

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

Judgment Reserved on: May 22, 2014
Judgment Pronounced on: July 02, 2014

+ **CRL.A.728/2002**

T.C.CHAWLA Appellant
Through: Mr. Anil Kumar Gupta and Mr. Sahil
Dhawan, Advocates

versus

C.B.I. Respondent
Through: Mr. R.V.Sinha, Standing Counsel for
CBI with Mr. A.S. Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. Appellant was a Junior Engineer in Public Works Department of Govt. of NCT of Delhi, who had purportedly accepted bribe of ₹1,500/- from complainant-*Jeewan Singh (PW-6)* in the afternoon of 11th November, 1997 for clearing his bill for the contract work. In RC No.87(A)/97-DLI, appellant was tried and on the strength of evidence of complainant-*Jeewan Singh (PW-6)*, recovery witness-*Vikram Singh (PW-3)*, shadow witness-*Babban Singh (PW-1)*, official witnesses and trap laying official (PW-7), appellant stands convicted vide impugned judgment of 4th April, 2002 for the offences under Section 7 and Section 13 (2) read with Section 13 (1) (d)

of *the Prevention of Corruption Act*. Vide impugned order of 26th August, 2002 appellant has been sentenced to simple imprisonment for a period of two years and fine of ₹2,000/- with default clause under Section 7 of *Prevention of Corruption Act* and simple imprisonment for three years and fine ₹5,000/- under Section 13 (2) read with Section 13 (1) (d) of *the Prevention of Corruption Act*.

2. The factual background of this case already stands noted in the impugned judgment and needs no reproduction. Suffice it would be to note that apprehension of appellant on 11th November, 1997 is from the place of his work i.e. Government Boys Senior Secondary School, Punjabi Bagh, Delhi and the recovery amount of ₹1,500/- from him was not actually disputed by learned counsel for appellant at the final hearing of this appeal. Therefore, detailed reference to the hand-wash of appellant or to the deposition of prosecution witnesses is really not required as all that is required to be seen in this appeal is whether the specific stand taken by appellant is sufficient to rebut the statutory presumption under Section 20 of *Prevention of Corruption Act* raised against him.

3. The stand taken by appellant in his statement under Section 313 of Cr.P.C. as noted in the impugned judgment is as under: -

“In his examination u/s 313 of the Cr.P.C., the accused has inter alia pleaded that he had neither met the complainant in his office nor he demanded any amount from anybody to clear his bills and that his role had already finished by 5.11.97 when he had furnished all the necessary

particulars regarding preparation of the bill in respect of the complainant; that the complainant himself misused the circumstances by twisting and fabricating the facts while factually Pooran Chand another contractor who had worked at the same site where the complainant had been working, i.e., G.B.S.S. School, Shakarpur and the complainant had received badarpur for a sum of Rs.3200/- from the said Pooran Chand for completing his job started on 19.7.96 which he completed on 15.5.97 and thus owed that amount to said Pooran Chand but when the complainant did not make payment for the badarpur received from Pooran Chand, he issued a cheque no.717575 dtd. 11.4.97 in favour of Sh. Harish, S/o said Pooran Chand for the amount of Rs.3200/- but that cheque had been dishonoured and complainant was in default, but complainant asked for some more time for making the payment and when Pooran Chand met the complainant on 11.11.97, in the morning and demanded his dues, the complainant promised to that Pooran Chand then told the complainant to handover Rs.1500/- by evening to the accused in his office on his behalf and when they so agreed, Pooran Chand contacted him on phone at his residence and told about the whole transaction, requesting him to receive Rs.1500/- from the

complainant on his behalf which he would have collected from accused later on.”

4. Trial court has also taken note of the deposition of *Pooran Chand (DW-5)*, who was also doing job of contractor under appellant and in the impugned judgment, the finding returned by trial court is as under: -

“.....The circumstances as explained on behalf of the accused that there was no motive for accepting the bribe could also not satisfy me that after having submitted the bill for the work done by the contractor, i.e., PW-5, he had no role to demand any money from the contractor.”

