

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

Reserved on: 02.01.2014

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Date of Decision: 06.01.2014

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CRL. A. No.645 of 2010

MAHESH PAL SINGH

..... Appellant

Through: Dr. K.S. Chauhan, Mr. Chand Kiran,
Mr. Ajit Kumar Ekka & Mr. Tej Singh
Varun, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J.

On 24th April, 2007, the complainant Mr. Shiv Kumar, whose son Ashwin at that time was studying in the 8th Standard in Ludlow Castle No.2 School and was placed in compartment in Mathematics, came to the office of the Anti Corruption Branch and gave a written complaint, exhibit PW 4/8, alleging therein that on the appellant, Mr. M.P. Singh, who was an English Teacher, asking him, through his son, to meet him, he (the complainant) went to the School along with his son and met the appellant, who offered to pass his son on payment of Rs.3,000.00 as bribe. He further alleged that the appellant had called him by 1:00 p.m. that day. The complainant also brought to the office of Anti Corruption Branch, currency notes amounting to Rs.3,000.00. The currency notes produced by the complainant were then treated with phenolphthalein

powder and a demonstration was then given to the complainant as well as the *panch* witness, Shri Ved Prakash, LDC in Food & Supplies Department, Government of NCT of Delhi by touching a hand of the *panch* witness with the aforesaid treated notes and then taking wash of the said hand in the solution of sodium carbonate, which turned into pink. The currency notes were then given back to the complainant and the *panch* witness was instructed to remain close to the complainant and give pre-decided signal after witnessing the transaction. The complainant and the *panch* witness were sent inside the School and were followed by the other members of the raiding team, who took positions in the Administrative Block of the School. On noticing the pre-decided signal given by the *panch* witness, the members of the raiding team reached the staff room of the School and on search of the appellant by the *panch* witness, the bribe money of Rs.3,000.00 was recovered from the right pocket of his pant. The currency notes taken out of the pocket of the appellant were seized and the wash of the hands of the appellant as well as the right pocket of his pant was taken in Sodium Carbonate solution, which turned pink.

2. The appellant was charged under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act'). He pleaded not guilty and claimed trial. The prosecution examined as many as twelve (12) witnesses in support of its case. One (1) witness was examined in defence. Vide impugned judgement and order of sentence, the appellant was convicted under Sections 7 & 13(1)(d) read with Section 13(2) of the PC Act and was sentenced to undergo rigorous imprisonment for a period of three (3)

years and pay a fine of Rs.30,000.00 or to undergo simple imprisonment for six (6) months in default under Section 7 of the PC Act. Identical sentence was awarded to him under Section 13(2) of the PC Act. It was further directed that both the sentences shall run concurrently.

3. The complainant, Shri Shiv Kumar, came in the witness box as PW-4 and stated that one day prior to 24.4.2007, his son Ashwin Dhigan, who was studying in Class 8 in Ludlow Castle No.2 School informed him that his teacher, Mr. M.P. Singh was calling him. He, therefore, went to the School along with his son, in the morning of 24.4.2007. The appellant, who met him in the School told him that he could get his son succeed in the compartmental examination and demanded bribe of Rs.3,000/-. He further stated that the appellant refused to reduce the bribe amount, saying that he had to give some money to senior officers as well. He thereupon went to the police and handed over six (6) currency notes of Rs.500.00 each to an Inspector in the presence of *panch* witness, Shri Ved Prakash. After noting down the numbers of those currency notes the police officer applied powder on them, gave demonstration, and thereafter handed over the said currency notes to him. At about 1:00 p.m. he along with the *panch* witness and other members of the raiding party reached the School. His son called the appellant, who first took them outside the School and then went inside the Staff Room. On return from the Staff Room, the appellant demanded and accepted the bribe amount of Rs.3,000.00 from him and kept the same in the right side pocket of the pant he was wearing. The appellant also told him that he had talked in the office. Thereafter the *panch* witness gave the pre-decided signal to the raiding party which

reached there and apprehended the appellant. The complainant further stated that when the appellant was apprehended he dropped the money after taking it out from his pocket and the currency notes were then collected by the members of the raiding party. Serial numbers of those currency notes tallied with the serial numbers mentioned in the pre-raid report and were seized vide memo Exhibit PW-1/C which bears his signatures. He has further stated that the right hand of the appellant was dipped in some water type solution which turned into pink and was thereafter transferred into two bottles which were seized by the police officers. The appellant was then taken to the office of the Anti Corruption Branch where a wash of the right side pocket of his pant was taken. The colour of the solution turned pink during wash. Another pant was called from the house of the appellant and the pant which he was wearing was seized by the police.

