

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. A. No. 52 of 2008

Reserved on: January 30, 2014

Decision on: February 4, 2014

TARUN GARG

..... Appellant

Through: Mr. K.K. Manan, Mr. Nipun
Bhardwaj, Mr. Navender N. Gautam,
Mr. Ankush Narang and Mr. Satbir S. Gill,
Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Manoj Ohri, Special Public
Prosecutor for CBI.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

04.02.2014

1. Tarun Garg has filed this appeal against the impugned judgment dated 18th December 2007 passed by the learned Special Judge in CC No. 67 of 2004 convicting him of the offence under Section 8 of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 20th December 2007 sentencing him to undergo rigorous imprisonment ('RI') for two years and pay a fine of Rs.25,000, and in default of payment of fine to undergo simple imprisonment ('SI') for six months.

2. The case of the prosecution is that Inspector Vivek Dhir (PW-1) of the

Central Bureau of Investigation ('CBI') received reliable information on 18th October 1999 that a large number of touts were actively functioning in and around the Regional Passport Office ('RPO'), Bhikaji Cama Place, New Delhi; that they were charging illegal gratification in connivance with the staff working at the various counters in the RPO for getting the work related to passport done at an early date and without objections being raised by the officials at the RPO. On the basis of the said information, PW-1 constituted a trap team comprising of himself, other officers of the CBI and three independent witnesses working in the Railways namely Mr. Vikas Chand (PW-2), Mr. Bohari Singh (PW-3) and Mr. Ram Chander (PW-4).

3. The CBI trap team is stated to have reached the RPO at around 11:30 am on 18th October 1999 and kept a close watch on the activities there. The trap team remained there till about 2:30 pm. It is stated that the trap team noticed that certain touts were approaching prospective applicants and telling them that they would be required to pay Rs. 50 to the staff of the RPO if they wanted to avoid objections being raised by the staff in regard to their applications. Applicants Mr. R.C. Rajpal (PW-7) and his son Sanjay Rajpal and Mr. Ved Prakash were found paying illegal gratification to the Appellant and one Mr. Krishan Kumar respectively. Five persons indulging in such activity, including the Appellant, were stated to have been apprehended by the trap team. A government currency (GC) note of Rs.500 was recovered from the Appellant and Rs.450 from Mr.Krishan Kumar. Some other incriminating documents were also recovered from the Appellant and the others who were arrested. In regard to the documents

and cash seized from the Appellant, a 'recovery memo' (Ex. PW 3/A) and a personal search memo (Ex. PW-4/A) were stated to have been prepared at the spot. According to the prosecution, it was revealed that the Appellant had obtained illegal gratification from Mr. Rajpal to be paid to the officials of the RPO for getting the ECNR stamp on the passport of his son Mr. Sanjay Rajpal. A charge sheet for the offence under Section 8 of the PC Act was filed against the Appellant and the others arrested.

4. The case of the prosecution was sought to be proved essentially through the evidence of Inspector Vivek Dhir (PW-1), the independent witnesses (PWs 2, 3 and 4), Mr. R.C. Rajpal (PW-7) and Sub-Inspector Mr. M.M. Ansari (PW-10) of the Anti Corruption Branch ('ACB') of the CBI to whom the investigation of the case was entrusted in November 2000.

5. One of the key issues that arose before the trial Court was the proper identification of the accused. This was not a case where there was specific advance information with the CBI about the identity of the touts who were operating outside the RPO. In other words, this was not a case where a complainant went to the ACB aggrieved by the demand for illegal gratification made by a particular person and was made to hand over the GC notes that would be used for payment of the illegal gratification which would then be treated with phenolphthalein powder. Even when the trap team left for the RPO on the forenoon of 18th October 1999, they were not clear as to who would be found outside the RPO indulging in the activity of seeking illegal gratification for being paid to the officials of the RPO. Also, the examination-in-chief of the prosecution witnesses was taking

place in 2005, nearly six years after the event. In the circumstances, the identification of the Appellant as one of the persons arrested on 18th October 1999 was critical to the entire case.

