

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 508 of 2008

SATISH KUMAR ARORA Appellant
Through: Mr. Vivek Sood with
Ms. Sonam Sharma, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Manoj Ohri, Spl. PP.

CORAM: JUSTICE S. MURALIDHAR

ORDER
12.02.2014

1. This appeal by Mr. Satish Kumar Arora (since deceased and represented by his legal representatives) is directed against the impugned judgment dated 30th May 2008 passed by the learned Special Judge, Delhi in CC No. 44 of 2003 holding him guilty of the offence under Section 120-B IPC read with Section 7, 13 (2), 13 (1) (d) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 31st May 2008 sentencing the Appellant to undergo one year's rigorous imprisonment ('RI') and to pay a fine of Rs. 2,000, and in default to undergo simple imprisonment ('SI') for seven days for the offence under Section 120-B IPC, and to undergo RI for one and half years and to pay a fine of Rs. 3,000, and in default to undergo SI for seven days for the offence under Section 7 of the PC Act, and to undergo RI for a period of two years and to pay fine of Rs. 5,000, and

in default of payment of the fine to further undergo SI for seven days for the offence under Section 13 (2) of the PC Act.

2. By an order dated 16th June 2008, this Court suspended the sentences awarded to the Appellant during the pendency of the appeal. Subsequently, the Appellant expired on 3rd April 2011 and his legal representatives were brought on record by an order dated 15th July 2011. The Appellant faced trial along with the co-accused, Mr. Hari Kishan Pal and Mr. Jai Bhagwan. Mr. Hari Kishan Pal had expired during the trial and the proceedings against him abated by an order dated 18th March 2008. Mr. Jai Bhagwan was convicted and sentenced by the same impugned judgment and order on sentence. However, it is not known whether he has preferred any appeal.

3. The case of the prosecution is that the Appellant was working as Deputy Regional Director (Dy. RD) in the National Savings Organization ('NSO'), Ministry of Finance, which had an office at Tis Hazari, Delhi. The charge was that the Appellant and the co-accused Mr. Hari Kishan Pal and Mr. Jai Bhagwan entered into a criminal conspiracy and by abusing their position demanded and accepted pecuniary gains for themselves from 17 authorized agents for clearing their commission bills under the Mahila Pradhan Kshetriya Bachat Yojana ('MPKBY'), Public Provident Fund ('PPF'), renewal and allocation of new agency.

4. The genesis of the case was a written complaint (Ex.PW-3/DA) purportedly submitted by approximately 30 agents to the Regional Director, NSO on 6th May 1999. The precise contents of the said complaint read as under:

“We regret to write the unbearable corruption and eve teasing with ladies agents by Sh. H.K. Pal, DSO, Tis Hazari, Delhi who have made difficult for us to work and mobilise the resources for National Saving Schemes. Mr. Pal makes baseless, illogical and irrelevant objections. Thereafter, he blackmails the ladies agents. He calls them at odd hours, i.e., either 7 am/8 am or 6-8 pm even for issuing MPKBY cards and even visits at their residence. He intentionally delays or misplaces their commission bills as he never gives the acknowledgement of bills.

He threatens to terminate the agency and demands huge amounts as bribe. On asking he told that he has been given collection targets from his seniors. His rate list is as give below:

- Rs. 3000 to Rs. 5000 for new agency.
- Rs. 1000 to Rs. 3000for renewal of agency.
- Rs. 200 to Rs. 1000 for R.D. Bills.
- Rs. 1000 to Rs. 10000 for removal of created/irrelevant objections.
- Rs. 200 to Rs. 2000 as protection money per month.
- Moral disgracement of ladies agents.

You can check his pockets full of money on Wednesdays and Fridays (Bill depositing days) and can also check in

late hours that his office remains opened many times up to 7/8 pm. Your Tis Hazari Office has actually become the 'ADDA of Corruption and Badmashis.'

We are surprised that a person who remained suspended for 6/7 years because of corruption charges was again given such a sensitive seat.

In this profession there are mostly ladies, old retired person and unemployed youth who earn their livelihood through this agency and try to make the both ends meet. They even bear high operational cost and are being harassed morally, mentally and financially by him.