4. The *panch* witness, Shri Ved Prakash came in the witness box as PW-6 and fully supported the case set out in the charge sheet. He corroborated the deposition of the complainant with respect to handing over six (6) currency notes of Rs.500.00 each to the police officer, the number of those currency notes being recorded in the pre-raid report, powder being applied to those notes and a demonstration being given by touching his hand and taking wash in a colourless solution, which on such wash turned into pink. He further stated that on seeing the complainant, the appellant came out of the class room and after walking for some time entered the Staff Room. Thereafter the appellant came out in a gallery, accepted the bribe money in his right hand and kept the same in the right side pocket of his pant. He thereupon gave pre-

decided signal to the raiding party, which reached there. He further stated that the treated currency notes were recovered from the right pocket of the pant of the appellant, their numbers tallied with the numbers noted in the pre-raid memo and said currency notes were then seized vide memo exhibit PW-4/C which bears his signatures. He has also corroborated the deposition of the complainant with respect to the hand of the appellant being dipped in some water type solution which then turned into pink and seizure of the said solution after transferring the same into two bottles. According to this witness, the wash of the right pocket of the pant of the appellant was also taken in the same manner and on such wash the solution turned pink and was seized after transferring the same into two bottles.

5. PW-8, Inspector Santosh Kumar of the Anti Corruption Branch, has deposed regarding the complainant coming to their office, handing over six (6) currency notes of Rs.500.00 each, phenolphthalein powder being applied to those notes and the same being handed over to the complainant after giving demonstration in the presence of the complainant and the *panch* witness by touching right hand of the *panch* witness with treated witness and thereafter taking wash of the said hand in the solution of Sodium Carbonate. He further stated that on receiving the pre-decided signal from the *panch* witness, he along with other members of the raiding party reached the Staff Room where the *panch* witness told him as to what had transpired. He offered his search to the appellant, who declined the offer. The *panch* witness thereafter took out the treated currency notes from the right pocket of the pant of the appellant. The said currency notes were then seized and right hand

wash of the appellant was taken in a colourless solution of Sodium Carbonate which turned into pink. Thereafter wash of the right side pant pocket of the appellant was taken and that also turned into pink and was duly seized. This witness also took the specimen signatures of the appellant Exhibit PW8/D1 to D6.

6. PW-12, Shri Anurag Sharma, Sr. Scientific Officer (Documents), FSL Rohini, Delhi who compared the writing Q1 and Q2 with the specimen signatures of the appellant. In his opinion, the author of the specimen writing S1 to S6 was also the author of the question writing Q1 and Q2.

7. In his statement under Section 313 Code of Criminal Procedure, the appellant admitted that he was posted as TGT (English) in Rajkiya Pratibha Vikas Vidyalaya, Ludlow Castle-II, Delhi in April, 2007. He, however, denied having asked Master Ashwin to ask his father to meet him. He also denied having demanded the bribe from the complainant, taking bribe amount of Rs.3,000/- from him on 24.4.2007 and recovery of the said money from his pocket. He stated that on 24.4.2007 when he was coming back after taking water from the water cooler installed in the Administrative Block of the School, the complainant met him in front of the office of the Principal and enquired about the result. He told the complainant that he had no concern with the said result and asked the complainant to contact the class teacher. Some altercation took place between them in which he was beaten by the complainant and the officials of Anti Corruption Branch.

8. DW-1, Shri Praveen Kumar, has stated that on 24.4.2007 when the appellant was reading newspaper from the dias where the newspapers were displayed one person caught hold of him from the back side with the collar of his shirt. The appellant was thereafter dragged by that person. According to this witness two-three persons were pushing the appellant but he was resisting them. According to him some teachers came there and stopped those persons. The witness claimed that no recovery was made from the appellant in his presence.

9 Section 7 of the PC Act, to the extent it is relevant for this case, provides that whoever, being a public servant, accepts or obtains or attempts to obtain, for himself any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, shall be liable to the prescribed punishment. Explanation (d) to Section 7 of the PC Act provides that a person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within the words “a motive or reward for doing”. Therefore a demand for money for doing a favour such as making a student succeed in the examination, would constitute an attempt to obtain illegal gratification as a motive or reward for doing an official act or showing favour in the exercise of official functions, irrespective of whether the public servant attempting to obtain such gratification is or is not in a position to actually extend any such favour.

