

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

% *Judgment reserved on :01.4.2014.*
Judgment delivered on : 25.4.2014

CRL.A. 154/2006

SOHAN LAL Appellant

Through: Mr. Ashish Kumar, Advocate.

Versus

STATE NCT OF DELHI Respondent

Through: Ms. Fizani Hussain, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence dated 04.02.2006 and 06.02.2006 respectively wherein he has been convicted under Sections 7 and 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the 'PC Act') and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.6000/- in default of payment of fine to undergo SI for 6 months under Section 13(1)(d) of the PC Act; under Section 7 of PC Act he has been sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.4000/- in default of payment of fine to undergo SI for 4

months. Both the sentences were to run concurrently.

2 Record shows that on 13.06.2001 Mahendra Kumar (PW-4) had filed a complaint in the Anti Corruption Branch which was to the effect that the appellant Sohan Lal had demanded a bribe from him for Rs.10,000/- for releasing his goods which had been confiscated. In his formal complaint (Ex.PW-4/A) it was stated that on 08.6.2001 some people had come to his office from the office of the Corporation and they stated that since he had not paid them the “monthly” they had come to impound his goods and had accordingly done so. Since the following two days were holidays he could not go to get his goods released from the office of the Corporation at Minto Road. On 13.6.2001 he met Inspector Sohan Lal and one Om Prakash in the Corporation office who had threatened him that for the release of the eight bundles of goods he would have to pay a fine of Rs.50,000/-; they would take a lenient view; he would, however, on affidavit have to state that these goods would be donated to a temple but for this purpose he would have to pay a bribe of Rs.10,000/- and Rs.45,000/- as the fine amount; the bribe of Rs.10,000/- was to be shared by four persons including appellant Sohan Lal and one Om Prakash. Complaint further recites that the main person was Sohan

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Lal and he had called PW-4 in his office on 13.6.2001; since the complainant was against giving bribes, he has filed the aforementioned complaint.

3 Pre-raid proceedings were conducted. Attar Singh (PW-8) was directed to join as a panchwitness. The raiding officer Inspector Mohd. Abdul Salam (PW-9) explained the procedure to PW-4 and PW-8; the bribe money of Rs.10,000/- which had been brought by the complainant was coated with phenolphthalein power and a live demonstration was given explaining to the witnesses (PW-4 and PW-8) that the coated notes when dipped in a solution of sodium carbonate would turn pink and these notes were accordingly handed over to PW-4 and direction was given to him that the money should be handed over to the accused only on demand.

4 On the same day i.e. on 13.6.2001 at about 11.00 a.m. PW-4, PW-5, PW-8 and PW-9 as also other members of the raiding party reached the office of the appellant at Minto Road. PW-4 and PW-8 entered the office at about 12.45. p.m.; PW-8 gave the appointed signal; PW-9 and other members of the raiding party reached the spot. PW-8 informed PW-9 that bribe money of Rs.5000/- had been accepted by the

appellant. The appellant was challenged; he became perplexed and started apologizing. The search of the appellant revealed that a sum of Rs.5000/- which were 10 currency notes of Rs.500/- each were lying in the left front pocket of his shirt. The number of the GC notes tallied with the numbers mentioned in the pre-raid proceedings; this is evident from the seizure memo Ex.PW-4/B. Right hand wash and left side shirt pocket wash of the accused were also taken. The solutions were transferred into separate clean bottles and sealed. The bottles were marked as RHW-I, RHW-II, LSPW-I and LSPW-II.

5 The CFSL vide its report Ex. PW-10/D opined the right hand wash of the appellant and left pocket wash of the shirt of the appellant as positive for the presence of phenolphthalein.

6 On the basis of the aforementioned evidence collected by the prosecution both oral and documentary the appellant was convicted and sentenced as aforesaid.

7 In the statement of the accused recorded under Section 313 Cr.P.C he had pleaded innocence; his submission was that he had been falsely implicated in the present case. The complainant had come to his office to deposit Rs.6000/- as Government charges for the release of

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goods which were to be deposited in the court of Rent Controller Om Prakash but since Om Prakash was not available the complainant came to the appellant and asked him to accept Rs.5000/-. The complainant had put the money forcibly into his pocket; police thereafter reached the spot and arrested him; this is a clear case of false implication.

