

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

% *Judgment reserved on :20.05.2014.*
Judgment delivered on:26.05.2014.

+ CRL.APPEL No. 266/2006
MANOJ KUMAR Appellant
Through Mr. K.B. Andley, Sr.Adv.with
Mr. M. Shamikh, Adv.

versus

STATE Respondent
Through Mr. Varun Goswami, APP
+ CRL.APPEL No. 282/2006 & Crl. M.A. Nos.5471-72/2014
KHAZAN SINGH Appellant
Through Mr. K.B. Andley, Sr.Adv.with
Mr. M. Shamikh, Adv.

versus

STATE Respondent
Through Mr. Varun Goswami, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Appellants Manoj Kumar and Khazan Singh are aggrieved by the
impugned judgment and order of sentence dated 24.04.2006 &
25.04.2006 respectively wherein accused Manoj Kumar has been
convicted under Sections 7 & 8 read with Section 13 (1)(d) and Section
13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to

as the 'said Act') read with Section 120-B of the IPC. Co-accused Khazan Singh has been convicted for the offence under Sections 7 and 13 (1)(d) read with Section 13 (2) of the said Act read with Section 120-B of the IPC. Both the accused persons have been sentenced to undergo RI for a period of 1 year and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo SI for 1 month for the offence under Section 13 (2) of the said Act read with Section 120-B of the IPC; each of the convicts have also been sentenced to undergo RI for a period of 6 months and to pay a fine of Rs.500/- and in default of payment of fine to undergo SI for 15 days for the offence under Section 7 of the said Act read with Section 120-B of the IPC. The convict Manoj has been further sentenced to undergo RI for a period of 1 year and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo SI for 1 month for the offence under Section 8 of the said Act. The sentences were to run concurrently. Benefit of Section 428 of the Cr.PC had been granted to the convicts.

2 Nominal rolls of the appellants have been requisitioned. They reflect that as on the date of grant of bail accused Manoj had suffered incarceration of about 3- ½ months and accused Khazan Singh had

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suffered incarceration of about 3- ½ months.

3 The version of the prosecution was unfolded in the complaint made by the complainant Suman Prakash examined as PW-4. In this complaint (Ex.PW-4/A), it was alleged that on 12.05.1993 accused Manoj Kumar, proprietor of M/s Sefali Scale Corporation (authorized to repair weights and measurements) along with co-accused Khazan Singh (Inspector in the Department of Weights and Measurements, Public Servant Department) visited the shop of the complainant; Khazan Singh booked the complainant for not keeping proper weights; challan was issued. After sometime, Manoj Kumar returned to the shop of the complainant and demanded a bribe of Rs.200/- promising him that the challan would be torn if this bribe money is paid. PW-4 refused. Accused Manoj got annoyed and told the complainant that he wanted to get rid of this problem, he would now have to pay Rs.500/-. Rs.300/- would be paid to the co-accused Khazan Singh and balance Rs.200/- would be kept by Manoj Kumar. On 26.05.1993, accused Manoj again visited the shop of the complainant demanding a sum of Rs.500/-. PW-4 agreed to pay the amount on 27.05.1993. However he did not wish to pay the bribe money, he made a complaint before the CBI. Pre-raided
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proceedings were organized and the panch witness Mohan Singh Shah (PW-12) was asked to join the raid. A live demonstration was given by the CBI officer ACP Ramesh Singh (PW-16) wherein it was shown that the bribe money (Rs.500/- in the denomination of Rs.100/- each) if coated with phenolphthalein powder and dipped into a colourless solution would turn pink. In the pre-raid proceedings, the complainant was informed that this money was to be handed over to the accused only on his demand.

4 Thereafter, the raid team reached the shop of PW-4. At about 01:00 PM, accused Manoj Kumar came to the shop of PW-4 and showed him the challan and accordingly PW-4 handed over the tainted money to Manoj Kumar which was kept by him in his left side shirt pocket. PW-12 gave the appointed signal. Raiding party reached the spot. From the personal search of Manoj Kumar, the tainted money was recovered from his shirt pocket and from his search, slip Ex.PW-4/H purported to be in the hand-writing of Khazan Singh was recovered. His right hand wash was also taken. The washes were seized and sealed into 6 separate bottles marked as Ex.RHW-1, Ex.RHW-2, Ex.LHW-1, Ex.LHW-2, Ex.SPW-1 and Ex.SPW-2. Seal was handed over to PW-12.