10. The deposition of the complainant, which I see no reason to disbelieve clearly shows that the appellant not only demanded but actually obtained illegal gratification for him, on the promise that he would make his son succeed in the compartmental examination in Mathematics. Though it was contended by the learned counsel for the appellant that the complainant has implicated the appellant for vested reasons, no such reason could be spelt out by him. Admittedly, there was no enmity or ill-will between the complainant and the appellant. Therefore, the complainant had absolutely no reason to impute a false demand and acceptance of bribe to the appellant. Moreover, the deposition of the complainant with respect to acceptance of Rs.3,000/- by the appellant from him has been fully corroborated by the *panch* witness, Shri Ved Prakash, LDC, who is a public servant and had joined the raiding party in performance of his official duties as a public servant.

11. The following observations made by me in Madan Lal Vs. The State of NCT of Delhi 2010 (9) AD Delhi 685 are apt for this case as well:

“23. The courts need to appreciate that the citizens in our country are most of the times reluctant even to lodge a complaint of demand of illegal gratification from them. Most of them pay the illegal gratification either with a view to get done something to which they are otherwise not entitled under the Rules or in order to get their matter expedited or with a view not to antagonize the public servant dealing with their matter, lest he puts obstacle in their way by taking a view or recording a note unfavourable to them. When a person takes the step of going to the Anti Corruption Branch, making a complaint, and getting a trap organized, he knows it very well that it was going to cost him a lot of inconvenience and harassment. Firstly, he has to visit the office of Anti Corruption

Branch and pay the bribe money from his pocket. He has to complete a number of formalities in the office of Anti Corruption Branch and then accompany the officials constituting the raiding party to the place of the accused. He then has to visit the office of the Anti Corruption Branch in connection with the investigation of the case and thereafter he has to attend the court on a number of occasions. While doing all this, the complainant has to necessarily remain away from the work or business in which he is engaged and thereby he sacrifices a lot of his precious time and possibly also the money which he could be earning utilizing that time. He has to withstand a grilling cross-examination at the hands of the defence counsel and also face the animosity of not only the public servant got trapped by him but also of his colleagues, who will be antagonized with him, on account of his getting a colleague of theirs trapped for accepting bribe. A person making complaint against a public servant knows it very well that in the department of the accused, no one may like to deal with him in future and in fact the colleagues of the accused are only likely to put obstacles in the work which he may have in the department. Therefore, most of the time, a person, from whom bribe is demanded, either pays up the money or he simply withdraws, instead of reporting the matter to the Anti Corruption Branch and going to the extent of being member of a raiding party. It is only in extreme cases where a citizen has a strong feeling of having been wronged or where he is so much conscious of his rights that instead of keeping silent or paying money, he wants a bribe seeker to be punished that he goes to the Anti Corruption Branch, make a complaint and then follows that complaint to its logical conclusion. Ordinarily the testimony of the complainant need to be believed unless there are strong and compelling reasons creating serious doubt on the truthfulness of his testimony.”

12. Ex.PW8/G is the writing which was recovered from the personal search of the appellant, when he was arrested. On the front side of this paper, there is a writing “23 April to 28 April, 2007, which is marked as Q1. On the backside of this paper, there is a writing “VIII A – 8141 –

Ashwani – Maths and S. Study” which has been marked as Q2. S1 to S6 are the specimen writing of the appellant taken by the Investigating Officer. The appellant has not denied that the specimen writings S1 to S6 were written by him. The question writings Q1 and Q2 on Ex.PW8/G were compared by the handwriting expert PW9 with the specimen writings S1 to S6 and in his opinion, the author of the specimen writings S1 to S6 is the author of question writings Q1 and Q2. The aforesaid paper recovered from the pocket of the appellant is strong corroborative documentary evidence against him. If he had nothing to do with the complainant or his son, as is the defence taken by him, there could be no reason from him to write the name of Ashwani, son of the complainant and the subjects in which he was placed in compartment, on this document. It would be pertinent to note here that, as would be evident from the letter Ex.PW3/D sent by the school to the IO of this case, Ashwani – son of the complainant, was placed for compartments in mathematics and Social Science and both the subjects were found written on the back side of the document Ex.PW9/G.

13. It was contended by the learned counsel for the appellant that since admittedly, the appellant was not teaching Mathematics to the son of the complainant, he was not in a position to help him in any manner in the compartmental examination. Admittedly, the appellant was a teacher in the school in which the son of the complainant was studying. If a school teacher makes such an offer to a parent, it would not be unrealistic for the parent to fall into his trap and pay bribe to him on the assumption that being a teacher in the same school he would be in a position to help his son in passing the examination which he had to take.