8 No evidence was led in defence.

9 On behalf of the appellant arguments have been addressed in detail. It is pointed out that the judgment of trial court suffers from improbabilities and infirmities. The complainant (PW-4) is hostile; he has not supported the version of the prosecution; he has categorically stated that he had got the goods released by payment of Rs.6000/- and this money was in fact paid for the said purpose. Reliance by the trial court upon his version is an illegality. Reliance has been placed upon (2002) 8 SCC 18 Gurpreet Singh Vs. State of Haryana to support a submission that where the evidence of a hostile witness has been relied upon by the prosecution, the hostility of the said witness which is in favour of the accused must also be looked into. It is pointed out that the panchwitness (PW-8) had not really witnessed the proceeding and he being only in the category of a hearsay witness, the trial court has

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committed a second illegality in placing reliance upon his version. The testimony of the raiding officer is not by itself sufficient to nail the accused. The defence of the appellant was probable; it could not have been ignored. The trial Judge noting that Section 20 of the said Act comes to the aid of the prosecution to sustain a conviction under Section 13 (1)(d) of the PC Act is also an illegality. On all these counts, the appellant is entitled to a benefit of doubt and a consequent acquittal. In the alternate, it has been argued that the sentence imposed upon the appellant is harsh. He be granted leniency in the sentence. It is stated that the appellant is 67 years of age. He has suffered a long trauma of trial; he has also undergone incarceration of about 3 months. As per record, he is suffering from epilepsy since the last more than 20 years and recently in terms of the medical papers of the appellant which have been placed on record, he has also been diagnosed with a cancer. For this proposition, reliance has been placed upon a judgment of the Apex Court in Crl. Appeal No.404/2014 V.K. Verma Vs. CBI decided on 14.02.2014.

10 Learned public prosecutor has refuted these arguments. It is

reiterated that the judgment of the trial court calls for no interference. Not only the panchwitness (PW-8) has supported the version of the prosecution but it has also been corroborated by the raiding officer (PW-9); the complainant PW-4 has also admitted that he had signed the complaint Ex.PW-4/A; the complainant has also verified its authenticity. In this background the trial court convicting the appellant has committed no fault.

11 Arguments have been heard. Record has been perused.

12 PW-4 was the complainant. He has filed his complaint Ex.PW-4/A. In the recital of his complaint, he has stated that his goods had been seized by the Corporation; some people had come to his office on 08.06.2001 since the monthly payment had not been made and that is why his goods had been impounded. The following two days were holidays and he could not get his goods released. On 13.06.2001, he had gone to the office of the Corporation at Minto Road where he had met the appellant. The appellant Sohan Lal had been accompanied by one Om Prakash who was threatening him. This version of PW-4 in Ex.PW-4/A was not reiterated in toto on oath in Court. PW-4 had however admitted that he had made a complaint Ex.PW-4/A; he had

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admitted that on the fateful day, some persons claiming themselves to be the MCD officials had come to his shop and his goods were lifted; a complaint was lodged by him on the following day. He admitted his complaint (Ex.PW-4/A) bearing his signatures. He admitted that in the pre-raid proceedings, he had taken currency notes which was the bribe money of Rs.10,000/-; thus from the stage of the complaint up to the pre-raid proceedings, it has been admitted by PW-4 that at the time of raid, he had gone to the MCD Office along with some members of the CBI. He had deposed that he along with the panch-witness has gone to the City Zone building and first they had gone to the office of Om Prakash but he was not available. He deposed that this fact of Om Prakash not being available was narrated by him to the appellant who told him that he should pay a fine to get the goods released. Accordingly PW-4 had paid this sum of Rs.10,000/- which was coated with phenolphthalein powder to the appellant; the appellant issued him a receipt. The appellant kept this money in his pocket. Thereupon the panchwitness gave the appointed signal and raiding party reached the spot. Further deposition of PW-4 being that from the left shirt pocket, tainted money was recovered and the numbers in the GC notes matched

with the numbers in the pre-raid proceedings. PW-4 had further admitted that the hand-wash and the pant pocket wash were taken and put into clean bottles. He admitted his signatures on the pre-raid and post-raid proceedings Ex.PW-4/B and Ex.PW-4/C. He also admitted his signatures on seizure memos Ex.PW-4/D and Ex.PW-4/H as also the seizure memo Ex.PW-4/J all of which reflect the proceedings which were conducted on the spot on 16.06.2001.

