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

Decided on: 27th April, 2017

\+ CRL.A. 222/2006

RATAN KUMAR GUPTA ..... Appellant

Through: Mr. Atif Shamim, Advocate with appellant in person.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Akshai Malik, APP for the State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This criminal appeal challenges the judgment dated 18.03.2006 of the Court of Special Judge in complaint case No.59/1999 holding the appellant guilty and convicting him for offences punishable under Sections 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 as also the order of sentence passed on 20.03.2006 whereby punishment in the form of rigorous imprisonment for six months with fine of Rs.1500/- had been awarded for offence under Section 7 of Prevention of Corruption Act, 1988, besides rigorous imprisonment for two years with fine of Rs.5,500/- for offence under Section 13(2) of the Prevention of Corruption Act, 1988, both substantive sentences having been directed to run concurrently with benefit of set off for the period of detention already undergone.

2. The appellant was working as Assistant Engineer in erstwhile Delhi Electric Supply Undertaking (DESU), posted in its office at Gandhi Nagar, Delhi, in September, 1989. He was arrested on 19.09.1989 by Inspector R.P.S. Rana (PW-9) of Anti Corruption Branch of Delhi Police sometime around 3:30 p.m. alongside registration of the First Information Report (FIR) No.37/1989 of Anti Corruption Branch (ACB) for offences punishable under Section 7 and 13 of the Prevention of Corruption Act, 1988, on the allegations that while being so employed in DESU and as such a public servant, he had demanded and obtained illegal gratification of Rs.1500/- from the complainant Rattan Singh (PW-7) as a motive or reward for not disconnecting the electric connection at premises no.6822, Shyam Gali, Gandhi Nagar, Delhi where the said complainant (PW-7) was engaged in the business of embroidery and thereby having obtained pecuniary advantage by corrupt or illegal means by abusing his position as such public servant.

3. On conclusion of investigation, report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) dated 17.05.1999 was submitted by Inspector Ramesh Kaushik (PW-8) in the court of Special Judge on 01.06.1999 on which cognizance was taken and the appellant stood summoned. He was eventually put on trial on charge being framed on 13.01.2004 for offences punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988.

4. At the trial, the prosecution led evidence by examining G.L. Gandhi (PW-1), retired superintendent in DVB office at Shakti

Bhawan; ASI Amar Singh (PW-2), who was the MHC(M) PS Subzi Mandi; ASI Subodh Kumar (PW-3) who was MHC (M) on 18.01.1990, who proved photocopy of the entry made by him in register no.19; Constable Jagat Narain (PW-4); Shri Varinder Singh (PW-5) the then Chairman DVB, who proved detailed sanction order as per Section 19 Prevention of Corruption Act; Shri K.P.Singh (PW-6), who deposed that he had kept the exhibits and sample seal in his almirahs under lock and key; Shri Rattan Singh (PW-7) the complainant; Inspector Ramesh Kaushik (PW-8), who deposed that he had received the investigation of this case from SO, DCP Anti Corruption and prepared charge-sheet; Inspector R.P.S. Rana (Retd.) (PW-9), who was the trap laying officer, Shri Ashok Sarin (PW-10) a *panch* witness, who turned hostile; Inspector R.L. Sharma (Retd.) (PW-11), who was the member of raiding party and also the second investigating officer; and ACP S.K. Sharma (Retd.) (PW-12), who had taken over investigation on 19.04.1990.

5. After the evidence of prosecution had been concluded, the appellant was examined under Section 313 Cr.P.C. on 28.01.2006 wherein he claimed to have been falsely implicated, he also submitting a detailed written statement mark 'X' requesting it to be read as part of his answer. It may be added that the prime plea of the appellant was that he had neither demanded nor accepted any bribe and that the complaint was motivated, he having been falsely implicated.