Recovery memo Ex.PW-4/C was prepared. Panchnama (Ex.PW-12/A) was prepared.

5 Investigation was then marked to D.D. Sharma (PW-15). Site plan (Ex.PW-15/A) was prepared. Accused Manoj was arrested. Pursuant to the disclosure statement of accused Manoj, role of co-accused Khazan Singh was revealed and on 28.05.1993, he was arrested vide memo Ex.PW-14/A. Specimen handwriting of accused Khazan Singh (S-15 to S-34) was taken. The admitted hand-writing of accused Khazan Singh was also taken vide memo Ex.PW-9/A and Ex.PW-9/B. The report of the hand-writing expert (Ex.PW-17/A) had evidenced the specimen, admitted and questioned hand-writing to be of the same person i.e. of Khazan Singh. The hand washes in the pocket pant wash of Manoj had also tested positive for phenolphthalein.

6 In the statement of the accused recorded under Section 313 of the Cr.PC, both of them have pleaded innocence; accused Manoj had stated that the complainant was his distant relative and because of a family rivalry, he has been falsely implicated in the present case. Co-accused Khazan Singh had also pleaded innocence stating it to be a case of false implication.

7 No evidence was led in defence.

8 On behalf of the appellants arguments have been addressed in detail. The first argument of the learned counsel for the appellants is qua the sanction (Ex.PW-8/A) which has been assailed qua the public servant. Attention has been drawn to this document. It is pointed out that at three places i.e. at points 'X' 'Y' and 'Z', there are question marks; no date has been mentioned in the sanction order; it had not been typed in the presence of PW-5. It also does not bear the slip of the department. The sanction is clearly suspicious; the trial would be vitiated on this ground alone. It is pointed out that this is a clear case of false implication as accused Manoj is admittedly related to the complainant and because of a family dispute, this false case has been set up against him. There is no evidence to show that Khazan Singh was ever present at the spot and merely a disclosure statement of co-accused Manoj implicating Khazan Singh is no evidence in the eyes of law. The panch witness (PW-12) had also been declared hostile. Attention has also been drawn to the testimony of PW-1. Submission being that the possibility of tampering cannot be excluded as PW-1 in his cross-examination has admitted that there is no notified malkhana in the Anti-Corruption

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Branch. It is pointed out that accused Khazan Singh has been arrested after five years for which there is no explanation and in this intervening period, a vigilance clearance had been given to Khazan Singh. All these clearly show that Khazan Singh has been falsely implicated in the present case. Accused persons are entitled to a benefit of doubt and a consequent acquittal.

9 Arguments have been refuted. It is pointed out that on no count does the impugned judgment suffer from any infirmity. Not only is the testimony of the complainant (PW-4) cogent and coherent but even the documentary evidence which includes the report of hand-washes, the hand-writing on the challan which was in the hand of Khazan Singh and which was recovered from the pocket of accused Manoj clearly establishes the connectivity and complicity between the accused persons.

10 Arguments have been heard. Record has been perused.

11 The sanction Ex.PW-8/A is also clear and categorical. This document bears a date of 17.02.1999. It is running into one complete page and has clearly delineated the brief facts of the case; S.C. Poddar (PW-8) is the Director of Education and the person who was originally

authorized and empowered to accord sanction for the prosecution of his employee Khazan Singh who was at the relevant time posted as a Head Clerk in the department of PW-8. This document further recites that after carefully examining the material placed before PW-8, sanction for prosecution is being accorded.

12 A sanction order is not required to be a detailed one; the sanction order should speak for itself. The Constitution Bench of the Supreme Court in 1963 Supp (2) SCR 652 R.S. Pandit V.State of Bihar referring to a decision of the Privy Council reported in AIR 1948 P.C. 82 Gokulchand Dwarkadas Mararka Vs. R. had in this context noted as follows:

“Section 6 of the Act (old Act) does not require the sanction to be given in a particular form. The principle expressed by the Privy Council, namely, that the sanction should be given in respect of the facts constituting the offence charged equally applies to the sanction under Section 6 of the Act. In the present case all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction.”

