

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 2nd September 2014
Decision on: 11th September 2014

CRL.A. No. 649 of 2008

RAJIV SHARMA

..... Appellant

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Ranjan Kumar,
Ms. Swati Goswami and
Mr. Harsh Vardhan, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondents

Through: Mr. Rajat Katyal, APP.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

11.09.2014

1. This appeal is directed against the judgment dated 9th July 2008 passed by the learned Special Judge, Delhi in CC NO. 6/99 convicting the Appellant for the offences under Sections 7 and 13 (1) (d) of the Prevention of Corruption Act, 1988 ('PC Act') punishable under Section 13 (2) of the PC Act as well as the order on sentence dated 10th July 2008 whereby for the offence under Section 7 of the PC Act, the Appellant was sentenced to undergo rigorous imprisonment ('RI') for 4 years along with a fine of Rs.20,000 and in default to undergo RI for two months. For the offence under Section 13 (2) of the PC Act he was sentenced to undergo RI for 4 years and a fine of Rs.20,000 and in default to undergo RI for two months. Both sentences were directed to run concurrently.

The complaint by Swami Charan

2. The Appellant was employed in the Delhi Tourism and Development Corporation ('DTDC') as an Assistant Manager (Tours). Amongst his duties was the verification of the bills of hire charges submitted by private taxi operators whose taxis were hired by the DTDC on commission basis for its customers. Swami Charan (PW-1) was one such taxi service operator. The taxi service was called Kumar Tours & Travels ('KTT'). The taxis of KTT were attached to the DTDC at Delhi Airport. According to PW-1, the Appellant was the in-charge of the counter of DTDC at the airport and had demanded Rs.2000 for the clearance of his bills.

3. On 24th September 1996, PW-1 went to the Anti Corruption Branch ('ACB') and gave his complaint in writing (Ex. PW-1/A) which was received by Ramesh Singh (PW-10) posted as Inspector in the ACB. The complaint was recorded in the presence of the *panch* witness S.S Arora (PW-8), a UDC with the Sales Tax Department, Delhi Secretariat. In the complaint PW-1 stated he had submitted bills for the period 1st to 15th September 1996 at the counter of the IGI Airport and the Appellant demanded the bribe amount. PW-1 called the Appellant on telephone at around 9.30 am on 24th September 1996 and enquired about his bills. The Appellant asked PW-1 to come that evening at around 4 or 4.30 pm with the bribe amount in order to get his work done.

Pre-raid proceedings

4. PW-1 took with him Rs.2,000, containing 2 Government Currency notes ('GC notes') of Rs.500 each and 10 GC notes of Rs.100 each. He handed them over to PW-10 who recorded their numbers in the

pre-raid report (Ex.PW-1/D). PW-10 treated the GC notes with phenolphthalein powder in the presence of PW-8 and thereafter gave a demonstration of its effect. Thereafter the treated GC notes were handed over to PW-1 who kept them in his shirt pocket. PW-8 was instructed to remain close to PW-1 in order to see and overhear the conversation.

5. At around 3.20 pm, a raiding party comprising of PW-10, PW-1, PW-8 and Inspector R.K. Singh (PW-9) along with other members of the raiding party left the ACB in a Government vehicle for the IGI Airport. They reached the IGI Airport in about 50 minutes. While PWs-1 and 8 proceeded to the DTDC counter, the other members of the raiding party took suitable positions.

Raid proceedings

6. PW-1 in his deposition stated that after reaching the counter he wished the Appellant and enquired about his bills, upon which the Appellant asked him to hand over Rs.2,000. PW-1 then took out the treated GC notes from the left side pocket of his shirt and handed them over in the left hand of the Appellant. PW-1 stated that the Appellant kept the treated GC notes between his thigh and chair on which he was sitting. As soon as the money was handed over, PW-8 gave a signal upon which the raiding party reached there. They disclosed their identity to the Appellant and challenged him that he had taken the bribe of Rs.2000. When the police officials enquired from the Appellant about the bribe money, he stood up and the treated GC notes were found on his chair. Their numbers tallied with those recorded in the pre-raid report. The left hand wash of the Appellant turned pink. The wash was transferred into two small bottles which

were then sealed and labelled.