Small Savings Department is meant boosting the deposits but it has turned into pocket filing department for Mr. Pal and his colleagues.

You are, therefore, requested to take the immediate action against Mr. Pal and in the meantime remove him from the present sensitive seat."

5. As far as the above complaint was concerned, the allegations were essentially against Mr. Hari Kishan Pal as regards the demand and acceptance of bribe. Admittedly, on the basis of the above complaint, an internal inquiry was undertaken. Statements of some of the agents were recorded during the said inquiry. As regards the Appellant, statements were made during the enquiry by Mrs. Urvashi Sharma (later examined as PW-8), Mrs. Asha Sehgal, (later examined as PW-15), Mrs. Leela Goel (later examined as PW-16) and Mrs. Meenu Thakur (who was not examined during the trial). In her signed
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statement dated 9th June 1999 during the enquiry, Mrs. Urvashi Sharma stated that when she went to the Tis Hazari office for submitting her MPKBY commission claim, the Appellant told her that she had to pay Rs. 600 for the same and directed Mr. Jai Bhagwan to collect the money. Although she informed the Appellant that she could pay only Rs. 400, the Appellant is stated to have said that if she had mentioned in the complaint that Rs. 600 per bill was being taken from the agent then she had to give Rs. 600 instead of Rs. 400. She further stated that she gave Rs. 400 to Mr. Jai Bhagwan on the direction of the Appellant and the Appellant also threatened her to tell the name of her 'leader' who had made the complaint or else her agency would be terminated. Mrs. Asha Sehgal did not sign the statement purportedly made by her during the inquiry. Consequently, no credence ought to be given to such statement. Mrs. Leela Goel, in her signed statement dated 9th June 1999, stated that Mr. Hari Kishan Pal demanded Rs. 1500 for renewal of her agency and she had put the same on the table of Mr. Hari Kishan Pal on his direction. She also stated that "Mr. Satish Kumar Arora was also sitting here". She further stated that Mr. Pal also demanded a sum of Rs. 200 per bill for passing of MPKBY commission claims. The signed statement dated 9th June 1999 of Mrs. Meenu Thakur need not be discussed as she was not subsequently examined during the trial.

6. There were two parallel proceedings initiated as far as the Appellant is concerned. On the disciplinary side, he was issued a memorandum on 5th February 2001 and was asked to answer the following two articles of charge:

“

Article-I

That the said Shri S.K. Arora, while functioning as Deputy Regional Director, during the period from 1st March 1999 to 30th September 1999 harassed authorized agents by demanding money and asking his subordinates to receive money which is illegal for attending to their commission claims and other matters in his office. He also allowed his subordinates to demand and accept money from the authorized agents in the office for attending of official work which they are otherwise duty bound to attend as public servants. Thus, the said Shri S.K. Arora, indulged in dishonest activities inconsistent with conduct expected from a reasonable Government Officer. The said Shri S.K. Arora, therefore, failed to maintain a reputation of a honest officer and absolute integrity as a Government servant in clear violation of Rule 3 (1) (i) and (iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri S.K. Arora, while functioning as Deputy Regional Director, in the office of Deputy Regional, Director, National Savings, (North Zone), Tis Hazari Court Campus, during the period from 1st March 1999 to 30th September 1999 failed to take appropriate corrective action against his subordinate officials indulging in gross misconduct and harassing his authorized agents by demanding and accepting bribes which badly tarnished the reputation of the Government office. Knowing these acts of misconduct of his subordinates he also failed to bring this to the notice of the higher authorities for appropriate action. The said Shri S.K. Arora, therefore, failed to maintain complete

devotion to his duty which is clear violation of Rule 3 (1) (ii) & Rule -2 (1) of CCS (Conduct) Rules 1964.”

7. The departmental inquiry ended with the Appellant being found not guilty of the charge under Article-I but guilty of the charge under Article-II. By an order dated 3rd/7th April 2003, he was awarded punishment of reduction of pay attached to his grade/post by two stages for a period of two years.