13 The sanction was valid.

14 PW-4 is the complainant. He is the star witness of the prosecution. He has reiterated the averments made in the complaint. On oath, he has deposed that on 12.05.1993, two officials from the Weight and Measurement Department i.e. Khazan Singh who is an Inspector and Manoj Kumar who is a private person has a shop of weight has visited his shop; they checked the weight lying in the shop and the challan was issued to him. After sometime, Manoj Kumar returned back to the shop. He demanded Rs.200/- from PW-4. PW-4 refused to pay the money. On 22.05.1993, accused Manoj Kumar again came to his shop and told him that the challan had been deposited in the office and in case he wanted to get that challan cancelled, he would have to pay Rs.500/- of which Rs.300/- would be paid to Khazan Singh and balance Rs.200/- would be kept by him. On 26.05.1993, Manoj Kumar again visited his shop; at this point of time, he had challan with him. PW-4 told him that he did not have any money and he would pay the money on 27.05.1993. On 27.05.1993, the complaint was lodged by PW-4 as he was not willing to pay this bribe amount. He reiterated that the pre-raided proceedings had taken place in which the panch witness (PW-12) had been asked to join the raid and in their presence a live demonstration

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was given as to how the tainted money if coated with phenolphthalein powder and dipped into a colourless solution would turn pink. The raid proceedings had also been reiterated. PW-4 on oath reiterated that the tainted money of Rs.500/- was recovered from the shirt pocket of accused Manoj Kumar and hand washes were prepared in his presence as also in the presence of PW-12.

15 PW-4 was subjected to a lengthy cross-examination but nothing could be elicited in his cross-examination which could discredit him. He admitted that he knew accused Manoj Kumar for last 2 years but he denied the suggestion that Manoj is related to him. The defence sought to be projected on behalf of appellant Manoj that accused Manoj has been falsely implicated because of a family rivalry did not find mention in the cross-examination of PW-4 as no such suggestion has been given to him. This has emanated for the first time in the statement of accused Manoj recorded under Section 313 of the Cr.PC; it is clearly an afterthought.

16 PW-12 was the panch witness. He has also fully supported the case of the prosecution toeing the line of PW-4. However in one part of his testimony, since the offence related to the year 1993 and the witness

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had come into the witness box in the year 2005 which was more than 12 years later due to some memory lapse, the witness was permitted to be cross-examined by the public prosecution. PW-12 admitted his signatures on all the documents i.e. pre-raid proceedings and post-raid proceedings as also in the seizure memo of the GC notes which tallied with the notes number noted in the pre-raid proceedings.

17 Dharam Pal Mata (PW-6) and Jai Bhagwan (PW-7) were both Zonal Inspectors who were working in the department of Khazan Singh. PW-6 was posted as Zonal Officer at the relevant time between April, 1992 to May, 1993. PW-6, PW-7 and L.N. Chawla (PW-10) have on oath detailed the procedure i.e. the manner in which an Inspector goes to the shop to make inspection; the Inspector is also empowered to prepare challan against that person. These challans are then forwarded by the Inspector and sent to the Head Quarter and they are also entered in the prosecution register. They are normally sent once in a week. It is admitted by PW-6 that he had seen the challan in the name of PW-4. He admitted that in Ex.PW-2/B, there is a cutting on the date and the earlier date of 20.05.1993 reads as 12.05.1993. He also admitted that when he had forwarded Ex.PW-2/B, there was no such cutting. He admitted that

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he had forwarded his note on 21.05.1993. PW-7 in the same context had deposed that the private person is not permitted to accompany an Inspector at the time when he goes for inspection; this is not the procedure.

18 Accused Khazan Singh was admittedly arrested five years after the date of the offence i.e. in the year 1998; his admitted signatures i.e. record of his leave application had been obtained from Sushma Tigga (PW-9) vide memo Ex.PW-9/A; three questioned documents had been sent to the hand-writing expert i.e. Ex.PW-4/H, Ex.PW-2/B and Ex.PW-10/B; the hand-writing expert Harshvardhan (PW-17) has submitted its report (Ex.PW-17/A) and noted that the specimen, admitted and questioned signatures were all in the hand-writing of Khazan Singh.