Version of the panch witness

7. The *panch* witness PW-8 stated that when he and PW-1 entered the cabin of the Appellant, the Appellant came near PW-1 and both of them thereupon sat on chairs while PW-8 remained standing. He then stated “Talks were going on between them. The accused asked the Complainant that he had to give Rs.2,000/- and Complainant requested to verify the cheque. Accused replied that the cheque had not been verified by that time. Accused asked that a balance of Rs.2,000 is due. The Complainant thereafter took out those treated GC notes and gave to the accused in his left hand which the accused kept on a chair. Thereafter I gave pre-determined signal to the members of the raiding party.” PW-8 proceeded to confirm that the raiding party reached after the signal was given by him; that they tallied the numbers on the notes recovered from the chair; that the left hand wash of the Appellant turned pink and that the wash was kept in the bottles which were sealed and labelled. In his cross-examination by counsel for the Appellant, PW-8 admitted that a register (Ex. PW-7/C) was seized from the airport. He also agreed that he had been a *panch* witness with the ACB in case of one Daya Chand which was listed for hearing just a day after the present case. He also stated that “all the documents were prepared first and then I had signed them simultaneously. I had not noticed as to whether FIR number on Ex.PW-1/B and Ex.PW-1/C was mentioned or not.”

8. It is thus seen that PW-8 did not categorically state anything about demand of the bribe amount as such by the Appellant. He only stated that he had told PW-1 that the latter had to give Rs.2,000. The precise

words of PW-8 were “accused asked that the balance of Rs.2,000 is due.”

Post-raid proceedings

9. The Appellant was arrested and a seizure memo was prepared (Ex.PW-9/B) of the sale register of IGI Airport T-II. The said seizure memo which is an important piece of evidence reads as under:

“FIR No. 42/96 dated 24.9.96 u/s 7 & 13 POC Act ACB

Seizure Memo

The Sale Register of IGI Airport T-II updated w.e.f. 29.8.96 of Delhi Tourism Counter with Index and Pages 1 to 825 in which Page No. 109 is last written has been seized from Sh. Dharam Sattu, Asstt. Manager Night Shift IGI Airport T-II Counter has been seized. Page 91 shows that Rs.2000/- were to be collected from Driver of KTT vide Sr. No. 6 while the sale does not indicate Rs.2,000/- nor there is any mention in the index of KTT.

Witnessed by
Sh Dharam Sattu
Asstt. Manager DTDC
24/9/96

R.K. Singh
Insp
AC Branch
24/9/96”

Testimony of Dharam Sattu (PW-7)

10. The person, who signed the above seizure memo as a witness was Mr. Dharam Sattu (PW-7) who was working as Assistant Manager, DTDC at the IGI Airport. In his deposition, PW-7 stated that in the said register they would enter daily sales “and if some advance is given to private taxis, the said amount was to be retained in that register and also in the index of the register of a particular company.” He referred to a particular entry on page 91 of the register which reads as under:

“MESSAGE: ‘IMP’

Dear Sir, Rajeev

Please contact to Sh. Gulati (Dy. Manager) at H.Q. Moolchand for sales depositions and abstracts i.e. pl. Contact discussing with said person. Rs.2,000/- to be collected from KTT vide Sr. No. 6
by Rajeev Sharma.

Sd/-
28/9/96.”

11. The above portion was marked ‘ZA’ and in relation to it PW-7 stated that “On 20.9.96 I had written a note on the basis of a message from Account Division that Rs.2,000/- is to be collected from M/s. Kumar Tours & Travels. This message was for Rajiv Sharma but there is no mention on the sale account of that day nor there is any entry in the index.”

12. There are significant factors to be noticed at this stage. One is that the above seizure memo, signed by PW-7 is dated 24th September 1996 which is the same date as the date of the raid. Second is that the said seizure memo itself notes that PW-7 had made the abovementioned noting on page 91. Thirdly, the said seizure memo was signed by PW-7 who confirmed in his examination-in-chief that he had written the aforementioned note about Rs.2000 having to be recovered from KTT. PW-7, a prosecution witness, was not declared hostile.

