

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

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Reserved on 16.01.2014
Date of Decision: 20.01.2014

+ Crl. Appeal No.655/2010

NAWAB SINGH

..... Appellant

Through: Mr. K.B. Andley, senior advocate
with Mr. M.L. Yadav, Advs.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Feroz Khan Ghazi, APP.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

A complaint to the Director (Vigilance) of Delhi Government was made by Sangeeta Uttam, daughter of Suresh Uttam, alleging therein that her father applied to the SDM, Kalkaji, in the year 2002, for issue of a caste certificate, vide diary No. 768/2002. She further alleged that the Enquiry Officer Nawab Singh verified her application and the documents annexed thereto with the original documents and found the same to be in order. He also made them bring the ration cards of two neighbours, noted their names on a paper and then demanded a sum of

Rs 500/- as bribe for writing a report. They did not have Rs 500/- with them, but Nawab Singh took Rs 100/- from her aunt (wife of her paternal uncle) and also asked them to send her father to meet him in the office. Her paternal uncle then met Nawab Singh, who demanded a bribe of Rs 500/- from him, whereupon her father made a complaint in this regard to the SDM. However, on coming to know of the complaint, Nawab Singh gave an unfavourable report stating therein that the neighbours knew them only for three months and, therefore, caste certificate could not be issued. She also alleged that Nawab Singh had himself put the signature/thumb impression of the witnesses against their names. She also alleged in the complaint that one of the witnesses Smt. Usha was a literate person who puts her signature, whereas the other witness was illiterate. An FIR under Section 7/13 of Prevention of Corruption Act and Section 177/182/465/466 and 471 of IPC was registered against the appellant Nawab Singh on the basis of the above-referred complaint of Sangeeta Uttam and the case was handed over to Anti Corruption Branch of Delhi for investigation.

2. Vide impugned judgment dated 12.05.2010 and Order on Sentence dated 15.05.2010, the appellant was convicted under Section 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act,

1988 as well as under Sections 177/468/471 of IPC. Being aggrieved from his conviction and the sentence awarded to him, the appellant is before this Court by way of this appeal.

3. Smt. Bhagwati Devi, paternal aunt of the complainant, came in the witness box as PW-3 and stated that an official from SDM office came to their residence to make an enquiry, asked her to bring ration cards of two neighbours, noted down the particulars from the ration cards which he brought from the neighbours and refunded the same to her. She also provided the photocopies as required by him. He thereafter demanded Rs 500/- from her. When she explained her inability to pay that much amount, he demanded Rs 100/-, which she paid to him. He then asked her to send her husband to his office. She narrated these facts to his husband **Naresh** Uttam and her niece Sangeeta Uttam. The witness, however, did not identify the appellant Nawab Singh in the Court and expressed her inability to identify the culprit since the incident had become 4-5 years old, by the time she was examined in the Court. This witness, however, was not cross-examined by the appellant, despite opportunity given in this regard. Shri Naresh Uttam is the paternal uncle of the complainant. He also deposed that when he complained to the SDM, he called one clerk Mr R.K. Singh and asked

him to look into the matter. Mr R.K. Singh asked him to come again after 15 days and told him, in the presence of the appellant Nawab Singh, that the fee of the appellant for issue of caste certificate was Rs 500/-, but the appellant did not object to the aforesaid statement of R.K. Singh by asking him as to why he was using his name in such a manner. During cross-examination of this witness, no suggestion was given to him that R.K. Singh had not told him in the presence of the appellant that his fee for issue of caste certificate was Rs 500/- and no objection to the said statement was raised by the appellant.

4. PW-7 Abdul Rasheed is the neighbour of the complainant. He stated that when the IO of the present case came to him on 24.10.2004 and showed to him the SC certificate prepared by Nawab Singh and the thumb impression of his father appearing on the said certificate, he told the IO that his father has expired long ago and someone has forged the thumb impression of his father on the said certificate. During cross-examination of the witness, no suggestion was given to him that the thumb impression, purporting to be of his father, was not a forged one and was the genuine thumb impression of his father.