8. As far as the criminal proceedings are concerned, although the complaint was made in May 1999 and enquired into thereafter, the FIR itself was registered only in 2002 and the charge sheet filed by the Central Bureau of Investigation (‘CBI’) on 26th September 2003.

9. The criminal charge framed against the Appellant by an order dated 20th September 2004 of the learned Special Judge, Delhi reads as under:

“I, Pratibha Rani, Special Judge, Delhi, charge you
(1) Satish Kumar Arora (2) Hari Kishan Pal (3) Jai Bhagwan as under:

That you Satish Kumar Arora while working as Deputy Regional Director, National Saving Organization, entered into criminal conspiracy with your co-accused Hari Kishan Pal who was working as District Saving Officer, National Saving Organization and Jai Bhagwan, Peon of the same department while working at your office of National Saving Organization, Ministry of Finance, Tis Hazari, Delhi during the period 1999 and in

furtherance of the said conspiracy you all demanded different amounts ranging between Rs. 200 to Rs. 1500 from Sarita Arora, Sharda Kohli, Madhu Gupta, Yatish Sharma, Urvashi Sharma, Sushma Mangla, Suman, Usha Gupta, Jasvir Kaur, Rajni Gupta, Sunita Oberoi, Punita Gupta, Asha Sehgal and Smt. Leela Goel for passing the commission bills of their agencies as well as for renewal of the agencies maintained by them and in this way, by abusing your official position, you all demanded and accepted illegal gratification and obtained pecuniary advantage of different amounts ranging from Rs. 200 to Rs. 1500 from different agents of your organisation and thereby you all committed an offence punishable under Section 120-B IPC read with Section 7 and 13 (2) read with Section 13 (1) (d) of PC Act and within the cognizance of this Court.

And I hereby direct you both that you be tried by this Court for the said charges.

Sd/-

Special Judge/Delhi”

10. As many as 21 witnesses were examined on behalf of the prosecution. The prosecution witnesses were divided broadly into two categories as far as the Appellant is concerned. The first category comprised witnesses who also spoke about his role during the internal inquiry. These were PW-8, PW-15 and PW-16. The second category comprised witnesses who did not speak about the role of the Appellant

in the internal inquiry or even in the departmental inquiry but for the first time when they were examined in the trial Court.

11. As far as Mrs. Urvashi Sharma (PW-8) is concerned, she stated in her examination-in-chief that Mr. Jai Bhagwan had asked her for money to clear her bills “for giving the same to DSO and there were two DSOs H.K. Pal and S.K. Arora at that time”. At that stage, learned Senior Public Prosecutor (‘Sr PP’) for the CBI sought permission to cross-examine PW-8 as she was resiling from her earlier statement. She was confronted with the statement Ex.PW8/D where she had stated that Mr. Jai Bhagwan demanded money in the name of the Appellant. She denied the suggestion that she was resiling from the statement earlier made to the CBI in order to save the Appellant.

12. In her cross-examination by the defence counsel, PW-8 stated that there were only two DSOs, viz., Mr. H.K. Pal and Mr. Ram Kala and that “it is correct that no money was directly demanded by accused No. 1 and 2 from me nor I had paid them anything.” PW-8 also gave conflicting replies on whether her statement was at all recorded by the CBI during investigation. Although she appeared to have, in her reply in the cross-examination by the learned Sr PP, answered the question in the affirmative, in her cross-examination by the counsel for the accused she stated that “I did not receive any notice from CBI. My statement was not recorded by CBI.”

13. The observation as far as the deposition of PW-8 is concerned is

that she clearly did not support the case of the prosecution as far as the Appellant is concerned. She denied the suggestion that she was resiling from her earlier statement purportedly made to the CBI that Mr. Jai Bhagwan demanded money in the name of the Appellant. Inasmuch she has not supported her own statement recorded in the disciplinary proceedings, it cannot be stated that she was a reliable witness.

14. It must be mentioned at this stage that Mr. Manoj Ohri, learned Additional Public Prosecutor (APP) for the CBI relied upon the decisions in *Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624* and *Himanshu @ Chintu v. State of NCT of Delhi JT 2011 (1) SC 123* to urge that the depositions of hostile witnesses cannot be rejected in *toto*. According to him, the evidence of a hostile witness remains admissible and it is open to the Court to rely upon the “dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record”.