In any case, once it is proved that there was actual demand and acceptance of gratification by the appellant, the question as to whether the appellant was in a position to actually help his son in the compartmental examination or not become altogether irrelevant, in view of explanation (d) to Section 7 of the PC Act.

14. In Chaturdas Bhagwandas Patel Vs. The State of Gujarat (1976) 3 SCC 46, the Supreme Court interpreting the explanation to Section 161 of the Indian Penal Code *inter alia* observed and held as under:

“21. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing. This is clear from the last Explanation appended to Section 161, according to which, a person who receives a gratification as a motive for doing what he does not intend to do, as a reward for doing what he has not done, comes within the purview of the words "a motive or reward for doing." The point is further clarified by Illustration (c) under this Section....”

“22. Indeed, when a public servant, being a police officer, is charged under Section 161 Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, the question whether there was any offence against the giver of the gratification which the accused could have investigated or not, is not material for that purpose. If he has used his official position to extract illegal gratification, the requirement of the law is satisfied. It is not necessary in such a case for the Court to consider whether or not the public servant was capable of doing or intended to do any official act of favour or disfavour.”

In Syed Ahmed Vs. State of Karnataka 2012 (8) SCC 527, the complainant and his father had some land dispute with their immediate

neighbour. The appellant, a police officer, who was inquiring into the complaint made with respect to the said dispute, demanded illegal gratification from the complainant to enable him to file a charge sheet against his neighbour. That dispute, however, got resolved in a few days and resulted in a settlement. Thereafter another dispute arose between the complainant and his neighbour which resulted in another complaint being lodged by the complainant against his neighbour. It was claimed by the complainant that the appellant demanded illegal gratification for inquiring into the said complaint made by him. The trial judge acquitted the appellant noticing that the land dispute had got amicably settled and, therefore, there was no connection of the appellant with the complaint relating to land dispute. As regards the second complaint the trial court noted that the appellant had no role to play in it since he was not investigating the said complaint and, therefore, there was no occasion for him to demand any illegal gratification from the complainant. The High Court, however, convicted the appellant holding that in view of Section 7(d) of the PC Act, a public servant who was not in a position to do any favour to a person could also be deemed to commit an offence under the Act if he demanded and accepted illegal gratification. Rejecting the appeal, the Apex Court held that the issue whether the appellant could or could not deliver results became irrelevant in view of the testimony of PW1 & PW2 who had stated that the appellant had demanded and accepted currency notes which he kept in the pocket of his trousers. Therefore, in the present case also since the appellant demanded and accepted illegal gratification from the complainant, the question as to whether he was in a position to extend

any favour to the son of the complainant in the compartmental examination or not become wholly irrelevant.

15. The learned counsel for the appellant pointed out that according to the complainant, on seeing the police officials, the appellant had taken out the currency notes from his pocket and thrown them on the ground whereas according to PW4, the *panch* witness, and PW8, Inspector Santosh Kumar of Anti Corruption Branch, the currency notices were recovered by the *panch* witness from appellant's pocket. In my view, the aforesaid discrepancy between the deposition of the complainant on the one hand and depositions of the *panch* witness and the police officer on the other, in the facts & circumstances of this case cannot be said to be so material as to result in altogether rejection of the case set up by the prosecution. The complainant as well as the *panch* witness have corroborated each other in saying that when the appellant met them in the School, he accepted a sum of Rs.3,000/- from the complainant and kept the same in the right side pocket of his pant. Once it is proved that the appellant had accepted the bribe money from the complainant and kept the same in the pocket of his pant, the question as to whether the money was ultimately seized from his pocket or from the ground loses much of its significance. The core part of the testimony of the complainant and the *panch* witness was acceptance of the money by the appellant from the complainant and his keeping that money in the pocket of his pant and there is absolutely no contradiction in their testimony on this core aspect.

16. It was contended by the learned counsel for the appellant that had the appellant actually demanded illegal gratification from the complainant he would have complained to the Principal/Vice Principal of the School instead of going to the police in the very first instance. I, however, find no merit in the contention. If a person is strongly opposed to the idea of taking favours by paying bribe, it ought to be his endeavour to get the bribe seeker caught red-handed, so that he does not extend such demands to other persons, and the complainant in this case has expressly stated, in his complaint, that he was opposed to the idea of giving and taking bribe. Had the complainant made a complaint to the Principal/Vice Principal of the School, instead of approaching the Anti Corruption Branch, the appellant might or might not have been subjected to some administrative action, but he would not have got the punishment which has been awarded to him on his being caught red-handed while accepting bribe from the complainant. In fact, it is also not sure whether any administrative action would certainly have been taken against the appellant by the Principal/Vice Principal of the School since, it would have been the word of the complainant vis-à-vis the word of the appellant, had such a complaint been actually made instead of approaching the police.