5. PW-9 Usha Rani is the another neighbour of the complainant. She stated that about 8 years before her deposition, the wife of Ramesh

Uttam had come to her house and sought a copy of her ration card. Her son handed over the photocopy of the ration card to her. Thereafter, the ration card was returned to her. During cross-examination by the learned APP, she admitted that no one from SDM office had come to her house, for verification in connection with the SC certificate and she had not put any thumb impression since she was literate and used to put her signature. She also admitted that Bhagwati Devi had taken her ration card from her and returned the same to her.

6. PW-10 Shri R.K. Meena, Deputy Collector, stated that the application for issue of SC certificate was rejected by his predecessor on the basis of verification report submitted by the *Bailiff*, Nawab Singh. He, however, later issued the certificate on the basis of verification report of another *Bailiff* Bhuvneshwar Singh.

PW-14 K.N. Singh is the fingerprint expert, who compared the questioned thumb impression mark Q-1 on Ex.PW-4/G with the specimen thumb impression of Smt. Usha Rani mark S-1 to S-18 and opined that Q-1 was not identical with any of the specimen thumb impression of Smt. Usha Rani. A detailed report of this witness is Ex.PW14/A.

PW-15 Ami Lal Daksh is a handwriting expert from FSL, Rohini. He compared the questioned writings Q1/1 on Ex.PW-4/G with the specimen signatures of the appellant marked S1 to S12 and opined that the person who wrote the writings and signatures marked S1 to S12 had also written the question writings Q1, Q1/1, Q2 and Q3. The detailed report of this witness is Ex.PW-15/A and A-1.

7. In his statement under Section 313 of Cr.P.C., the appellant Nawab Singh admitted that in August, 2002, he was working as *Bailiff* in the office of SDM, Kalkaji. He did not dispute that Suresh Uttam, father of the complainant Sangeeta Uttam had submitted an application Ex.PW-4/C along with the requisite documents for obtaining SC certificate and had submitted the documents annexed to the said application, including the ration card Ex.PW-4/B. He expressly admitted that the enquiry for issuing caste certificate was assigned to him. He did not dispute that he had gone to the house of Sangeeta Uttam, compared the documents with the original one and called for the ration card of two neighbours, namely, PW-6 Abdul Rashid and PW-9 Usha Rani. He, however, denied having demanded Rs 500/- from the family members of the complainant. He also admitted that the endorsements at points 'A', 'B' and 'C' on Ex.PW-4/G and in his hand. He stated that a lady,

namely, Usha Rani, was produced before him, who appended her thumb impression and one person by the name of Abdul Rashid was produced before him, who also appended his thumb impression in his presence. According to him, there was no reason for him to disbelieve that the persons produced before him were not Usha Rani and Abdul Rasheed.

8. This is not in dispute that an application was submitted by Shri Suresh Uttam for issue of Scheduled Caste Certificate and the aforesaid application was assigned to the appellant, Nawab Singh, for making inquiry. It is also not in dispute that the writings Q1 & Q2 as well as the signatures Q3 on the report Ex.PW4/G are in the hand of the appellant. This is also an undisputed position that the appellant had gone to the place of the complainant for making inquiry in connection with his application for issue of Scheduled Caste Certificate. The appellant in his statement dated 24.8.2009, while admitting the endorsements on Ex.PW4/G claimed that one lady by the name of Smt. Usha Rani and one male by the name of Abdul Ahmed were produced before him and they had appended their respective thumb impressions in his presence. The question which then arises is whether two persons who claimed to be Usha Rani and Abdul Ahmed were produced before the appellant and they had put their respective thumb impressions on Ex.PW4/G or not.

When Smt. Usha Rani came in the witness box as PW9, she expressly stated that no person from the SDM Office, Kalkaji came to the house of Suresh Uttam for verification of the SC Certificate and non one signed and put thumb impression in her presence. This was not the case of the appellant during cross-examination of this witness that someone other than her was produced before him and was represented to be Usha Rani. On the other hand, the suggestion given to her was that she had put thumb impression on the documents. I see no reason to disbelieve Smt. Usha Rani. There was no enmity or ill-will between her and the appellant and there was no reason for her to depose falsely against him. Moreover she expressly stated in her examination in the Court that she never put any thumb impression since she was literate and used to sign. In the ordinary course of human conduct a person who knows how to sign would put his signatures instead of putting his thumb impression, when called upon to sign a document. This is also not the case of the appellant that any rule of the Government required thumb impression of the witness to be obtained even when the witness was literate and knew how to sign. In any case, there could be no reason for the family of the complainant to produce a fictitious person before him, along with the genuine ration card of Smt. Usha Rani, particularly when the statement