15. As far as the evidence of PW-8 is concerned, it cannot be said that there is any portion of the statement made by her in her examination-in-chief that can be said to support the case of the CBI because even her description of the designation of the Appellant was erroneous. A clarification was obtained from her in her cross-examination by the defence counsel that “there were two DSOs H.K. Pal and Ram Kala at that time.” Nevertheless, in light of the law explained by the Supreme Court, it has to be seen whether any part of the evidence of PW-8 can be said to be corroborated by other reliable witnesses.

16. PW-15, Mrs. Asha Sehgal, did not sign the statement made by her in the inquiry. What is significant, therefore, is the statement made by her in the Court. In her examination-in-chief she stated that “accused Jai Bhagwan asked for Rs. 200 from me for getting the bills passed from H.K. Pal and the other accused, both present in the Court today.” Thereby, she appeared to suggest that the ‘other accused’ whom she could not name was the Appellant. However, in the cross-examination by the learned Sr PP, she stated that neither of them had asked any amount from her for passing of her bills. She also stated that it was correct that “none of them had accepted any money from Jai Bhagwan in my presence.” The evidence of PW-15 should also be appreciated in the context that she was signatory to the original complaint which there was no reference whatsoever to any bribe of money being demanded or received by the Appellant. The fact that she had not named the Appellant in the Court, and her clarification that at no point in time the Appellant asked money from her for passing her bills is significant. It would not be possible for the Court to agree with the submission of the learned APP that evidence of PW-15 is sufficient to constitute evidence against the Appellant about his demanding and accepting bribe for passing of the bills of the agents.

17. At this stage it must be mentioned that one of the defences raised by the accused was that the complaint was a counterblast to a complaint (Ex.PW1/DA) made by the CPMG, Delhi against the agents. However, PW-15 denied the suggestion in this regard. Therefore, the fact that

there may have been a complaint against the agents themselves is not of much help to the accused.

18. PW-16, Mrs. Leela Goel, was the next key witness for the prosecution. She identified her application for renewal of the SAS agency (Ex.PW-16A) and her signature thereon. Her categorical statement in her cross-examination was under:

“This application was deposited by me with S.K. Arora, accused present in Court. Accused S.K. Arora demanded Rs. 1500 from me for renewal of my agency. He further stated that if Rs. 1500 is not paid, my agency will not be renewed. I have seen bills Ex.PW16/B to E bearing my signature at point A. I have submitted these bills with either S.K. Arora or H.K. Pal. As I submitted the renewal application and these bills at the same time, the amount was demanded for both.”

19. Clearly, in making the above statement, PW-16 was resiling from the statement made by her before the CBI during the investigation. For this reason, the Sr PP for the CBI sought permission to cross-examine this witness. In her cross-examination, she stated as under:

“I was not called by CBI in connection with this case nor my statement was recorded. I do not recollect if I was examined by Inspector A.K. Singh on 17th July 2002 and recorded my statement mark PW-16/F. I do not recollect that if I had stated before CBI that I submitted my

renewal application to accused H.K. Pal who demanded Rs. 1500 from me. I also do not recollect that I submitted my bills also to H.K.Pal who demanded Rs. 100 per bill for forwarding the same. I only recollect that I paid Rs. 1500 to accused S.K. Arora. I do not remember if I paid Rs. 300 to H.K. Pal for passing my bills. I do not remember if H.K. Pal told me that this amount is to be distributed amongst them i.e., him and the other two accused. (Confronted with statement mark PW16/F where it is so recorded). It is incorrect to suggest that I have been won over by accused H.K. Pal and as such I am deposing falsely on the confronted statement.”

20. It is clear from the above answer given by PW-16 in her cross-examination by the learned Sr PP that while during investigation she maintained that it was Mr. H.K. Pal who demanded a bribe of Rs. 1500 from her, in the court she substituted Mr. H.K. Pal with the Appellant. She was, therefore, an untrustworthy witness.