6. The appellant examined Shri Ram Kishore (DW-1), who happened to be present in the office of the appellant at the time of raid; Shri Jagdish Chand (DW-2), who visited the office of appellant to take

his tools on the day of incident; Shri K.C. Verma, (DW-3) retired ACP who stated that on 30.04.1991 Inspector S.K.Sharma had given un-traced report in the present case; Shri Basant Kumar Raghav (DW-4), who was the shift in-charge on the day of the incident in the office of the appellant; Shri Rakesh Kumar Gupta (DW-5), brother of the appellant; and Shri Madan Lal Gupta (DW-6), who was posted as Executive Engineer at the relevant time in DESU as witnesses in his defence.

7. The learned Special Judge, by judgment dated 18.03.2006, returned finding of guilt and thereby convicting him as charged awarding sentences as noted earlier.

8. Having heard arguments and having gone through the trial court record with the assistance of learned counsel on both sides, this court is of the opinion that the appeal must be allowed and the appellant acquitted on benefit of doubts. The reasons for such view are set out hereinafter.

9. The FIR (Ex.PW-11/A) was registered at 4:20 p.m. on 19.09.1989 by Anti Corruption Branch on the basis of *rukka* (Ex.PW-9/A) sent by Inspector R.P.S. Rana (PW-9) the trap laying officer (TLO) at 3:30 p.m. from the office where the appellant was posted respecting the alleged transaction it having occurred at about 1:05 p.m. earlier at the same place. The *rukka* indicates the proceedings were undertaken by Anti Corruption Branch on the basis of complaint (Ex.PW-7/A) lodged at 8:00 a.m. by Rattan Singh (PW-7) alleging the demand for illegal gratification having been made by the appellant in

the context of exception being taken to the running of the machinery of embroidery in the premises of the complainant in late night hours, such demand of the appellant for Rs.1500/- per quarter (three months) being towards *"Kharcha Paani"* with threat of disconnection of electricity supply in case of failure to do so. As per the complaint, the appellant had asked for the money to be kept ready on 18.09.1989 implying that it would be collected on the said date but then adding that the appellant was expected to come at about 10.00 a.m. on 19.09.1989 for such purposes. The TLO, per the *rukka,* joined witness Ashok Kumar Sarin (PW-10), an employee of Sales Tax Department, who is shown present in the office of Anti Corruption Branch at the relevant time, in the proceedings, obtained fifteen currency notes each of the denomination of Rs.100/- from the complainant, treating them with phenolphthalein powder and after necessary pre-trap proceedings (Ex.PW7/C) set out for the premises of the complainant. As per further proceedings forming part of the *rukka,* the appellant did not turn up at the premises of the complainant and instead, upon being contacted on phone, instructions were received by the complainant to come to his office as the appellant would be present there till 2.00 p.m. It is alleged that when the complainant approached the appellant in his office at about 1.05 p.m., he reiterated the demand and upon the treated currency notes being tendered, he received the same by asking the complainant to place the money within a brown coloured *raxine* folder lying on his table. The FIR further alleged that upon the appointed signal being given, the TLO with other members of the raiding party entered the office and the trap money was recovered from within the file on the office table of the appellant and follow up proceedings were undertaken. The cash taken from the file folder during these proceedings is stated to have been sent to Central Forensic Science Laboratory (CFSL) which, per its report (Ex. PW11/C), gave positive test for the presence of phenolphthalein and sodium carbonate powder.

10. At the trial, the *panch* witness (PW-10) did not support the prosecution version. He was examined on 08.12.2005, sixteen years after the alleged occurrence. He would not support the case or narrate the necessary facts stating that he would not remember any details. The cross-examination by the public prosecutor could not bring out any facts affirming the prosecution case on any material aspects.

11. In the given facts and circumstances, the prosecution mainly rested its case on the word of complainant (PW-7) with regard to the demand and acceptance of the illegal gratification, this besides the evidence of the TLO (PW-9) with regard to the recovery of trap money. It is the admitted case of the prosecution that the trap money was not recovered from the physical possession of the appellant. Instead, it was recovered from within a file folder lying on the table of the appellant. There is no evidence whatsoever showing the appellant to have touched any of the said currency notes at any point of time. In this fact situation, the evidence of PW-7 was the most crucial material.

