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

RESERVED ON : SEPTEMBER 30, 2016

DECIDED ON : JANUARY 03, 2017

+ **CRL.A.680/2014 & CrI.M.A.4725/2015**

SHASHI KANT GAUR Appellant.

Through : Mr.Manoj Ohri, Sr.Advocate, with
Mr.Krishan Kumar Arora and
Mr.R.C.S.Bhadoria, Advocates.

versus

THE STATE Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 20.05.2014 of learned Special Judge in Complaint Case No.44/12 arising out of FIR No.61/2010 registered at Police Station Crime Branch whereby the appellant was held guilty for committing offence punishable under Section 7 of Prevention of Corruption Act (in short 'PC Act'). By an order dated 21.05.2014, he was sentenced to undergo Rigorous Imprisonment for two years with fine ₹20,000/-.

2. Briefly stated, the prosecution case as set up in the charge-sheet was that during the period from December, 2003 to 2004, the appellant while working as Sub-Inspector at Special Staff Maurice Nagar, North District (Operation Cell), Delhi, demanded bribe of ₹2,00,000/- from the complainant-Anil Kumar Jaiswal. Subsequently, he again demanded and accepted bribe amount of ₹50,000/- in January, 2004. The complainant paid

a total bribe amount of ₹70,000/- at various stages from February to June, 2004 to the appellant.

3. On 1.5.2010, the complainant-Anil Kumar Jaiswal recorded statement (Ex.PW-15/A). V.K.Dham ACP, Anti-Homicide Branch of Crime Branch, lodged First Information Report. During investigation, statements of witnesses conversant with the facts were recorded. Search warrants were obtained and certain documents were recovered. Upon completion of investigation, a charge-sheet was filed against the appellant for commission of various offences. The appellant was, however, charged for committing offence under Section 7/13 PC Act and Section 384 IPC vide order dated 10.04.2013. In order to establish its case, the prosecution examined twenty three witnesses. In 313 statement, the appellant denied his involvement in the crime and pleaded false implication. He examined DW-1 (SI Umesh) and DW-2 (Chaudhary Ajay Raj) in defence. The trial resulted in his conviction under Section 7 of the PC Act, as aforesaid. Being aggrieved and dissatisfied, the appellant has preferred the instant appeal. It is relevant to note that the appellant was acquitted of the charges under Section 13(1) (d) PC Act and Section 384 IPC and the State did not challenge his acquittal under those offences.

4. I have heard the learned counsel for the parties and have examined the file minutely. Admitted position is that in December, 2003, the appellant was posted as Sub-Inspector at Special Staff Maurice Nagar, North District (Operation Cell), Delhi.

5. Undisputedly, appellant's conviction is primarily based upon the statement of complainant-Anil Kumar Jaiswal (PW-4). The incidents took place in December, 2003 and January, 2004 when allegedly the

appellant demanded bribe of ₹2,00,000/- from the complainant for not involving him in a car theft case and on the next day on 1.1.2004, he accepted ₹50,000/- at the complainant's residence. Admittedly, the complainant did not lodge any complaint against the appellant for demand and acceptance of illegal gratification from him promptly. Only on 1.5.2010, after a gap of about more than six years, the complainant approached ACP V.K.Dham to lodge complaint (Ex.PW-15/A) in which he leveled allegations of demand of bribe and about its payment. It is a comprehensive complaint in which all sorts of allegations have been leveled by the complainant against the appellant. It is not clear if on 1.5.2010, the complainant on his own had gone to the office of PW-15 (ACP V.K.Dham) to lodge the complaint or PW-15 (ACP V.K.Dham) had called him at the office where the complainant had made statement (Ex.PW-15/A). It has, however, not been explained as to why the complainant chose to lodge report before ACP V.K.Dham and why the local police where the incidents had allegedly taken place was not approached. Strange enough, after recording complainant's statement (Ex.PW-15/A), the investigation was taken over by ACP V.K.Dham (PW-15) himself.

6. Inordinate delay in lodging the complaint has not been explained by the complainant. It has come on record that the complainant had filed various writ petitions before this Court after the said incident. In no such petition, the complainant ever uttered a word about the demand and acceptance of bribe by the appellant. PW-4 (Anil Kumar Jaiswal) admitted in the cross-examination that he had made a statement dated 26.04.2006 (Ex.PW-4/D1) before ACP Sita Ram Vohra. He expressed his inability to disclose if he had accused the appellant to have demanded any money from

him in the said statement. Similar was complainant's response to the statement (Ex.PW-4/D2) made before ACP Surinder Kumar. He further admitted that Writ Petition No.606/07 (Ex.PW-4/D5) was filed by him. He again did not remember if he had disclosed about payment of ₹50,000/- after selling jewellery of his wife to the appellant. Similar was the response to the Writ Petition Nos.312/2008 (Exx.PW-4/D6) and Writ Petition No.83/2011 (Ex.PW-4/D7). Apparently, the complainant was aware of the legal remedies. Had there been any demand and acceptance of bribe by the appellant, there were no valid reasons for him not to initiate legal proceedings against him soon after the commission of the offence.