13 Even in his cross-examination by the learned public prosecutor (after the witness had been declared hostile) he reiterated that the complaint Ex.PW-4/A was signed by him at point 'A'. In another part of his cross-examination, he had also admitted that the goods were only valued at Rs.20,000/- and he had requested the appellant Sohan Lal and Om Prakash to have mercy upon him. He admitted that he had been called by Om Prakash to the City Zone office on 13.06.2001 along with the bribe money; he admitted that he had accordingly filed a complaint. PW-4 had also admitted that when the appellant was challenged, he started trembling and begged pardon. In a further part of his cross-examination, he stated that the appellant had asked to deposit Rs.6,000/- with the Rent Controller Om Prakash but Om Prakash was not available

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there and accordingly he paid Rs.5,000/- to the appellant and the balance amount was to be paid later on. He denied the suggestion that this money was forcibly put in the pocket of the appellant.

14 This version of PW-4 as noted supra in fact fully supports the version of the prosecution. It fully supports not only the initial complaint which had been filed by PW-4 but also goes on to recite in detail the pre-raid proceedings. PW-4 has admitted that in the raid, he was accompanied by the panch-witness; he has admitted that the appellant had asked him to go to the office of Om Prakash to pay an amount of Rs.6,000/- but since Om Prakash was not present, the bribe amount of Rs.5,000/- was paid to the appellant. Admittedly, these GC notes were coated with phenolphthalein powder and were the same GC notes which had been taken by the complainant in the pre-raid proceedings and handed over to PW-9 who had then coated them with phenolphthalein. The hand-wash of the appellant and the left pant pocket of the appellant had turned positive as per the report of the CFSL (Ex.PW-10/D) substantiating the version of the prosecution that this in fact was the tainted money which was recovered from the left shirt pocket of the appellant.

15 The defence sought to be projected by the appellant that this money was to be paid as part of fine which the complainant had to pay to the Superintendent Om Prakash has come in the version of PW-4; the panch-witness (who is the so called independent witness) has also admitted that he had heard the appellant telling the complainant to go to pay this money to Om Prakash. This submission of the learned counsel for the appellant is correct. PW-8, the panch-witness had fully toed the line of the prosecution on oath not only on the stage of pre-raid proceedings but also the post-raid proceedings; he has however admitted that the complainant was told by the appellant to go to the office of Om Prakash with this money. Submission of the learned counsel for the appellant being that Om Prakash was the Rent Controller with whom the fine money had to be deposited and this defence had been projected by the appellant right from the inception; this was in fact the true version and also finds mention in his statement under Section 313 of the Cr.P.C.

16 In the course of hearing, it was put to the learned counsel for the appellant as also the public prosecutor as to who this Om Prakash was as the name of Om Prakash has been recited by the complainant not only in his complaint but also in his version on oath in Court. In his statement

under Section 313 of the Cr.PC, the designation of Om Prakash had been given. In this statement while answering question No.29, the appellant has stated as follows:

“A: I am innocent. I never demanded or accepted any bribe. The real facts are that the complainant on the date of raid came to me and asked to deposit Rs.6000/- for release of goods as govt.charges and also told him to deposit the same but I asked him to deposit the same to Rent Controller Om Parkash. The complainant went there but ZS Om Parkash was not available and then he again came to me and asked me to accept Rs.5000/- and he also said that the balance amount would be paid later on insisting that amount be deposited with Shri Om Parkash. Then complainant tried to put the money in my pocket forcibly and immediately police came and arrested me. I protested but no one heard me. I have been falsely implicated in this case.”