5. At the final hearing of this appeal, impugned judgment and order was assailed by learned counsel for appellant by submitting that complainant-*Jeewan Singh (PW-6)* had animus against appellant under whom complainant-*Jeewan Singh (PW-6)* was doing work of contractor and appellant had withheld payment of ₹2,000/- on account of pending sanction of extension of time and pending rectification of defects and this withholding of payment of ₹2,000/- was got noted from complainant-*Jeewan Singh (PW-6)* on 31st October, 1997 and thus, complainant-*Jeewan Singh (PW-6)* was annoyed with appellant.

6. It was submitted on behalf of appellant that ₹1,500/- was received by appellant towards the payment for the badarpur sand, which was received by complainant-*Jeewan Singh (PW-6)* from another contractor-*Pooran*

Chand (DW-5), who was also doing work of contractor under appellant, as the badarpur sand was given by *Pooran Chand (DW-5)* to complainant-*Jeewan Singh (PW-6)* because there was a tacit understanding between the two contractors i.e. complainant-*Jeewan Singh (PW-6)* and *Pooran Chand (DW-5)* that the payment of badarpur sand would be made by appellant to *Pooran Chand (DW-5)* after receiving it from complainant-*Jeewan Singh (PW-6)*.

7. It was vehemently argued by learned counsel for appellant that there was no occasion for demand of any bribe by appellant from complainant-*Jeewan Singh (PW-6)* because complainant's bill was prepared by appellant on 28th October, 1997 and on 31st October, 1998, complainant-*Jeewan Singh (PW-6)* had signed the measurement book on the basis of which the bill in question was prepared and it was submitted by appellant to Executive Engineer on 15th November, 1997 through dak and on the day appellant was falsely trapped in this case, complainant's bill was lying in the office of Executive Engineer for clearance and appellant being Junior Engineer had no role in getting the said bill cleared from the concerned Executive Engineer. Reliance was placed by appellant's counsel upon Apex Court's decision in *V.Venkata Subbarao v. State* (2007) 3 SCC (Cri) 175 to contend that the pre-requisite for raising the statutory presumption under Section 20 of *Prevention of Corruption Act* is that demand for bribe by accused must be proved and in the instant case it stands disproved from the fact that there was no occasion for appellant to have demanded any bribe from complainant-*Jeewan Singh (PW-6)*.

8. To refute the impugned finding of hand-wash of appellant proving the prosecution case, reliance was placed upon decision of a co-ordinate Bench of this Court in *Subhash Chand Chauhan v. C.B.I.* 117 (2005) DLT 187. Thus, it was contended on behalf of appellant that the statutory presumption raised against appellant stands rebutted in view of the stand taken by appellant, which stands substantiated from the evidence of *Pooran Chand (DW-5)* and other defence witnesses. According to learned counsel for appellant, impugned judgment convicting appellant for the offence in question is patently erroneous and deserves to be set aside.

9. Mr. R.V. Sinha, learned Standing Counsel for CBI, had supported the impugned judgment and had submitted that there is no illegality or infirmity in it as the evidence on record conclusively proves the prosecution case. Reliance was placed upon decision of a co-ordinate Bench of this Court in *Crl.Appeal No.293/2003 titled V.K. Verma v. C.B.I.* rendered on 22nd July, 2013 to contend that similar defence taken by an accused was not found plausible and in the instant case also, the defence taken by appellant lacks plausibility and thus, there is no substance in this appeal and it deserves to be dismissed.

10. After having heard both the sides and on scrutiny of the evidence on record, impugned judgment and the decisions cited, I find that there was occasion for appellant to have undertaken that the payment of badarpur sand would be made by complainant-*Jeewan Singh (PW-6)* to *Pooran Chand (DW-5)* through him because both the contractors i.e. complainant-*Jeewan Singh (PW-6)* and *Pooran Chand (DW-5)* were working under

appellant at Government Boys Senior Secondary School, Punjabi Bagh, Delhi and as per deposition of *Mahabir Singh (DW-3)* from the Public Works Department, the repair work at the school in question was to be completed by appellant in September, 1996, but it was completed by him in May, 1997. From the deposition of aforesaid official witness-DW-3, it becomes evident that since there was urgency in getting the repair work done at the aforesaid School, therefore, it was natural on the part of appellant to have undertaken that the payment of badarpur sand would be made by complainant-*Jeewan Singh (PW-6)* to *Pooran Chand (DW-5)*, who was working under him on the project in question. This reasonably explains as to why appellant would accept money from complainant-*Jeewan Singh (PW-6)* on behalf of contractor-*Pooran Chand (DW-5)* towards the badarpur sand as both the contractors were working under him on a time-bound project.