7. Delay in lodging the FIR creates a considerable doubt regarding the veracity of the complainant's statement. First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is essential that the delay in lodging of the First Information Report should be satisfactorily explained.

8. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. In the instant case, the delay in lodging the FIR has remained unexplained.

9. In scanning the testimonies of the prosecution witnesses, it reveals that the prosecution has miserably failed to establish as to when and where the alleged bribe was demanded. As observed above, the Trial Court did not believe the prosecution case about acceptance of bribe by the appellant from the complainant and it resulted in his acquittal under Section 13 (1) (d) PC Act and Section 384 IPC. In complaint (Ex.PW-15/A), the complainant did not disclose the exact date when he was illegally lifted and bribe was demanded from him. He merely disclosed that in December, 2003, when he had gone to House No.S-307, School Block, Shakarpur to meet Rekha Bhandari (PW-17) between 10.00 am to 12.00 noon, he was forcibly lifted by four individuals from outside the house and they took him to Maurice Nagar in a car. He disclosed that one of the individuals was the appellant who disclosed his identity as Sub-Inspector. The appellant tried to implicate him in a theft case. Thereafter, the appellant demanded ₹2,00,000/- from him for his release. When he expressed his inability, he was threatened and beaten. The appellant, thereafter, asked him to arrange ₹50,000/- or else he would be implicated in a 'smack' case. Due to fear, he gave ₹50,000/- brought by his family members.

10. In this complaint, the complainant did not claim if he was detained at the office for one night and on the next day, he was taken to his residence at Kanchan Apartments where his wife handed over ₹50,000/- as bribe to the appellant.

11. In his court statement as PW-4 the complainant has given inconsistent and conflicting version. He did not disclose the exact date when he had gone to meet his sister in December, 2003 and was lifted forcibly by four individuals who had arrived in between 10.00 a.m. to 12.00 noon in a maruti zen. The complainant did not disclose the number of the maruti zen in which he was abducted and taken to Maurice Nagar Special Staff Office. He also did not elaborate as to who other three individuals were besides the accused Shashi Kant Gaur. He alleged that he was given beatings by fist blows and danda and demand of ₹2,00,000/- was made from him by the accused to let him free. In his further examination, he deposed that the accused along with the three other individuals had lifted him on 31.12.2003 and after detaining him for a day at Maurice Nagar Special Staff Office had raised demand of ₹2,00,000/-. The accused had taken him to his house at Kanchan Apartment, Geeta Colony on 01.01.2004 in a car along with his two associates and had accepted an amount of ₹50,000/- handed over to him by his wife. Again, the complainant did not specify the exact time when on 31.12.2003 he was lifted from any specific place. As discussed above the Trial Court did not accept the complainant's version about acceptance of ₹50,000/- from him as bribe on 01.01.2004. No complaint whatsoever was lodged by the complainant or his wife any time for the alleged demand and acceptance of bribe any time prior to the lodging of the FIR in question. Serious discrepancies have emerged as to when the accused was lifted / apprehended and was taken to Maurice Nagar Special Staff Office. It has come on record in the testimony of the complainant that subsequent to that, he remained in custody in the car theft case for about more than one month and came out of jail on grant of bail by the Court

concerned. At the time of his production before the Court during remand proceedings, the accused did not level any allegations of demand and acceptance of bribe by the accused. Complainant's testimony discloses that he remained in touch with the accused subsequently on various occasions and allegedly conspired with him in his alleged misdeeds. He was even introduced to one Sachin Malhotra where he was employed at his instance. The accused even deposed about purchase of illegal properties by the accused in his name or in the name of his wife. Other various allegations without proof have been leveled against the accused which need not be elaborated in the absence of any specific charge. It has further come on record that the complainant had conducted 'sting' operation with the help of media people and CD (Ex.P3) was produced as an incriminating piece of circumstance. The prosecution was, however, unable to prove the contents of CD (Ex.P3). The Trial Court observed that the original CD was not seized by the Investigating Officer and the relevant witnesses who had recorded the alleged conversation were not examined. Contents of CD's transcription (Ex.PW-11/A & Ex.PW-11/B) were not accordingly taken into consideration.