made by that person was to go against them. If they were to produce a fictitious and represent her to be Usha Rani, that person would state in their favour, which according to the appellant, was not the position. There could have been no reason for the family members of the complainant to produce fictitious persons before the appellant as Usha Rani and Abdul Ahmad. Admittedly, the ration cards of the above-referred persons were produced before the appellant at the time he went to the house of the complainant for making inquiry. Therefore, they had no difficulty in producing their neighbour, and had no reason to resort to an illegal act of producing fictitious persons and make them impersonate as Usha Rani and Abdul Ahmad. Therefore, I have no hesitation in holding that Smt. Usha Rani did not put thumb impression on Ex.PW4/G. The necessary inference, therefore, is that the appellant had made some person other than Smt. Usha Rani put his/her thumb impression against her name on Ex.PW4/G.

9. It has also come in the deposition of PW6, Abdul Rashid, who is the son of Abdul Ahmad that in August, 2002 no one from the Office of the SDM, Kalkaji had come to him for verification of caste in connection with the Scheduled Caste Certificate of Suresh Kumar Uttam. He also stated that he had told the IO that his father had expired

long back and someone had forged the thumb impression of his father on the said certificate. During his cross-examination no suggestion was given to him that his father was alive at the time the appellant visited the place of the complainant in August, 2002. No suggestion was given to him that the report Ex.PW4/G bears the thumb impression of his father. There could be no good reason for the family of the complainant to produce a fictitious person and represent him to be Abdul Rashid. The view taken by me, with respect to thumb impression of Usha Rani equally applies to the thumb impression of Abdul Rashid. It is, therefore, obvious that it is the appellant who had made someone put his thumb impression on Ex.PW4/G against the name of Abdul Ahmad.

10. The deposition of PW3, Smt. Bhagwati Devi, which I see no reason to disbelieve shows that the person who had come to her place for making inquiry in connection with issue of Scheduled Caste Certificate to Suresh Uttam had demanded a bribe of Rs.500/- and she had paid a sum of Rs.100/- to him as bribe. Though as rightly pointed out by the learned counsel for the appellant, she did not identify the appellant as the person who had come to her place and demanded and accepted bribe from her, since it is an admitted case that it is the appellant, Nawab Singh, who had gone to her place to make an inquiry

in connection with issue of a Caste Certificate to Suresh Uttam, it is only the appellant, Nawab Singh and no other person who could have demanded and accepted the bribe from her while making inquiry in connection with the issue of Caste Certificate. The identity of the appellant as the culprit, therefore, stands established beyond reasonable doubt.

11. As noted earlier, the evidence produced by the prosecution proves that the thumb impressions on the report Ex.PW4/G are not of Smt. Usha Rani & Shri Abdul Abmad, and it is the appellant who made someone put thumb impressions on the said document. Had the appellant not demanded bribe there could be no reason for him to prepare a false report and going to the extent of forging the document by making someone put thumb impressions against the name of Usha Rani and Abdul Ahmad on the said document. It has come in the deposition of Shri Ramesh Uttam that he had complained to the SDM, Shri A.K. Singh with respect to demand of bribe from him. The logical inference, therefore, would be that the appellant forged the report Ex.PW4/G either because a complaint was made against him to the SDM or because the whole of the bribe amount of Rs.500/- was not paid to him.

12. Since the appellant who was legally bound to furnish correct information in his report to the SDM, submitted information which he knew to be false, he has rightly been convicted under Section 177 of the Indian Penal Code. The appellant is also guilty of offences punishable under Sections 468 and 471 of IPC since he forged the report Ex.PW4/G and also used it as a genuine document by submitting the same to the SDM in connection with issue of Caste Certificate to the complainant. The appellant made a false document within the meaning of Section 464 of IPC since his report contained statements purporting to be made by Usha Rani and Abdul Ahmad though, in fact, neither of them had made any such statement. This, obviously, was done with the intention of causing wrongful loss to the complainant who was legally entitled to issue of a Scheduled Caste Certificate. The appellant thereby acted dishonestly while making the report Ex.PW4G as he did it with the intention of causing it to be believed that the aforesaid statements on the report Ex.PW4/G were made and thumb marked by Usha Rani and Abdul Ahmad. Since making of a false document with the intent of cause damage or injury to any person amounts to forgery within the meaning of Section 463 of the IPC and the purpose of forging the document was to induce the SDM to refuse Caste Certificate to the