17. As regards DW1, the testimony of the aforesaid witness does not inspire confidence. As per the version given by him the appellant was reading newspaper when a person caught hold of him from the backside of his collar and dragged him. On the other hand, the version given by the appellant in his statement under Section 313 of the Code of Criminal Procedure was that when he was coming back to the Staff Room after

drinking water from the water cooler and reached in front of the office of the Principal, the complainant suddenly came to him, inquired from him about the result and the appellant asked him to contact the class teacher. No altercation between the complainant and the appellant has been claimed by DW1 and this was not the case of the appellant in his statement under Section 313 of the Code of Civil Procedure that he was reading newspaper when the complainant, all of a sudden, came there, caught hold of him from the backside of his collar and then dragged him. Moreover, no complaint was made by DW1 to the Principal of the School, alleging therein that he had seen the appellant being caught from the backside of his collar and being dragged by the complainant. Being a teacher in the same School he was bound to be aware of the criminal case registered against the appellant. Had he actually witnessed the incident in the manner stated by him, he would have brought the incident to the notice of the Principal of the School or some other higher authority.

18. Section 13(1)(d) of the PC Act to the extent it is relevant for the present case, provides that a person is said to commit criminal misconduct, inter alia, if he (i) by corrupt or illegal means or (ii) by abusing his position as a public servant obtains himself any pecuniary advantage.

19. The expression “corrupt or illegal means” has not been defined in the Act. Illegal would obviously mean something which the law prohibits. The definition of the expression ‘corrupt’ in the Shorter Oxford Dictionary includes something influenced by bribery. This

expression would also include something which is morally unsound, dishonest, depraved or pervert. Therefore, accepting money as bribe would certainly amount to use of corrupt means. Since taking or attempting to take bribe is prohibited by law, such an act would also amount to use of illegal means. The appellant, therefore, is guilty of criminal misconduct under Section 13(1)(d)(i) of the Act since he took Rs.3,000/- from the complainant by corrupt and illegal means.

As observed by the Hon'ble Supreme Court in M.Narayanan Nambiar versus State of Kerala [AIR 1963 SC 1116], abuse means misuse i.e. using one's position for valuable things, for which it is not intended. The abuse of official position by a public servant may not necessarily be by use of corrupt or illegal means. If a public servant obtains valuable things or pecuniary advantage by use of corrupt or illegal mean without abusing his position as public servant, that would amount to criminal misconduct in terms of sub clause (i), whereas if he obtain valuable things or pecuniary advantage by abusing his position, that would constitute an offence under sub clause (ii) irrespective of whether he employs corrupt or illegal means to obtain such a valuable thing or advantage or not. The appellant abused his position as a public servant by demanding and accepting Rs.3,000/- from the complainant, on the assurance that he would make his son succeed in the compartmental examinations. Had he not been holding the position of a teacher in the school, it would not have been possible for him to extend such a demand. Therefore, he abused his position as public servant in obtaining pecuniary advantage to the extent of Rs.3,000/- from the

complainant. The appellant, therefore, was liable to be convicted under Section 13(1)(d) read with Section 13(ii) of the Act.

20. For the reasons stated hereinabove, I find no good reasons to interfere with the conviction of the appellant under Section 7&13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. However, considering all the facts and circumstances of the case, including the personal circumstances of the appellant, the substantive sentence awarded to the appellant is reduced from three (3) years to two (2) years each under Section 7 as well as under Section 13 (1)(d) read with Section 13(2) of the Act. The sentences shall run concurrently. The appellant shall also pay fine imposed upon him unless already paid and in the event of failure to pay the fine, he shall undergo the sentence awarded to him by the learned trial court, in default of payment of fine. The appellant is directed to surrender forthwith before the concerned trial court for undergoing the sentence awarded to him. One copy of this order be sent immediately to the concerned Court along with the trial court record. If the appellant does not surrender forthwith, the trial court will take appropriate steps to procure his presence and commit him to the prison, to undergo the remaining sentence.

The appeal stands disposed of accordingly.

JANUARY 06, 2014
b'nesh

V.K. JAIN, J.