13. In his cross-examination by counsel for the Appellant, PW-7 further explained: “The entry at point ZA on page no. 91 had been correctly recorded by me. I have seen note at page no. 73 at point A-3 pertaining to the date of 15th September 1996 and there exist a

mention of Rs.500/- plus Rs.2000/- along with a mention of Rs.2500/- to be collected from driver KTT. Mr. Yogesh of taxi no. 2866. The split 500/- plus 2000/- reflects that at two times advance has been given.”

Statement of the accused under Section 313 Cr PC

14. There were 12 prosecution witnesses examined. In his statement under Section 313 Cr PC, the Appellant in response to the question that it had come in evidence that the treated GC notes were handed over to him after he had demanded the bribe amount of Rs.2,000 and then it was accepted by him in his left hand and kept between his chair and thigh, stated as under:

“I informed him that I have not issued no due certificate on the bills since there is a message from the HQ stating that a sum of Rs.2,000/- has to be collected from KTT, his travel firm. Further I also told him that I would look into the sale register in his presence, and verify whether as to any other amount taken by his driver as advance during the intervening period stood repaid or not. Since I was sitting in the counter of ITDC, therefore I told him, that I will be taking him along to the counter of DTDC where the sale register was lying. Rest is incorrect. I did not demand any bribe money.”

15. In response to another question that PW-8 had told the raiding party that the bribe amount had been accepted by the Appellant and kept on the chair beneath his thigh, he stated as under:

“I had categorically stated to the official of Anti Corruption Branch that as per the instruction received from the HQ, which are available on the sale register, Rs. 2000/- has to be collected from KTT i.e. the travel firm of the complainant and further complainant offered me Rs.2,000/-, towards the said advance received by KTT, therefore I accepted the said money

as the same was due towards KTT. I did not accept any bribe amount.”

16. The Appellant confirmed that the Sale Register (Ex. PW-7/C) had been seized at his instance and that at the relevant time it was available at the DTDC Counter. He maintained that he was wrongly arrested and detained. When asked why the PWs had deposed against him, he stated:

“Complainant is an interested person. His driver has taken an advance, with respect to which I had received instructions from HQ, which was recorded by PW Dharma Sattu in the sale register Ex. PW-7/C, in the date of 20th September 1996. I accordingly accepted money amounting to Rs.2000/- from the Complainant who was owner of KTT, since the Complainant knew that I as Incharge of DTDC counter is bound to follow the instructions of my superior, therefore he lodged a false complaint against me. Moreover I used to allocate tourists as per turn of the travel operator without any favour to anybody, this was also the reason for which the Complainant had grudge against me. The shadow witness is a hand pick witness of the police and he has not disclosed all facts relating to the present case. Police officials involved in present case are interesting in the success of the raid, therefore despite of the fact that on the spot I had produced before them the instructions received by me from my HQ through PW Dharam Sattu, which is also reflected at point ZA on page No. 90 of Ex.PW-7/C, in spite of that I was wrongly arrested and charge sheeted.”

The defence evidence

17. The Appellant examined Balbir Singh (DW-1) who used to supply taxis to the DTDC and was running a concern under the name of M/s. B.S. Travels. He confirmed that they used to submit bills after 15 days or a month. Whenever they had an outstation passenger, they would collect advance from the DTDC and deposit it back before the bill was

passed. Sometimes the DTDC used to call them to deposit back the advance taken by them. In his cross-examination DW-1 confirmed that “The DTDC officials used to note the advance taken by the driver in a register. When we used to return the advance taken then the entry regarding advance used to be struck off by the concerned person.”

18. Surinder Singh (DW-2) was working at the Information Counter of the DTDC, IGI Airport at the relevant time. He too confirmed that “the taxi driver who used to take the advance had to deposit the advance back but there used to be complaint in respect of taxi drivers that they were not depositing the advance back in time. The man at the counter used to enter in the register the amount of money which was to be taken from the taxi driver given as an advance.”

