

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Appeal No.S-1346-SB of 2002

.....

Date of decision:6.1.2015

Krishan Kumar

...Appellant

v.

C.B.I.

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. J.S. Bedi, Senior Advocate with Mr. Lovepreet Singh Chahal, Advocate for the appellant.

Mr. Sumeet Goel, Standing Counsel for the respondent-C.B.I.

.....

Inderjit Singh, J.

This criminal appeal has been filed by appellant-Krishan Kumar challenging the impugned judgment of conviction and order of sentence dated 14.8.2002 passed by learned Special Judge, C.B.I., Patiala, whereby he has been held guilty and convicted for the offences under Section 7 and Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for four months for the offence under Section 7 of the Act. He has also been sentenced to undergo rigorous

imprisonment for two years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for four months for the offence under Section 13(1)(d) punishable under Section 13(2) of the Act. However, both the sentences of imprisonment have been ordered to run concurrently.

The brief facts of the prosecution case are that the accused-appellant was working as Senior Telephone Operating Assistant in the office of General Manager (T), Amritsar. He was caught red handed while demanding and accepting ₹1500/- as bribe from Sarabjit Singh for shifting his telephone No.481979 from Kot Baba Deep Singh Colony, Shop Nos.84-85, Tarn Taran road, Amritsar to M/s P.S. Road Lines, Shop No.23-B, Akali Phoola Singh Market, Ghee Mandi, Amritsar. FIR No.45 dated 17.8.1999 was registered against him at Punjab Vigilance Bureau, Jalandhar. The accused-appellant was a Central Government employee and as such, the investigation of the case was taken up by the C.B.I. Sarabjit Singh had applied for shifting of his above telephone and the application was received in the Department of Telecom, Amritsar on 30.7.1999 vide S. No.8017. The file pertaining to the above telephone was pending with the accused on 16.8.1999. Sarabjit Singh contacted the appellant on 16.8.1999 and he demanded a sum of ₹2,000/- from him for shifting the telephone. Sarabjit Singh made a false promise to pay the bribe amount of ₹1,500/- to the accused-appellant, who had asked him to come along with bribe amount on 17.8.1999. Sarabjit Singh along with Raj Kumar visited DSP Ranbir Singh at Vigilance Bureau, Amritsar and

got recorded his statement. Sarabjit Singh produced two currency notes of ₹500/- denomination each and five currency notes of ₹100/- denomination each. The said currency notes were smeared with phenolphthalein powder and the same were handed over to Sarabjit Singh with an instruction to give the same to the accused on demand. It was also ensured that Sarabjit Singh was not possessing any other currency notes of ₹100/₹500 with him. A handing over memo was prepared and the numbers of currency notes were also recorded therein. Raj Kumar was directed to act as a shadow witness and Government witness was joined and raid was conducted. Santokh Singh, Junior Assistance was also joined in the raiding party. 'Ruqa' was sent to the Punjab Vigilance Bureau and FIR was registered. At about 3.05 p.m., DSP Ranbir Singh along with complainant, shadow witness, Government witness and other members of the raiding party left the Vigilance Bureau Office in a jeep for conducting the raid. Sarabjit Singh and Raj Kumar went inside the office of accused, who told them to stand outside after inquiring regarding the bribe money. After some time, accused came out of the office and met the complainant and demanded bribe money. The tainted money was handed over to the accused by Sarabjit Singh. On the passing of the bribe money, Raj Kumar shadow witness gave the pre-appointed signal to the raiding party. On the receipt of the signal, the raiding party reached the spot. DSP Ranbir Singh introduced himself to the accused. The accused was holding the tainted money in his right hand. Their numbers were got tallied by Santokh Singh with the help of already prepared memo and the same tallied. The tainted

money was taken into possession vide separate recovery memo. A solution of Sodium Corroborate was prepared. The fingers of both the hands of the accused were washed in the said solution and the colour turned pink. Recovery memo, site plan etc. were prepared. Sanction was received from the competent authority. After completion of the necessary investigation, challan was presented.

On presentation of challan, the trial Court finding prima facie case against the accused, framed charges for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined various witnesses.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent.

After going through the evidence on record, the learned trial Court, vide its impugned judgment and order, convicted and sentenced the accused-appellant for the offences as mentioned above. Aggrieved against the impugned judgment and order, the present appeal has been filed.

At the time of arguments, learned senior counsel for the appellant argued that the version of the prosecution is improbable and a reasonable doubt exists in the prosecution version. As per evidence, when the file came to the appellant on 16.8.1999, there was no occasion for the

complainant to go 3-4 times to the accused-appellant. Learned senior counsel for the appellant further argued that the Investigating Officer has stated that Sarabjit Singh-complainant has come to him for the first time on 17.8.1999, whereas the complainant says that he had also gone to the appellant on 16.8.1999. This also creates doubt. Learned senior counsel for the appellant further argued that as per the evidence on record, the file was taken from the table of the accused-appellant on the spot and nothing has been added after the recovery of the file, but the file shows that already noting had been made for transfer of the telephone connection and nothing was left for the appellant to do in that file. Learned senior counsel for the appellant further argued that sanction in the present case is defective as the competent authority has not seen noting that ₹1,943/- was due on this account which amount had not been paid till now. The learned senior counsel for the appellant further argued that recovery witness Santokh Singh PW-3 has not supported the prosecution version and there are so many discrepancies and contradictions in his statement which shows that recovery has not been proved. Learned senior counsel for the appellant also argued that there is discrepancy regarding time also in the statement of the witness. He next argued that there being merit in this appeal, it should be allowed.