21. Mr. Ohri urged that the deposition of this witness, to the extent that she supported the case against the Appellant, should be accepted by the Court. The Court is unable to accept this submission. It is not possible to selectively rely upon the evidence of a basically untrustworthy witness only because she supports the case of the prosecution against the Appellant. The question is whether PW-16 is a reliable witness.

From a perusal of her deposition, it appears that she is not. PW-16 further stated in answer to a suggestion by the defence counsel:

“It is incorrect to suggest that H.K. Pal never demanded Rs. 1500 from me nor I paid this amount to him and that is why it is not mentioned in the complaint.”

22. Mr. Ohri submitted that there was no suggestion put to PW-16 by the defence counsel that the statements made by her against the Appellant in her examination-in-chief were incorrect. This submission overlooks the fact that during her cross-examination, PW-16 was asked to identify the statement made by her in the departmental inquiry (Ex.PW-16/DA) and her signature thereon. The said statement reads as under:

“Statement of Smt. Leela Goel, Age 43 years w/o Shri Inder Mohan, E-3, C.C. Colony, Opposite R.P. Bagh, Delhi.

Smt. Leela Goel deposed that she went to the office of Deputy Regional Director, North Zone, Tis Hazari to seek renewal of her agency. Though Mr. Satish Kumar Arora was also sitting in his chamber, she met Shri H.K. Pal, DSO and handed over the papers to him. Mr. H.K. Pal did raise some objections about the papers but ultimately the agency was renewed and she did not pay any money to anybody.”

23. In response to the specific question put to her in the cross-examination, she not only identified the statement and her signature but also stated that the statement “is correct.” The above suggestion is more than enough, as far as the defence counsel is concerned, to contradict the statement made by her about the Appellant in the examination-in-

chief. It will be recalled that as far as the statement during the investigation was concerned, PW-16 did not state that the Appellant himself demanded any bribe and that he was only sitting in the office when Mr. Jai Bhagwan demanded the bribe. In the considered view of the Court, PW-16 can hardly be stated to be a reliable witness and it cannot be stated that her evidence has been corroborated by any other evidence against the Appellant.

24. Mr. Ohri referred to the decision of the Supreme Court in *State (NCT of Delhi) v. Ajay Kumar Tyagi (2012) 9 SCC 685* to urge that the exoneration in the departmental proceeding *ipso facto* would not result in the quashing of the criminal prosecution. He added that that in any event there was no complete exoneration of the Appellant in the departmental proceedings.

25. The criminal case has, no doubt, to be evaluated on the evidence on record, irrespective of the outcome of the departmental proceedings. A reference has been made to the departmental proceedings only to the limited extent of noticing the statements made therein by some of the witnesses who also deposed in the criminal proceedings. As far as PW-16 is concerned, she totally absolved the Appellant in her statement made in the departmental proceedings. This by itself indicates that PW-16 is unreliable.

26. Now coming to the second category of witnesses who did not implicate the Appellant in the inquiry proceedings or in the

departmental proceedings but spoke about his role for the first time in the trial Court.

27. PW-2, Mrs. Savita Chopra in her deposition stated that Mr. H.K. Pal used to demand Rs. 200 for the collection of up to Rs. 1 lakh and Rs. 300 for the collection above Rs. 3 lakhs. She stated that the Appellant also used to sit in the same office in the inner portion. She did not implicate the Appellant as such. This at best substantiates what was found against the Appellant in the departmental proceedings when he was found guilty of Article 2 of the charge. It does not satisfy the requirement of proving the offence under Section 120-B IPC (criminal conspiracy) or the offences under Sections 7 and 13 (2), 13 (1) (D) of PC Act. PW-3, Mrs. Madhu Gupta also did not make any inculpatory statement as such against the Appellant. She merely stated that both accused No. 1 and 2 used to sit in the office but in different rooms. As far as PW-7, Mr. Yatish Sharma is concerned, he stated that he went to the office of the Appellant who referred him to Mr. H.K. Pal and that Mr. H.K. Pal demanded Rs. 5,000 for giving him PPF agency which he did not give. In his cross-examination, PW-7 stated that “It is correct that accused No. 1 has not demanded any money from me while asking me to see Mr. H.K. Pal.”

