PW10 the shadow witness reiterated the version of the complainant to the extent of pre-trap proceedings and the trap proceedings. He however clarified that when the Appellant came at about 5.55 PM in the Maruti Van he parked the vehicle near the shop. The Appellant wished the complainant and shook his hand with him and sat down in the shop. The Appellant asked the identity of PW10 from the complainant. The complainant introduced him to be a person who had come for getting his ration card prepared. The complainant asked the Appellant as to whether he had debited the money to the tune of Rs. 3000/- or not to which the Appellant replied. Thereafter the complainant and the Appellant came out of the shop. When PW10 followed them, he was asked not to follow by the Appellant. Further the complainant also gave him a signal by the palm to stop. The complainant and the Appellant came by the side of driver seat and hence he could not hear the conversation between them. Thereafter both the Appellant and complainant went inside a nearby shop in the name of National Egg Sales and had a talk which PW10 could not hear. After few minutes they both came out and the Appellant sat down in the driver's seat in his van and the complainant stood

on the left side of the window i.e. opposite the driver seat. The Appellant asked the complainant to sit down and accompany him in the van twice or thrice, however the complainant declined. While the Appellant was sitting in the driver seat he demanded Rs. 5000/- from the complainant saying “Chalo Paanch Hazar Rupee De Do”. The complainant took out the money from his pocket and extended towards the Appellant who accepted the same from the left hand and after taking the money, the Appellant put the same in the dash board. On this PW10 gave the pre-arranged signal.

7. Though the raid officer could not be examined as he was out of the country at the relevant time, however Inspector Ranjit Ekka PW14 was examined. He stated that on 11th December, 1996 he had accompanied Inspector R.K. Singh along with other Police officials, complainant and the panch witness. He stated that his vehicle was parked outside the market and he remained sitting over there and at about 7.45 PM he was called by R.K. Singh raid officer to the spot. On reaching the spot Inspector R.K. Singh handed over the custody of the Appellant to him and also the custody of various articles seized vide different seizure memos. PW14 took into possession the seized articles including currency notes, four bottles which were sealed. He prepared the site plan at the instance of panch witness and the complainant. The Maruti van no. DL 3C 7818 was also seized. He deposited the seized articles duly sealed with the seal of RKS with the ACP who kept the same in the almirah which was locked with the seal of ‘RE’. He identified the signatures & hand-writing of the raid officer on all the documents and exhibited the same.

8. As regards the initial demand it would be seen that PW8 the complainant has clearly stated that though he resigned from running the fair price shop in the year 1994, however ration cards which were allocated to him were transferred to the shop of his friend Rattan Lal who was running a shop nearby and was not having an account in the bank. A cheque to the tune of 1,29,780/- was given by the complainant to the Rattan Lal to be deposited in FCI. It was this cheque which had come for clearing. At what stage it was mentioned banker's cheque is not relevant. However, as per photocopy of the cheque exhibited as Ex.PW2/B2 the same notices to be a 'B' cheque i.e. a banker cheque which the complainant was not competent to draw and thus he was foisted with the penalty to the tune of nearly Rs. 3000/- which fact is admitted by the Appellant. The demand of the Appellant of Rs. 10,000/- was to rectify this fault failing which he would get the FCI license cancelled. Learned counsel for the Appellant has laid a lot of emphasis that the complainant did not have a running license of FCI as he has already surrendered the same in 1994, however the fact of the matter is that even after surrendering the said license, the complainant was continuing said business through his friend Rattan Lal, as is evident from the fact that all ration cards allocated to him were transferred from his shop to Rattan Lal shop and the operations qua the shop of Rattan Lal were being carried out by the complainant. Thus, the contention that motive has not been proved is misconceived.

9. The defence of the Appellant is that since a Court case was pending between DW1 Rattan Lal and the bank for recovery of Rs. 30,000/-, the Appellant had gone to take the first installment of Rs. 10,000/-, however

DW1 denies that he had called the Appellant on 11th December, 1996 to come after bank hours to C- 28, Tagore Garden. Further even if it is an out of Court settlement no correspondence thereof has been placed on record to prove this fact and it is highly improbable that a Bank manager would personally go to recover the amount.

10. As regards the demand and acceptance at the time of trap, PW8 and PW9 who are the witnesses present have fully supported the case of prosecution. PW8 the complainant has stated that at about 6.00 PM the Appellant came in his van no. DL 3C 7818 white colour and after coming to the shop asked about the money as to whether he had arranged or not. The complainant stated that he could arrange only Rs. 5000/- on which the Appellant stated that he should take the money from the neighbourer as he wanted the full amount to the tune of Rs. 10,000/-. In order to borrow Rs. 5000/- more, the Appellant and the complainant went to the neighbourhood shop of Kuldeep Kumar who was running a shop in the name of National Egg Sales, however Kuldeep Kumar could not arrange the money. Thereafter they both came back to the shop of the complainant. This version of PW8 complainant is supported by independent witness PW9 Kuldeep Kumar. He identified the Appellant as a person who came along with the complainant Raghunath whereupon the complainant demanded Rs. 5000/-, however Kuldeep Kumar showed his inability to pay the said amount. Further PW10 S Natrajan has also corroborated this version. PW10 stated that on coming to the complainant's shop, the Appellant asked the identity of PW10 whom the complainant introduced as a person who had come for getting his ration card prepared. Thereafter the complainant asked the

Appellant as to whether he had debited the money to the tune of Rs. 3000/- or not which was replied by the Appellant, however he could not remember the words. Thereafter the complainant and the Appellant came out of the shop and PW10 was asked not to follow by the Appellant. Even complainant gave a signal of palm asking him to stop. Thereafter both of them went nearby a shop of the complainant in the name of National Egg Sales, however since there was a talk in between and he was not there he could not hear the talk.

11. The acceptance at the time of raid has been proved by the testimony of both PW8 and PW10. As noted above the Appellant thereafter insisted on payment of Rs. 5000/- itself which the complainant took out from his coat and gave to the Appellant. The Appellant caught hold of the same with his left hand and kept the money in the dash board when PW10 the shadow witness gave the signal. The contention of the learned counsel for the Appellant that since PW10 was asked to stop he could not have heard conversation is contrary to the evidence on record. PW10 has clarified that on the first instance when they went out to the other shop of National Egg Sales, he was stopped from following them. However, after coming from the shop, the shadow witness went near the vehicle and heard and saw the demand and acceptance of the money.

12. Version of PW8 and PW10 is further corroborated by the left hand wash and the dash board wash taken with the help of sodium carbonate. The washes turned pink and the report of the expert in this regard has been exhibited and proved by PW7 Head Constable Balram who brought the same from the CFSL. The report is per-se admissible under Section 293 Cr.P.C.

and PW7 has not been cross-examined by the Appellant. Further though the raid officer has not been examined as he was out of India, the post-raid proceedings have been deposed to by PW14 Ranjit Ekka besides PW8 and PW10.

13. In view of the fact that the prosecution has been able to prove its case beyond reasonable doubt, whereas the Appellant has not even proved his defence by preponderance by probability, I find no infirmity in the impugned judgment convicting and sentencing the Appellant. Appeal is accordingly dismissed. Bail bond and surety bond are cancelled.

(MUKTA GUPTA)

JULY 29, 2013

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