6. PW-1 was examined by way of examination-in-chief on 2nd March 2005 on which date all the accused were present in Court. However, he was not asked to identify each of them. He identified only one of the accused, Krishan Kumar. His specific statement in this regard reads as under:

“All the accused except Krishan Kumar are present in Court. I can identify Krishan Kumar if shown to me. At this stage accused Krishan Kumar is present in Court.”

7. PW-1 stated that Mr. R.C. Rajpal and his son and one Mr. Ved Prakash Dua were seen approached by two touts whose identities were disclosed as Tarun Garg and Krishan Kumar. He further states that “Shri Tarun Garg took an amount of Rs.500/- from R.C. Rajpal for getting the stamp of ECNR on the passport of his son Sanjay Rajpal and Shri Krishan Kumar was seen accepting Rs.450/- from Shri Dua for submitting his application in the passport office. In all 5 touts were identified in observations.” At this stage, also, PW-1 was not asked to identify the Appellant. PW 1 further stated that Mr. R.C.Rajpal, his son and Mr. Ved Prakash Dua “were requested to join the proceedings and specifically identify the touts, who took the money from them. Accordingly, Shri R.C. Rajpal and Sanjay Rajpal identified Shri Tarun Garg who took the money from them towards doing the needful”. He added that Mr. R.C. Rajpal “also identified the GC note of Rs.500/-, which was produced by Tarun Garg, who also accepted to have received the same”. At the above stage, PW-1 could have been

asked to identify the Appellant in Court. However, for reasons best known to the Public Prosecutor ('PP'), he was not asked to do so.

8. The other witnesses who constituted the trap team also did not identify the Appellant in the Court. PW-2 Vikas Chand could identify only Subhash Gupta and Zahoor Alam in the Court. He was examined on 12th May 2005, on which date all the accused were present. This is apart from the fact that PW-2 turned hostile and did not support the case of the prosecution. He only stated that he observed money being taken from R.C.Rajpal, his son Sanjay Rajpal and Ved Prakash Dua. He stated that Mr. R.C.Rajpal and his son identified the Appellant as having received the passport and money. However, even at that stage he was not asked to identify the Appellant in the Court.

9. PW-3 also failed to identify the Appellant. He could only identify the co-accused Rajinder Kumar. PW-3 added that the CBI Officials did not record his statement and that "they just made me sign the papers". PW-4 also did not identify the Appellant although he said that five persons were apprehended at the gate of the RPO and that the names of the said persons were revealed as the Appellant and the four other accused. He stated that Mr. R.C. Rajpal identified the currency note of Rs.500 paid by him to the Appellant and that the Appellant was also interrogated and admitted to receiving Rs.500. Considering that even when he made that statement, he was not asked to identify the Appellant who was present in Court, it can only lead to the inference that he was making the said statement on the

basis of documents shown to him during his examination-in-chief by the PP.

10. Next is the evidence of PW-7 Mr.R.C. Rajpal. He was examined on 26th July 2007 when all the accused were present. He was not asked by the PP to identify the Appellant in the Court. Significantly, he admitted that the Rs. 500 note, alleged to have been seized from the Appellant, was not shown to him in the Court. PW-10 came to the picture only in November 2000 and, therefore, his seeing the Appellant on the date of arrest did not arise.

11. The inevitable conclusion from the above discussion is that there was no identification of the Appellant in the Court as the person arrested outside the RPO on 18th October 1999. The trial Court does not appear to have discussed this aspect in the impugned judgment.

12. The next important aspect was the identification of the GC note of Rs. 500 and seizure. PW-7 stated that he paid Rs. 500 to the Appellant but there was no occasion for him to note down its number before he did so. The Court has been shown the recovery memo PW-3/A which contains the signatures of the Appellant, Mr. Bohari Singh and Mr. R.S. Bedi, Inspector of CBI. The Appellant appears to have signed it as an acknowledgment of receiving a copy thereof. The other signatory Mr. Bedi was not examined as a witness. The recovery memo does not mention that Mr. R.C. Rajpal (PW-7) identified the Rs. 500 note mentioned therein as the same note which he gave the Appellant. Also, it is not known why Mr. Rajpal did not

sign the recovery memo if indeed it was prepared on the spot and in his presence.