19 The evidence thus collected clearly clinches the version of the prosecution. Not only are the oral testimonies of PW-4 and PW-12 in conformity with the documentary evidence i.e. Ex.PW-4/H, Ex.PW-2/B and Ex.PW-10/B (all of which are in the hand-writing of co-accused Khazan Singh), all these pieces of evidence show that on 12.05.1993 Inspector Khazan Singh along with co-accused Manoj Kumar had visited the shop of PW-4 and had challaned him. Thereafter Manoj

Kumar returned back to the shop of PW-4 asking for bribe money. PW-4 did not pay the amount. Manoj Kumar again returned to the shop of PW-4 on 22.05.1993 on which date he issued a challan informing PW-4 that in case he wanted this challan to be cancelled, he would have to pay a bribe of Rs.500/- of which Rs.300/- would be kept by Khazan Singh and Rs.200/- would be taken by Manoj Kumar. PW-4 had agreed to pay this amount on 27.05.1993. The challan which was issued on 20.05.1993 is Ex.PW-2/B. The photocopy of this document is Ex.PW-10/B and one is verbatim other. This shows that there is an overwriting at point 'X' and 20.05.1993 has been cut and upon it, there is overwriting of 12.05.1993. This cutting is clear and apparent. This clearly shows that the challan was prepared only on 20.05.1993 but the date was thereafter cut out to make it read out as if it was prepared on 12.05.1993. This is in the hand-writing of accused Khazan Singh. That is how on 21.05.1993, PW-7 had forwarded this challan. The story does not end here. Ex.PW-4/H which was supposed to accompany Ex.PW-2/B as is evident from the statement of PW-10 who has on oath while explaining the procedure stated that Ex.PW-10/B had not accompanied by the statement of the complainant (Ex.PW-4/H) and that is how co-accused Manoj Kumar had

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taken Ex.PW-4/H to the complainant again on 26.05.1993 informing him that if he wanted his challan to be cancelled, he would have to pay the bribe money. PW-4 had agreed to pay the bribe money on 27.05.1993. On 27.05.1993, in the raid proceedings Ex.PW-4/H was recovered from the right shirt pocket of Manoj Kumar. This was at the spot.

20 How this document which was admittedly in the hand-writing of Khazan Singh came into the pocket of Manoj has remained unanswered and unexplained? Efforts had been made by the learned counsel for the appellants on this score trying to built up some explanation but no such explanation is forthcoming. Submission of the learned counsel for the appellants that this document was planted into the pocket of accused Manoj Kumar is an argument totally bereft of force as had this been the position, this would have been reflected in the cross-examination of the witnesses or in the first line of defence which was projected by the appellants but no such defence had emerged.

21 The connectivity and complicity of accused Manoj Kumar and accused Khazan Singh is writ large as a document written by the Inspector i.e. by public servant Khazan Singh was found in the pocket of

a private man i.e. Manoj Kumar at the time when the raid was conducted. Conspiracy between both the accused persons was evident. Manoj Kumar was caught red handed. His hand and pocket washes had tested positive for phenolphthalein; money was kept by him in his pocket after touching his hand. This further advances the version of the prosecution qua Khazan Singh. Qua Khazan Singh, not only Ex.PW-4/H, Ex.PW-2/B and Ex.PW-10/B are in the hand-writing of accused Khazan Singh evidencing the fact that he had gone to the shop of PW-4 and had prepared a challan qua him, the further crucial piece of evidence against Khazan Singh is Ex.PW-4/H which was found in the pocket of his accomplice Manoj Kumar. Both the accused persons are clearly guilty of the offence for which they have been charged.

22 Section 8 of the said Act speaks of gratification by corrupt or illegal means to influence a public servant; this Section speaks of receipt of gratification as a 'motive' or 'reward' for the purpose of inducing a public servant by corrupt or illegal means to complete the offence. It is a proposition of law qua a person who is not a public servant. The presumption under Section 20 of the Evidence Act also arises. It is no doubt a rebuttable presumption and the accused persons are given a

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chance to rebut it but in this case they have failed to do so. The statement of the accused Manoj Kumar stating that he is a relative of the accused and there is a family rivalry between the parties has not been borne out from the record. Accused Khazan Singh has projected no defence.

23 On no count, does the impugned judgment call for any interference. Both the appellants have already been granted minimum sentence.

24 At this stage, this Court has been informed that appellant Khazan Singh has expired. The appeal qua Khazan Singh is accordingly abated. Learned counsel for the appellants who has filed an application seeking permission to bring on record his legal representatives no-longer presses this application. It is permitted to be withdrawn. Accused Manoj be taken into custody to serve the remaining sentence.

25 Appeals disposed off in the above terms.

INDERMEET KAUR, J

MAY 26, 2014

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