On the other hand, learned standing counsel for the respondent-C.B.I. argued that case of the prosecution has been duly proved. There are no material contradictions or improvements in the statements of the witnesses. The demand of the bribe money, the

acceptance of the same and the recovery from the appellant have been duly proved. The sanction is valid sanction. The fact that an amount of ₹1,943/- was due and was to be paid by the complainant, in no way, creates doubt in the prosecution version. When the connection is to be transferred, that amount is to be paid to the Department and that amount has no concern with the demand of bribe money. The bribe had been asked for shifting the telephone connection and not for this amount of ₹1,943/- which was due amount. Learned counsel for the C.B.I. argued that minor discrepancy regarding time can occur due to gap of time. Rather, it makes the witness truthful. He further argued that even if on some facts recovery witness has not supported the case or there is discrepancy, even then the demand, acceptance and recovery of the bribe money have been duly proved by the other witnesses. There is nothing on the record to show that the appellant is innocent or falsely implicated in this case.

I have heard learned senior counsel for the appellant as well as learned standing counsel for the respondent-C.B.I. and have gone through the record.

From the record, I find no merit in the arguments of the learned senior counsel for the appellant. The prosecution has examined PW-1 Sarabjit Singh, complainant, who has consistently deposed as per the prosecution version and there are no material contradictions or improvements in his statement. There is nothing in his statement which may make his statement unreliable. The mere fact that ₹1,943/- was due/

payable by the complainant towards Telecom Department, in no way, affect the prosecution version. The accused-appellant has asked for the bribe for shifting the telephone connection, which is duly proved on the record that the accused-appellant had to deal with the file and he actually dealt with the file. The mere fact that he had already done his work before the raid is no ground to say that the appellant has been falsely implicated. Sarabjit Singh is a layman. He does not know the procedure of the Department as to how the file was to be moved and who has to lastly sanction the shifting. The appellant told the complainant that he would get his work done and he had dealt with the file and the file was also recovered from the table of the appellant at the time of raid, which supports the prosecution version, that demand was raised and file was kept on his table by the accused-appellant after doing the needful and he was only waiting for the bribe. PW-1 had duly proved the demand of bribe by the accused-appellant firstly on 16.8.1999 and then at the time of raid he inquired from the complainant whether he brought the money. This witness has also duly proved that the accused-appellant had taken the currency notes of ₹1,500/-, which were recovered by the Investigating Officer from the hands of the accused-appellant. PW-1 Sarabjit Singh has stated in his examination-in-chief that he went to C.B.I. Office on 17.8.1999. As per the statement of PW-1, even the demonstration etc. was done on 17.8.1999.

PW-2 Raj Kumar, who is the shadow witness, has also consistently deposed as per the prosecution version and nothing is there in

the cross-examination to make his statement unreliable. There are no material contradictions or improvements in the statement of PW-2 Raj Kumar. The mere fact that he stated that accused was caught hold from his both hands by two persons and the DSP recovered currency notes from the right hand of the accused, in no way, make clear as to whether from which part of the arms he was caught hold, whether from the wrist or from the fingers or from the actual hand.

PW-3 Santokh Singh, who is recovery witness, deposed that he accompanied the raiding party and raid was conducted upon the accused. He also deposed in examination-in-chief that Sarabjit Singh-complainant and Raj Kumar shadow witness went to the office of the accused and signal was received from the witness and then the DSP along with other members of the raiding party had gone along with him. He also stated that the accused present in the Court was standing outside his office. The DSP and other members of the raiding party had caught hold of the accused. The DSP handed over the currency notes to him and he tallied the numbers and the same were found to be correct. He also admitted signing the recovery memo. This witness has also stated regarding other procedure, regarding washing hands of the accused and taking the pink solution into Police possession etc. The mere fact that he stated that the memos were prepared in the office by the DSP in examination-in-chief does not create any doubt. In his statement he has stated that the memos were prepared by the DSP in the office, but no where clarified that it was in the office of the DSP, it may be office of the

Telecom Department. In cross-examination, this witness though has reported that the DSP left the jeep and they went inside the office after about 15-20 minutes when the DSP left for the spot. The currency notes were handed over to the DSP when he reached the spot. This witness has not seen the currency notes in the hands of any other persons except the DSP. All this cross-examination of this witness does not create any reasonable doubt in the prosecution version. Even if it is taken as discrepant, even then the Investigating Officer, the recovery witness, the complainant had duly proved the recovery of the currency notes from the accused-appellant. Rather, in examination-in-chief, PW-3 Santokh Singh has supported the prosecution version, so no reasonable doubt exists in the prosecution version. The mere fact that Sarabjit Singh came to accused 3-4 times is no ground to infer that the whole case is false as the file was to be dealt with by the accused. Therefore, Sarabjit Singh may have contacted him earlier also though the file came to him on 16.8.1999.

As regards sanction, in no way, it can be held that by not seeing the note regarding due amount, in no way, made it defective. PW-5 Jatinder Singh, Divisional Engineer Customer Services, Telecom, Amritsar has specifically stated in the cross-examination that he had gone through a file containing 15/20 papers received from C.B.I. giving the sequence of events. The file was accompanied with a forwarding letter. He had also made an independent inquiry about the present case.

Keeping in view the above statement, in no way, the sanction can be held as defective. The mere fact that an amount of ₹1,943/- has not

been paid till now also does not create any doubt in the prosecution version.

From the perusal of the evidence on record, I find that the prosecution has duly proved its case by leading cogent evidence against the appellant beyond any reasonable doubt. The PWs have consistently deposed as per prosecution version. There are no material contradictions or improvements in the statements of witnesses. The impugned judgment and order are correct and as per law and the same are upheld.

Therefore, finding no merit in the appeal, the same is dismissed.

The sentence of imprisonment of appellant was suspended by this Court and he was released on bail during the pendency of the appeal. As he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

January 6, 2015.

(Inderjit Singh)
Judge

hsp