13. A personal search memo was also prepared (Ex.PW-4/A). This bears the signature of the Appellant by way of acknowledgment of receiving a copy thereof. The other signatures are of PW-4 and Mr. Bedi. This refers to “cash sum of Rs. 860 (eight hundred sixty only)” as having been recovered during the personal search of the Appellant. It does not mention the currency notes comprising the cash of Rs. 860. Here again it is not known as to why, if the personal search took place in the presence of Mr. Rajpal, he did not sign it. The identification of the GC note of Rs. 500 recovered from the Appellant being the very same GC note given by PW-7 to him was critical to the case. Unlike a trap case where during pre-raid proceedings the GC note is identified, its number noted and then treated with phenolphthalein powder, in the instant case there was no occasion for Mr. Rajpal to know the precise GC note he would be handing over to the Appellant. Further the failure to examine Mr. Bedi who was the signatory to the above memos has weakened case of the prosecution. It appears that an application filed by the PP under Section 311 Cr PC for examining Mr. Bedi was declined by the learned trial Court. The failure by Mr. Rajpal to sign the recovery memo and the personal search memo does raise serious doubts as to whether they were prepared on the spot or even at the RPO as claimed by PW-1. This is apart from the fact that PW-1 does not talk of the presence of Mr. Bedi who appeared to have signed the recovery memo and personal search memo. The above recovery memo (Ex. PW-3/A) and the personal search memo (Ex. PW-4/A) raise more questions than they

answer and in particular raise doubts as to whether Rs. 500 purportedly recovered from the Appellant was the same note that had been allegedly given to him by Mr. Rajpal.

14. Viewed in the above background, the failure to produce in the Court the original GC note purportedly recovered from the Appellant cannot be brushed aside as a trivial matter. During the cross-examination of PW-10, the trial Court was informed by the learned PP that the “GC note was deposited in the bank due to inadvertent on the part of CBI.” While it is possible to surmise that the Rs. 860 in cash may have contained one note of Rs. 500, in the absence of personal search memo detailing the numbers of the GC notes comprising Rs. 860, it is not possible to conclude that the GC note of Rs. 500 purportedly given by Mr. Rajpal to the Appellant was part of the cash of Rs. 860 recovered from the Appellant.

15. Another aspect is that the arrest memo (PW-2/B), which was also purportedly prepared at the same time as the recovery memo and the personal search memo, does not appear to have been signed by any of the independent witnesses. The other members of the trap team, i.e. the CBI officers Mr. A.K. Singh and Mr. Surendra Malik were also not examined.

16. The entire case of the prosecution appears to now rest on the sole evidence of PW-7 Mr. Rajpal which, for the reasons discussed, cannot be safely relied upon for returning the finding of guilt against the Appellant. In particular, his evidence is inadequate as regards the identity of the

Appellant, the identification of the GC currency note of Rs.500 and its recovery from the Appellant.

17. Mr. Manoj Ohri, learned counsel for the CBI, referred to the decision of the Supreme Court in *Prithipal Singh v. State of Punjab 2012 (1) JCC 254* in support of his submission that the evidence of an accomplice can be relied upon if it was corroborated in material particulars. He also referred to the decision on *Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624* and submitted that even the testimony of a hostile witness can be relied upon if it is corroborated by other reliable evidence.

18. The evidence of PW-7 cannot be stated to have been corroborated in material particulars by any of the other prosecution witnesses. The independent witnesses (PWs 2 and 3) who were part of the trap team, and PW-1 who headed it, failed to identify the Appellant as the person who was arrested on 18th October 1999.

19. This being a case involving an offence under Section 8 of the PC Act, the presumption under Section 20 (1) PC is not available to the prosecution. It was, therefore, incumbent on it to prove beyond all reasonable doubt that the Appellant demanded and accepted illegal gratification on behalf of a public servant. This, in the considered view of the Court, it has failed to do.

20. For the above reasons, the impugned judgment dated 18th December 2007 of the learned trial Court is set aside. The Appellant is acquitted of

the offence under Section 8 of the PC Act. Consequently, the order on sentence dated 20th December 2007 is also set aside.

21. The appeal is allowed with no orders as to costs.

S. MURALIDHAR, J.

FEBRUARY 4, 2014
dn/Rk