11. The dictum of Apex Court in *V.Venkata Subbarao (supra)* stands reiterated by Apex Court in *State of Punjab v. Madan Mohan Lal Verma*, (2013) 14 SCC 153 the following words: -

“The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the

amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.”

12. Apex Court in *Sooraj Mal v. The State (Delhi Administration)* AIR 1979 SC 1408 had declared that in a case under *the Prevention of Corruption Act*, mere recovery of money divorced from the circumstances under which it was paid, is not sufficient to convict an accused and the aforesaid dictum of Apex Court stood reiterated by a co-ordinate Bench of this Court in *Subhash Chand (supra)*. In the instant case, there was no occasion for appellant to have demanded any bribe from complainant-*Jeewan Singh (PW-6)* because from the evidence of official witness-*PW-9*,

it stands proved that appellant had deducted ₹2,000/- from the bill of complainant-*Jeewan Singh (PW-6)* and the said deduction was countersigned by complainant-*Jeewan Singh (PW-6)* and thereafter, appellant had cleared complainant's bill on 5th November, 1997. Thus, there was no occasion for appellant to have demanded or accepted any bribe on the day of the incident i.e. 11th November, 1997, particularly, when the complainant's bill was sent by appellant through dak to the Divisional Office and was pending before the Executive Engineer when appellant was trapped in this case. Thus, it is quite evident that complainant-*Jeewan Singh (PW-6)* had an animus against appellant and had got him trapped in this case.

13. Regarding the alleged conversation between appellant and complainant-*Jeewan Singh (PW-6)* on the day of the incident, I find that complainant's version of appellant asking complainant whether he has brought the money and thereafter, appellant asking complainant to see him at a place of work i.e. Government Boys Senior Secondary School, Punjabi Bagh, Delhi or of appellant giving assurances to complainant-*Jeewan Singh (PW-6)* stands dislodged from the deposition of shadow witness (*PW-3*), who had categorically deposed that appellant was not available at the office at Lawrence Road, Delhi where alleged conversation had taken place between appellant and complainant and then the raiding team had gone to the School in question i.e. Government Boys Senior Secondary School, Punjabi Bagh, Delhi, where appellant was trapped. Since complainant-*Jeewan Singh (PW-6)* had an animus against appellant, therefore, afore-

referred contradiction *inter se* the deposition of complainant-*Jeewan Singh (PW-6)* and shadow witness-*PW-3* creates a reasonable doubt about the veracity of the prosecution case.

14. In *V.K. Verma (supra)*, the version of accused having paid ₹650/- to complainant for buying tyre and tube for his scooter on a discount and of returning the balance amount of ₹265/- was found to be not reliable as accused's aforesaid version was based upon his own self-serving statement only and had defied logic in view of the fact that complainant had a grudge against accused. Reliance placed by respondent-CBI upon decision in *V.K. Verma (supra)* is misconceived because in the instant case, there is evidence of defence witnesses which renders probable the version of appellant entitling him to rebut the statutory presumption raised against him and to entitle him to benefit of doubt.

15. The afore-noted contradictions in the deposition of complainant-*Jeewan Singh (PW-6)* and shadow witness-*Vikram Singh (PW-3)* also renders the prosecution case unreliable. Impugned judgment is rendered unsustainable as it fails to rely upon the deposition of *Pooran Chand (DW-5)*, which has to be read in conjunction with deposition of complainant-*Jeewan Singh (PW-6)* and the deposition of shadow witness-*PW-3*. Upon having done so, this Court is of the considered opinion that appellant succeeds in rebutting the statutory presumption raised by prosecution and is thus entitled to acquittal.

16. In view of the aforesaid, the impugned judgment is set aside and appellant is acquitted.

17. The appeal stands accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 02, 2014

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