12. PW-7, the complainant, did not stand by his version in the FIR. He did state that an official of DESU used to harass him by visiting his premises with certain other officials taking exception to the working

of the machinery. According to his deposition, the harassment was through his stooges who had conveyed the demand for illegal gratification. Though he would state that the official who had demanded the money had not come to collect the same at his premises as was the understanding given earlier, after he had reported the matter to Anti Corruption Branch, with the preparation having made for the trap to be laid, he had made a telephone call to the DESU office to be told by the person at the other end, referring him to as *"someone"* that since *"Guptaji"* was busy in his work he could come to the office. It is against this backdrop, per the evidence of PW-7, that the trap party had moved to the DESU office. There is no evidence identifying the said "someone" or as to his connection, if any, with the appellant.

13. PW-7 testified at the trial that when he had reached the room where the DESU officials in question was to be met he had found "Guptaji" not present. Instead, one peon was present who had offered him water, asking him to sit. After some ten minutes, the very same peon had told him that *"nobody would take money like that"* and he should keep the money in the file lying on the table. It is on such advice that he had kept the notes within the file lying on the table. He is on record to state that inspite of wait for 5-7 minutes, the concerned officer did not turn up and so he had come out. As he had reached the door, a person came and sat on the office table when he was told by the same very peon that it was *"Guptaji"*. It is at this juncture that he gave the signal to the trap party which came in and questioned the person introduced as *"Guptaji"* asking him if he had taken money

which was denied. The money was thereafter recovered from the office folder.

14. Though it is true that PW-7 is not very clear in his deposition to identify the appellant as the public servant who he had met in the DESU office upon he being introduced by a peon as *"Guptaji"* it may be assumed in the face of the post trap *punchnamas* (Ex. PW7/F, PW7/G, PW7/H) and personal search memo (Ex.PW7/J) that the person arrested in DESU office in the wake of the aforesaid proceedings was none other than the appellant.

15. The prosecution evidence, however, remains deficient on the crucial score of the allegations of demand or acceptance of illegal gratification by the appellant. The initial report of the TLO leading to the trap being arranged had accused the appellant to be the person who had raised the demand after prolonged harassment. In the witness box, PW-7 would not confirm that to be a fact. Going by his deposition, he had never met the appellant prior to the visit to the office of DESU during the trap proceedings. This is why he required the person occupying the table in the said office to be introduced by a peon as *"Guptaji"*. He has clarified that the demand had been conveyed through stooges and, therefore, clearly not directly.

16. The trap money was not recovered from the person of the appellant. It was found lying within the file folder on the office table of the appellant. The evidence of PW-7 shows that the trap money was placed in the said folder by him at the time when the appellant was not present and, thus, during his absence. There is no evidence

confirming any exchange between the appellant and the complainant prior to the money being thus placed in the file folder. Adverse conclusions cannot be drawn accepting the case for the prosecution only on the basis of the trap proceedings.

17. In above facts and circumstances, mere recovery of trap money from the file folder lying on the office table of the appellant cannot lead to the conclusion that it was kept there at the instance or on the asking of the appellant. Since the evidence clearly shows the money was thus placed in the said file folder during his absence, the possibility of it having been placed there to falsely entrap the appellant with ulterior motive cannot be ruled out.

18. Thus, the appellant is entitled to benefit of doubts. The judgment dated 18.03.2006 and the order on sentence dated 20.03.2006 of the trial court are, therefore, set aside. The appellant stands acquitted. The fine, if realized, shall be refunded. Pending hearing on the appeal, the sentence had been suspended by order dated 18.04.2006 and the appellant was released on bail. His bail bonds are discharged.

19. The appeal is allowed in above terms.

(R.K. GAUBA)
JUDGE

APRIL 27, 2017
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