19. Lalit Kumar Gulati (DW-3) was posted as Deputy Manager in the Defence Colony Head office of DTDC. He was asked to bring the record of the accounts of the DTDC. He stated that the same had been destroyed in a fire. He also confirmed the practice regarding the reimbursement of the bills of the taxis.

The trial Court judgment

20. The trial Court on an analysis of the evidence first held that the sanction had been properly accorded. The plea of the Appellant that the amount had been received from PW-1 in respect of an advance given by the DTDC to PW-1 or his driver was not accepted by the trial Court. Relying on the evidence of PW-1 and PW-8 it was concluded that the fact that there was acceptance and demand of the bribe by the Appellant was proved beyond reasonable doubt.

21. The trial Court analysed the various entries in the register (Ex.PW-7/C) and concluded that “whatever amount was due was mentioned in the index and all the payments were already cleared on 17.9.96 and nothing was due.” It was held that the words appearing in the note written by PW-7 had been forged and added to the register as an interpolation. The entries upon it (mark-Z2) on pages 90-91 of register showed that in respect of a passenger taken to Kathmandu, the driver was to collect Rs.9,000. It was not mentioned there that a sum of Rs.2,000 was collected. The fact that the statement of PW-7 was recorded only on 4th March 1997 showed that his statement was recorded “only after this manipulation was made in the register.” As regards the evidence of DW-2, the trial Court held that he had failed to produce any document to show that there was a shortage of Rs.2,000 which was required to be made up.

22. On the aspect of manipulation in the register (Ex.PW-7/C), the Court initiated proceedings in respect of the forgery committed by the persons who had been responsible for manipulation in the register. The Appellant was then convicted for the offences abovementioned and sentenced accordingly.

23. This Court has heard the submissions of Mr. Dayan Krishnan, learned Senior counsel for the Appellant and Mr. Rajat Katyal, learned APP for the State.

Demand and acceptance of bribe

24. PW-1 supported the case of the prosecution regarding the Appellant consciously demanding and accepting the bribe amount of the treated GC notes which were later recovered. However, PW-8 was

not so categorical. He only stated that the Appellant had asked PW-1 that a balance Rs.2,000 was due. This was corroborated by PW-7 who admitted to having written the note on 20th September 1996 in the register (Ex. PW-7/C).

25. The Appellant is not denying that the raid took place, money recovered and the register seized. The question that arises is whether there was any conscious demand and acceptance of the bribe amount by the Appellant. If he was under the impression, as per the note in the register, that Rs.2,000 had to be collected from KTT then clearly in his mind what he reminded PW-1 about and accepted from him was not a bribe amount but the balance due to DTDC from KTT.

26. Mr. Rajat Katyal, learned APP, pointed out in the note at page 91 of Ex. PW-7/C, a reference was made to an entry at Serial No. 6 in the previous page, i.e at page 90 of the register which in turn referred to a passenger's trip to Kathmandu. In terms of the said entry, the balance due was 200 US dollars which worked out to more than Rs.2,000. It was further submitted that there was no corresponding entry in the index regarding Rs.2,000 which had to be collected from a KTT driver. In these circumstances, there was no question of any balance amount to be collected.

27. Mr. Katyal went to the extent of suggesting that perhaps PW-7 was acting in connivance with the Appellant in writing the note in page 91 after the seizure of the register. It was further submitted that even Inspector R.K. Singh (PW-9) may have connived with the Appellant and PW-7 in preparing the seizure memo (Ex. PW-9/B) at a

later point in time and back dating it.

28. The above submissions are not acceptable for the simple reason that the authenticity of the note was confirmed by PW-7 himself. Secondly, the prosecution did not declare PW-7 hostile. The evidence of PW-7 was clear that not only was the register seized on the date of the raid but a seizure memo was also prepared on that day. If indeed the register was seized by Inspector R.K.Singh at the time of the raid on 24th September 1996 there was no occasion for PW-7 to insert a note in page 91 of the Register at a later point in time. The seizure memo (Ex. PW-9/B) which is signed both by Inspector R.K.Singh and PW-7 makes an express reference to the note at page 91. It notes: "Page 91 shows that Rs.2000/- were to be collected from Driver of KTT vide Sr. No. 6 while the sale does not indicate Rs.2,000/- nor there is any mention in the index of KTT." There was not even a suggestion to PW-7 or to PW-9 or to the IO by the learned APP that they had acted in connivance to help the Appellant. That not being the case of the prosecution at all, the Court finds no reason to disbelieve PW-7 when he stated that he actually wrote the note since Rs.2,000 had to be collected from M/s. KTT.

