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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17.03.2016

+ CRL. L.P. 10/2015

STATE (GOVT OF NCT OF DELHI) Petitioner
Through Ms. Radhika Kolluru, APP
SI Bijender Singh, PS Anti-Corruption

versus

ANUJ CHHIKARA Respondent
Through Mr. Ramesh Gupta, Sr. Advocate with
Mr. Bharat Sharma, Advocate along
with respondent

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Section 378(1) of the Code of Criminal Procedure, 1973 seeks leave to appeal against the judgment and order dated 12th September, 2014 rendered by the Special Judge (ACB), Tis Hazari Courts, Delhi whereby Shri Anuj Chhikara, a police officer was acquitted of all the charges for offences punishable under Section 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the said Act').

2. After having perused the Trial Court record as well as having heard learned counsel appearing on behalf of the parties, in my view, the leave to appeal cannot be granted.

3. A perusal of the depositions of the complainant/PW-10 and the panch witness/PW-11 reveals as follows:-

(a) The complaint (Ex. PW10/A) was filed at the dictation of the Raid Officer/PW-12.

(b) The entire evidence qua the trap operation, in which Shri Anuj Chhikara was implicated, was at the behest of the said Raid Officer/PW-12.

(c) The subject currency notes were recovered from the drawer of Shri Anuj Chhikara.

(d) Admittedly, Shri Anuj Chhikara did not accept the bribe money in his own hands since no hand-wash was ever taken by the prosecution.

4. Furthermore, according to the testimonies of the complainant/PW-10 and the punch witness/PW-11, the bribe money was placed in the drawer of the desk of Shri Anuj Chhikara in the latter's absence at the instruction of the Raid Officer/PW-12.

5. The only other witness produced on behalf of the prosecution to establish demand of illegal gratification i.e. Sanjay Kumar/PW-9 turned hostile and did not support their case. Consequently, the prosecution failed to prove beyond reasonable doubt that there was either any demand of the bribe or acceptance of the subject money, insofar as, Shri Anuj Chhikara is concerned.

6. Ms. Radhika Kolluru, learned APP appearing on behalf of the leave petitioner invited my attention to a decision of a three Judge Bench of the Hon'ble Supreme Court of India in *M. Narsinga Rao vs. State of A.P.* reported as *(2001) 1 SCC 691* to urge that in view of the complaint (Ex. PW10/A) made by the complainant/PW-10 as well as the recovery of the tainted money from the drawer of Shri Anuj Chhikara, a presumption under Section 20 of the said Act was raised against the latter, which presumption, he has failed to rebut in accordance with law.

7. In my respectful view, the said decision does not come to the aid of the prosecution, inasmuch as, in that case, the accused had been caught '*red-handed*' and the tainted currency notes were recovered from his pocket.

8. In a three Judge Bench decision of the Hon'ble Supreme Court of India in *B. Jayaraj vs. State of A.P.* reported as *2014 (4) LRC 35 (SC)*,

wherein the facts were *pari materia* with the facts in the present case, the Supreme Court held as follows:-

(i) The demand of illegal gratification is sine qua non to constitute an offence under the Act and mere recovery of currency notes cannot constitute the offence under Section 7 of the Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. [Ref: *C.M. Sharma Vs. State of A.P.* reported as (2010) 15 SCC 1 and *C.M. Girish Babu Vs. C.B.I.* reported as (2009) 3 SCC 779].

(ii) The proof of acceptance of illegal gratification can follow only if there is proof of demand.

9. The decision in *B. Jayaraj (supra)* was followed by the Supreme Court in *Krishan Chander vs. State of Delhi* reported as 2016 (1) JCC 495 wherein the Supreme Court observed that in all such types of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused had obtained the illegal gratification.

10. The Supreme Court in these decisions affirmed the dictum of an earlier decision in *P. Satyanarayana Murthy vs. The Dist. Inspector of*

***Police, State of Andhra Pradesh & Anr.* reported as (2015) 10 SCC 152**

wherein it was held as follows:-

“ 21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) & (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *dehors* the proof of demand, *ipso facto*, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

11. A similar position of law emerges from a reading of the decision of the Supreme Court in ***A. Subair vs. State of Kerala*** reported as (2009) 6 SCC 587.

12. In the present case, it is observed that the complainant/PW-10 and the panch witness/PW-11 have turned hostile and have not supported the case of the prosecution.

13. Sanjay Kumar/PW-9, the only other witness produced on behalf of the prosecution in support of prosecution's allegation of demand by Shri Anuj Chhikara has also turned hostile.

14. Consequently, the prosecution has failed to prove either demand or acceptance of illegal gratification and consequently, the guilt of Shri Anuj Chhikara, in the present case.

15. In view of the foregoing, the present leave petition is devoid of merit and is accordingly dismissed.

MARCH 17, 2016
SD

SIDDHARTH MRIDUL, J