28. Mr. Ohri placed reliance on the evidence of PW-14, Mrs. Rajni Gupta. PW-14 did not make any statement against the Appellant in the internal inquiry proceedings. She also did not make any statement in the

departmental proceedings. In her examination-in-chief in the Court, she stated:

“I am working as MPKBY agent since 1987. I submitted bill Ex.PW14/A1 to A6 bearing my signature at point-A in the DSO office to S.K. Arora, accused present in the Court today (Correctly identified). Some money was demanded by S.K. Arora which was paid by me but due to lapse of time I do not remember how much money was demanded from me or paid by me.”

29. At that stage, learned Sr PP for the CBI sought permission to cross-examine her. He confronted her with the statement recorded of her during the investigation Ex.PW-14/B. PW-14 was unable to recall that her statement was recorded by the CBI. She was unable to recollect that the Appellant demanded Rs. 300 per bill and that she gave Rs.200 per bill. In her cross-examination, she denied the suggestion that the Appellant had never demanded any money nor was any money paid by her to him. However, in the other answers given by her in the cross-examination, she stated that Mr. Ram Kala had demanded Rs. 300 from her for the renewal of her PPF agency and that in the complaint made there was no mention of any demand made by the Appellant.

30. The criticism of the evidence of PW-14 by Mr. Vivek Sood, learned counsel for the Appellant, that it was an afterthought appears justified. In the internal inquiry in 1999, PW-14 did not implicate the Appellant at all. She did so for the first time in the trial six years later on 22nd September 2005. PW-14 also made only a vague generalised statement about the Appellant demanding a bribe and was unable to give better

particulars during her cross examination by the Sr PP. It is not natural for a witness, who has in fact paid a bribe amount, not to remember how much was paid. It would not be prudent to return a finding of guilt against the Appellant only on the basis of the above deposition of PW-14.

31. Learned counsel for the Appellant referred to the decisions of the Supreme Court in *Ragbir Singh v. State of Punjab AIR 1976 SC 91* and *State Through SPE & CBI, Andhra Pradesh v. M.Krishna Mohan (2007) 14 SCC 667* and submitted that with the complaint having been received in 1999 itself, the prosecution could have arranged for a trap team to strengthen the evidence regarding the demand and acceptance of bribe by the Appellant and the co-accused. For the reasons best known to the prosecution, that course was not adopted.

32. The trial court has in the impugned judgment relied on the evidence of PW-8, PW-13 and PW-15 to hold that the charge of criminal conspiracy against all the accused stood proved. The trial Court appears to have overlooked the portions of the evidence of PW-8, PW-15, which are problematic and which have been discussed above in detail. It is also important for the learned trial Court to have evaluated the statements of the witnesses, vis-à-vis, the role of each of the accused and in particular the Appellant herein. The trial Court has also placed considerable reliance on the evidence of PW-14 despite the fact that “she could not specify the amount of bribe due to lapse of time”. Where

a witness is making statements incriminating the accused for the first time during the trial, then her testimony has to be carefully evaluated. The trial Court appears to have overlooked the fact that PW-14 made no statement against the Appellant during the inquiry. She signed the complaint in which there was no mention about the Appellant demanding any bribe.

33. As regards PW-16, the trial Court appears to have totally overlooked the inconsistent statements made by her and the fact that she confirmed as correct the statement by her during the departmental proceedings where she said nothing against the Appellant.

34. For the aforementioned reasons, this Court holds that the prosecution has not been able to establish its case against the Appellant beyond all reasonable doubt. The benefit of doubt, in the circumstances, ought to have been given to the Appellant. The Appellant is acquitted of the offences under Section 120-B IPC read with Section 7, 13 (2) and 13 (1) (d) of the PC Act.

35. Consequently, the impugned judgment dated 30th May 2008 of the trial Court convicting the Appellant and the order dated 31st May 2008 on sentence are hereby set aside. The appeal is allowed in the above terms.

S. MURALIDHAR, J.

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