29. The trial Court appears to have gone into an elaborate exercise of analysing the entire Sale Register of disbursement to conclude that there were no dues after 17th September 1996. The Court is of the view that the trial Court erred in undertaking this task all by itself without putting questions to witnesses to explain the entries and clarify the position. There was no valid basis for excluding the evidence of PW-7 which authenticated the entries in the register as

made by him.

30. Interestingly, when PW-9 was asked how he ascertained that the questioned amount was not an official payment to DTDC by PW-1 for the period 1st to 15th September 1996, he answered that “I fully relied upon the statement of the complainant and the *panch* witness in this regard.” This practice of the airport counter of the DTDC to give advance and to have the same collected at a later date, was not investigated by the police.

31. The evidence of the prosecution cannot, in the circumstances, be said to prove beyond reasonable doubt that there was either a conscious demand or conscious acceptance of the bribe amount by the Appellant.

The hand washes

32. There is another strange aspect of the case regarding the two bottles containing the left hand wash of the Appellant. Both were sealed with the seal ‘SR’. While one left hand wash (‘LHW-2’) was deposited in the police *malkhana*, the other left hand wash (‘LHW-1’) was kept in an almirah of the ACB Office. It is not clear whether the said almirah had been sealed. There was nothing to show that the sample sent to Forensic Science Laboratory (‘FSL’) was in a tamper free condition except the FSL report stating that the seals were intact. This still does not explain why LHW-2 which was kept in the *malkhana* was not sent to FSL for testing. Mr. Krishnan, learned Senior counsel appearing for the Appellant is right in his submission that the failure by the prosecution to send the LHW kept in the

malkhana for testing by the FSL should lead to an inference being drawn against the prosecution under Section 114 of the Evidence Act.

Validity of the sanction

33. There is a third aspect of the matter which is regarding the sanction accorded for prosecution. Mr. Chander Mohan, (PW-11) Manager Personnel, DTDC only identified the signatures of Ms. B. Prasad, the Managing Director of DTDC who passed the sanction order (Ex.PW-4/A) dated 11th November 1998. For some reason, the sanctioning authority was herself not examined as a witness. Mr. Piyush Aggarwal (PW-12) who was posted as Manager Legal and Vigilance, DTDC stated that the sanctioning authority “had gone through the documents and being the competent authority to remove the accused from his services had accorded the sanction...”. However neither was the original file containing relevant papers, produced before the Court and nor was Ms. B. Prasad examined as a witness. It is not, therefore, clear whether the sanctioning authority had applied her mind to the materials on record before passing the sanction order. It appears to be a standard form order. It does not, therefore, inspire confidence.

34. The presumption attracted as a result of the hand wash turning pink has been rebutted on a preponderance of probabilities by the Appellant. The inference drawn by the trial Court on an analysis of the register and holding that it incriminated the Appellant was not, in fact, put to the Appellant in his statement under Section 313 Cr PC. Therefore that could not have been used as a circumstance against him.

Conclusion

35. In the circumstances, this Court is unable to concur with the impugned judgment of the trial Court convicting the Appellant for the offences under Sections 7 and 13 (1) (d) punishable under Section 13 (2) of the PC Act. The impugned judgment and order on sentence passed by the learned trial Court is set aside. It is clarified that no further action needs to be taken in respect of the directions given by the trial Court to the police regarding investigation into whether the register exhibited as Ex.PW-7/C contained entries which were forged.

36. The bail bond and the surety bond of the Appellant are directed to continue for a period of three months in terms of Section 437-A Cr PC.

37. The appeal is allowed in the above terms. The trial Court record be sent back forthwith.

S. MURALIDHAR, J.

SEPTEMBER 11, 2014
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