

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

+ CRL.A. 9/2003

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Reserved on: 22nd April, 2013
Decided on: 2nd July, 2013

HEM CHANDER

..... Appellant

Through Mr. K.B. Andley, Sr. Adv. with Mr.
M. Shamikh, Adv.

versus

STATE OF DELHI

..... Respondent

Through Mr. Manoj Ohri, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant challenges the judgment dated 19th December, 2002 convicting the Appellant for offences punishable under Sections 7/ 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 21st December, 2002 directing him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- for offences under Section 7 PC Act and Section 13(1)(d) read with Section 13(2) of the PC Act. There appears to be a typographical error in the impugned order of sentence dated 21st December, 2002 whereby instead of Hem Chander convict Raj Kishore has been mentioned.

2. Learned counsel for the Appellant contends that in the entire prosecution case there is no evidence to prove demand and acceptance of illegal gratification by the Appellant. Further there is no recovery of the bribe money from the Appellant. The complainant himself stated different plot numbers and finally stated that the money was demanded for illegal construction of plot No. 128, however plot no. 128 was already a constructed building. The alleged recovery was effected from the drawer of the table and thus cannot be said to be a recovery from the Appellant. Even the panch witness has not supported the prosecution case. Merely by proving the hand wash solutions, the prosecution cannot be said to have proved beyond reasonable doubt the commission of offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act by the Appellant. Reliance is placed on *Banarasi Dass vs. State of Haryana, 2010 (4) SCC 450*.

3. Learned APP on the other hand contends that the recovery of the tainted money has been proved which is duly corroborated by the report of the hand-wash solution, and in view of the law laid down by the Supreme Court in *Hazari Lal Vs. State (1980) 2 SCC 390*; *State of U.P. Vs. Zakaullah AIR 1998 SC 1474* and *State vs. G. Premraj, 2010 (1) SCC 398*, there is no illegality in the impugned judgment and the appeal be dismissed.

4. Briefly the case of the prosecution as per the complaint of PW6 Umrao Singh Ex. PW5/A dated 4th March, 1993 is that he was doing the business of marble. At plot no. 128 Lalita Park, Laxmi Nagar he started construction of his house when on 3rd March 1993 at about 11.00 AM Inspector Hem Chander, SHO PS Shakarpur came to his plot and took away the labour working there to PS Shakarpur. When the complainant reached

the Police Station at about 12.45 noon and met the SHO, he released his labour and called him again in the evening. In the evening at about 8.00 PM he again went to PS Shakarpur and at that time the SHO demanded Rs. 30,000/- as bribe without which he would not permit construction on the plot. On the request of the complainant, the bribe amount was reduced to Rs. 5000/- out of which he paid Rs. 1000/- then and there and the balance amount of Rs. 4000/- he had to give on 4th March, 1993 at 6/7 PM at PS Shakarpur. Since the complainant did not want to give the bribe, he made a complaint, on the basis of which FIR No. 10/93 was registered under Section 7/13 PC Act at PS Anti-corruption Branch. The complainant gave 40 notes of Rs. 100/- denomination, the numbers of which were noted which were stated to be recovered from the Appellant's drawer. The hand-wash was also taken which turned pink. On the basis of this material the charge-sheet was filed.

5. PW6 the complainant when he appeared in the witness box reiterated that on 4th March, 1993 he went to the Anti-corruption Branch and got his statement recorded vide Ex.PW5/A which bears his signature. The complaint was with regard to the demanding bribe of Rs. 4000/- for which he gave 40 GC notes of Rs. 100/- denomination to the raid officer TR Mirwani who applied phenolphthalein powder on the tainted GC notes. The trap team including the complainant, panch witness, raid officer TR Mirwani and other 5-6 officials reached the Police Station Shakarpur at about 6.15 PM. However the complainant failed to support the case of the prosecution with regard to demand, acceptance and recovery of the money on the spot. Since the complainant had turned hostile, the learned APP cross-examined him,

however he denied the suggestions. Thus, no cross-examination was done by the accused. Mere lodging of the complaint and reiterating its contents is not an evidence of demand, acceptance or recovery of the money. The complainant has not stated a single word to prove the demand, acceptance and recovery of the bribe money from the Appellant.

6. PW5 Bali Dutt Joshi the shadow witness has also turned hostile. Even in the cross-examination by the learned APP nothing could be elicited. PW5 states that he was deputed in the Anti-corruption Branch as a panch witness on 4th March, 1993 and in his presence statement of complainant Umrao Singh was recorded in Anti-corruption Branch. This witness in the cross-examination by the learned APP denied that the SHO while sitting in his chair asked whether the complainant had brought the money as demanded by him or that he accepted the money in his right hand, opened the drawer of his table and kept the same in his drawer. The complainant and the shadow witness i.e. PW6 and PW5 being the witnesses to the demand and acceptance having not supported the prosecution case, there is no evidence on record to prove the demand and acceptance of the illegal gratification.

7. As regards the recovery of the GC notes, though PW5 and PW6 have not supported the prosecution case however the trap laying officer TR Mirwani has proved the same. According to PW7 pre-trap formalities were conducted and on reaching PS Shakarpur, the complainant and shadow witness were sent ahead of the trap team to contact the Appellant at about 6.30 PM when they were informed that the Appellant was not present in the Police Station. Thereafter, the complainant and the panch witnesses were again called at 10.00 PM in the Police Station. At about 10.15 PM they

received a signal from the panch witness and thus they immediately rushed to the spot and challenged the Appellant after disclosing their identity. On the pointing out of the complainant the GC notes Ex. P5 to P45 were recovered from the drawer of the table of the Appellant and seized vide memo Ex.PW/B. The right hand-wash and the photoprint envelope wash lying in the drawer were also taken which turned pink and were seized and sealed in separate bottles.