17 This Zonal Superintendent i.e. Om Prakash was examined as PW-2 on oath in Court. He has stated that on the fateful day i.e. 13.06.2001 he was posted as Superintendent, Zonal City Zone. He had come with the attendance register Ex.PW-2/A to Ex.PW-2/C to substantiate the version of the prosecution that on that day, the appellant was present in his office. No cross-examination has been effected of this witness.

18 If this defence of the appellant was in fact a true and real defence, it would have been incumbent upon him to have cross-examined PW-2 who according to the appellant was the person to whom the fine amount had to be paid since he was admittedly the Z.S. (Zonal Superintendent).

19 As noted supra, this witness was not cross-examined. That apart, defence projected by the appellant was that he got his goods released on payment of Rs.6,000/-; why he did not file any documentary proof to substantiate this defence has also not been answered. This defence is nothing but sham. It was rightly rejected by the trial Judge.

20 As noted supra, PW-8 is the panch-witness. He fully supported the version of the prosecution. His version is corroborated not only by the documentary evidence which includes Ex.PW-4/B to Ex.PW-4/J but also the oral testimony of PW-9 who was the raid officer. In fact this testimony has not even been assailed. The scientific evidence was also in favour of the prosecution. The report of the CFSL dated 31.08.2001 noted that the notes recovered from the person of the appellant were coated with phenolphthalein powder.

21 The appellant has been convicted for the two offences i.e. for the offence under Section 7 and the second offence under Section 13 (1)(d)

of the PC Act. For the offence under Section 7 where the initial ingredients of the said Section are proved, the presumption contained in Section 20 of the said Act comes to the aid of the prosecution. Although it is a rebuttable presumption, the onus would then shift upon the appellant to rebut this presumption. This presumption does not stand rebutted. The appellant was rightly convicted for the offence under Section 7 of the PC Act.

22 For the offence under Section 13 (1)(d) of the PC Act, there is no doubt that the presumption contained in Section 20 of the said Act does not come to the aid of the prosecution. However that does not in any manner advance the argument of the learned counsel for the appellant, as the prosecution, in view of this Court, has fully proved its case even without the support of Section 20 of the said Act. The conviction of the appellant also calls for no interference. Not only is the versions of PW-8 & PW-9 clear and coherent but the version of PW-4 who has admitted all the signatures on the documents which had been prepared both in the pre-raid proceedings as also in the post-raid also advance the version of the prosecution. His presence in the office of the appellant was for no reason but for the fact that he had taken the bribe money to

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be handed over to the appellant which was accordingly done when the same was demanded.

23 A hostile witness as has been noted in the Gurpreet Singh (supra) can be relied upon by the prosecution to the extent that it supports the prosecution as also the accused but there is nothing in the cross-examination of PW-4 which could directly advance the defence sought to be projected by the appellant. The version of PW-4 (as discussed supra) was thus rightly relied upon by the trial Judge. On no count, does the conviction of the appellant call for any interference.

24 On the point of sentence, this Court notes that the appellant has been convicted for the offence under Section 7 of the PC Act and has been sentenced to undergone RI for a period of 2 years and to pay a fine of Rs.4,000/- and in default of payment of fine, to undergo SI for 4 months; for the offence under Section 13 (1)(d), he has been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.6,000/- and in default of payment of fine to undergo SI for 6 months. Fine has since been paid. The appellant has suffered incarceration for about 3 months.

25 The judgment relied upon by the learned counsel for the appellant reported as V.K. Verma (supra) is applicable to the instant facts. In that

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case which was under the provisions of the old PC Act, no minimum sentence was prescribed. In that case, the appellant had been sentenced for a period of 1-½ years which was reduced to the period already undergone; he already having undergone a period of four months.

26 In the instant case, the medical condition of the appellant is not very good; he is a patient of Seizure and is also under scrutiny for possibility of cancer. He is aged 67 years. This Court is, accordingly, inclined to modify the sentence. The sentence of 3 years which is the sentence imposed upon the appellant is reduced to 6 months. Fine shall remain unaltered. His bail bonds are cancelled. Surety discharged. He be taken into custody to serve the remaining sentence.

27 Appeal disposed off in the above terms.

INDERMEET KAUR, J

APRIL 25, 2014
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