complainant, which he would not have done had he known that the report contained forged statements of Usha Rani and Abdul Ahmad, the forgery committed by the appellant is punishable under Section 468 of the IPC. Fraudulently or dishonestly using forged document as genuine knowing or having reason to believe to be a forged document is punishable under Section 471 of the IPC and the appellant dishonestly used the forged report Ex.PW4/G as genuine by submitting it to the SDM, knowing fully well that it was a forged document. Therefore, no ground for interfering with the conviction of the appellant under Sections 177, 468 and 471 of the IPC is made out.

13. 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 agrees to accept 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. Therefore, a demand of money for doing a favour such as submitting a favourable report for the purpose of issue of Caste Certificate would constitute an attempt to obtain illegal gratification 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. The appellant by demanding bribe of Rs.500/- and then accepting Rs.100/- from Smt. Bhagwati Devi committed an offence punishable under Section 7 of the PC Act.

14. 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.

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.

15. The appellant abused his position as a public servant by demanding Rs.500/- and accepting Rs.100/- from Smt. Bhagwati Devi.

Had he not been holding the position of a bailiff in the Office of the SDM, it would not have been possible for him to demand and accept the aforesaid amount. He, therefore, clearly abused his position as a public servant for obtaining pecuniary advantage to the extent of Rs.100/- and, therefore, has rightly been convicted under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

16. The learned counsel for the appellant, during the course of arguments, relied upon the decision of the Apex Court in Banarsi Dass Vs. State of Haryana AIR 2010 SC 1589. In the aforesaid case the charge against the appellant was that he demanded and accepted bribe for changing khasra girdawari in the name of the mother of the complainant Smt. Sat Pal Kaur. However, when she was examined in the Court, she denied her statement before the police Ex.PW3/A as well as memos alleged to be signed by her, saying that she had signed them without reading the same. The Apex Court also found that on the material circumstances/facts she had completely taken a somersault while deposing before the Court. Another witness Gurmej Singh, besides disowning his statement under Section 161 Cr.P.C. in its entirety stated that he was not present either when the bribe was demanded or when the same was accepted. The complainant also admitted that she

had an altercation with the appellant and thereafter had put the money on his table. The plea taken by the appellant was that since the complainant insisted on changing the khasra girdawari she got annoyed and the money was lying on his table without any knowledge or demand when it was recovered. It was in these circumstances that the Court held that the demand and acceptance of illegal gratification could not be proved by the prosecution in accordance with law. The facts before this Court are altogether different and besides oral evidence of Smt. Bhagwati Devi, the documentary evidence in the form of forged report of the appellant establishes the case against him beyond any reasonable doubt.

17. Coming to the sentence part, I find that the substantive sentence awarded to the appellant does not exceed two (2) years on any count and the sentences have to run concurrently. The appellant went to the extent of forging the statements of Smt. Usha Rani and Shri Abdul Ahmad merely because the family of the complainant refused to meet his demand for a bribe of Rs.500/- and made a complaint against him to the SDM. He, abusing his position as a public servant, extracted money from a person belonging to a weaker section of the society who was in dire need of Caste Certificate, and then made the SDM refuse such a

certificate to him. The facts & circumstances of the case warrant no leniency in the matter of punishment awarded to him and no case for reducing the sentence is, therefore, made out.

18. For the reasons stated hereinabove, the appeal is hereby dismissed. The appellant is directed to forthwith surrender before the trial court for undergoing the remaining sentence awarded to him. The fine, if not already deposited shall be deposited within a week from today. If the appellant fails to surrender forthwith, the trial court shall take steps to procure his presence and commit him to prison to undergo the remaining sentence.

The trial court record be sent back immediately along with a copy of this order.

V.K. JAIN, J

JANUARY 20, 2014
BG/b'nesh