8. Thus, the issue that arises is whether merely by recovery of the treated notes from the drawer in the room of the Appellant, the Prosecution has been able to prove the offences under Sections 7 and 13(1)(d) read with 13(2) PC Act. In *Meena (Smt) w/o Balwant Hemke vs. State of Maharashtra, 2000 (5) SCC 21* the three Judge bench of the Hon'ble Supreme Court held:

“11. The learned Judge in the High Court seems to have mechanically affixed his approval to the findings recorded by the trial Judge by profusely extracting such findings. Mere recovery of the currency note of Rs 20 denomination, and that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe, in the peculiar circumstances of this case which lend also credence to the case of the appellant that it fell on the table in the process of the appellant pushing it away with her hands when attempted to be thrust into her hands by PW1. The results of phenolphthalein test, viewed in the context that the appellant could have also come into contact with the currency note when she pushed it away with her hands cannot by itself be considered to be of any relevance to prove that the appellant really accepted the bribe amount. With such perfunctory nature of materials and the prevaricating type of evidence of PW 1 and PW 3, who seem to have a strong prejudice against the appellant, it would be not only unsafe but dangerous to rest conviction upon their testimony. PW 1, if really was keen on getting the copy of the

record urgently, could have made an urgent application to have them delivered within 3 days instead of making an ordinary application and going on such an errand, which makes it even reasonable to assume that the trio of PW 1, PW 3 and Jagdish Bokade were attempting to weave a web around the appellant to somehow get her into trouble and victimise her.”

9. In *Banarasi Dass Vs. State of Haryana (2010) 4 SCC 450* the Hon’ble Supreme Court while considering the earlier decisions on the point held:

“19. The above findings recorded by the High Court show that the Court relied upon the statements of PW 10 and PW 11. It is further noticed that recovery of currency notes, Exts. P-1 to P-4 from the shirt pocket of the accused, examined in light of Exts. PC and PD, there was sufficient evidence to record the finding of guilt against the accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error insofar as it has drawn the inference of the demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.

20. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, PW 10 and PW 11 were neither the eyewitnesses to the demand nor to the acceptance of money by the accused from Smt Sat Pal Kaur (PW 2).

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23. To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused.

24. In *M.K. Harshan v. State of Kerala* [(1996) 11 SCC 720 : 1997 SCC (Cri) 283] this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

“8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW 1. Since PW 1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW 1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or

obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable.”

25. Reliance on behalf of the appellant was placed upon the judgment of this Court in *C.M. Girish Babu* [(2009) 3 SCC 779: (2009) 2 SCC (Cri) 1] where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in paras 18 and 20 of the judgment held as under: (SCC pp. 784 & 785-86)

“18. In *Suraj Mal v. State (Delhi Admn.)* [(1979) 4 SCC 725 : 1980 SCC (Cri) 159] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

20. A three-Judge Bench in *M. Narsinga Rao v. State of A.P.* [(2001) 1 SCC 691 : 2001 SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

‘24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi v. State of Maharashtra*

[(2000) 8 SCC 571 : 2001 SCC (Cri) 34] .) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (*Madhukar case* [(2000) 8 SCC 571 : 2001 SCC (Cri) 34] , SCC p. 577, para 12)

“12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted ‘as motive or reward’ for doing or forbearing to do any official act. So the word ‘gratification’ need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like ‘gratification or any valuable thing’. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word ‘gratification’ must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.” ‘ ’ ”

In fact, the above principle is no way a derivative but is a reiteration of the principle enunciated by this Court in *Suraj Mal case* [(1979) 4 SCC 725 : 1980 SCC (Cri) 159] where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in *Sita Ram v. State of Rajasthan* [(1975) 2 SCC 227: 1975 SCC (Cri) 491] where similar view was taken.

26. *C.M. Girish Babu case* [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with Section 5

of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case.”

10. It is thus well settled that the prosecution is duty bound to prove the demand and acceptance of money either by direct or circumstantial evidence before an inference that the money given is an illegal gratification could be raised. In *Zakaullah (supra)* the complainant proved the case of the prosecution and in the light of the said evidence it was held that the testimony of the bribe giver could not be rejected merely because he is aggrieved by the conduct of the accused, however in such a case the evidence of complainant requires greater scrutiny. In *State Vs. G. Premraj (supra)* rendered by two judges bench of the Hon’ble Supreme Court it was held that once the story of demand of bribe and the acceptance thereof by the Respondent therein was acceptable not being demolished in cross-examination and the amount being substantial, the presumption under Section 20 PC Act was raised. In the present case there is no evidence of demand and acceptance either direct or circumstantial.

11. Further the learned Trial Court failed to consider the defence of the Appellant. The complainant was involved in as many as five criminal cases including cases of murder, trespass, cheating by impersonation etc. The Appellant proved that the claim of the complainant in the complaint that he was owner of plot No. 128 Lalita Park Laxmi Nagar and was constructing

the same was false. The said house was owned by one Shri Dharamjeet Singh and he was residing therein with his family. The house was fully constructed. The Appellant was required to prove his defence by preponderance of probability which he has been able to do.

12. In view of the fact that neither the demand nor acceptance has been proved, it cannot be said that the prosecution has proved its case beyond reasonable doubt. The Appellant is thus entitled to the benefit of doubt. He is acquitted of the charges framed. The bail bond and the surety bond are discharged. Appeal is disposed of.

(MUKTA GUPTA)

JULY 02, 2013
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