12. Complainant's statement has remained uncorroborated. PW-17 (Rekha Bhandari) to whom the appellant had described as her 'muhboli' sister did not support the prosecution. She did not depose if on 31.12.2003 the complainant had come at her house. Contrary to that, she deposed that in December 2003 on getting a telephone call at her shop at Connaught Place, she reached her house. She saw that her husband PW-18 (Satish Pant) was being taken to Crime Branch Office Maurice Nagar. On enquiry, the accused informed her that Satish Pant was being taken to their office at

Maurice Nagar. In the evening, she visited Crime Branch Office Maurice Nagar but was not allowed to meet Satish Pant. On the next day, she went there with food but was not allowed to serve food to Satish Pant and Anil Jaiswal. She further deposed that Satish Pant did not talk about any conversation in respect of money to have taken place between them. The witness was cross-examined by learned Addl. Public Prosecutor after seeking Court's permission. In the cross-examination, she admitted that Satish Pant along with one Ashok Tyagi was taken to Crime Branch Office. She denied the suggestion that Satish Pant had asked her to give ₹50,000/- to the police official and accordingly she had given ₹50,000/- to Satish Pant. She further denied the suggestion that on the next day Satish Pant gave him credit card to withdraw ₹70,000/- or that she had given ₹70,000/- to Ashok Tyagi in the presence of the accused Shashi Kant Gaur or had kept it on the table. In the cross-examination by learned defence counsel, she came up with the plea that Satish Pant was taken away by the police officials on 01.01.2004. She further revealed that on 31.12.2003 at about 12.00 night she had a talk with the complainant Anil Jaiswal on his mobile and had wished him. She volunteered to add that she had also talked to his wife. This witness was not re-examined by the prosecution. No suggestion was put to him that on 31.12.2003 the complainant was already in the custody of the police officials at Crime Branch Maurice Nagar.

13. PW-18 (Satish Pant) has also given inconsistent version about his apprehension. He deposed that probably on 31.12.2003, the accused along with other police officials had lifted him from his house in a car and had taken him to their office at Maurice Nagar. After some time, his friend Anil Jaiswal was also brought there. He did not depose if any demand of

bribe was made by the accused from the complainant in his presence. He rather stated that Anil Jaiswal had told him about demand of ₹70,000/- by the accused to pacify the matter. This is in conflict with the demand of ₹2,00,000/- allegedly made by the accused from the complainant. The witness did not depose if any payment whatsoever was made by the complainant to the accused to his knowledge. This witness was also got declared hostile by learned Addl. Public Prosecutor and was cross-examined. In the cross-examination, he denied the suggestion that when the police officials of Lodhi Colony had asked him to accompany to their office, he had called Anil Jaiswal who came to his house along with the accused or that the accused had talked to those police officials and had asked him to give ₹1,00,000/- to settle the matter and ultimately the deal was finalized for ₹60,000/- or that he had given ₹20,000/- at that time and ₹40,000/- were sent through Anil Jaiswal who delivered on the same day at Coffee House, Laxmi Nagar. He further denied the suggestion that on the day he was taken to the office at Maurice Nagar, he was brought to the house in the evening for taking the money or that he had taken ₹50,000/- from Ms.Rekha with whom he had kept the said amount and had handed over it to the accused. In the cross-examination by the defence counsel, he admitted that when he was brought to the office of the Operation Cell Maurice Nagar by ASI Ashok Tyagi, senior Officers ACP Brar and DCP had interrogated him. He remained in the Operation Cell Maurice Nagar till after 09.00 p.m. along with the complainant Anil Jaiswal on 01.01.2004. He further admitted that no conversation in respect of money had taken place between him and the accused.

14. PW-9 is Vimla Jaiswal, complainant's wife. She also did not reveal the exact date when her husband Anil Jaiswal - the complainant was lifted by the police officials of Special Staff Maurice Nagar in December 2003. She merely deposed that after 2 or 3 days of the lifting of her husband, the accused brought her husband to her house and her husband asked her to bring ₹50,000/- down-stairs. She gave it to her husband who in turn gave it to the accused in her presence. After about one and a half month, her husband came out of jail. In the cross-examination, she admitted that no complaint whatsoever was lodged by her against the accused for demand and acceptance of bribe. She was unable to tell the name of the police officials who had arrested her husband. She informed that she came to know about her husband's arrest only after he was brought at the house after 2 or 3 days. Apparently, the version given by the complainant's wife is in conflict or at variance with the one narrated by the complainant.

15. Testimony of PW-20 (Sachin Malhotra) is of no use as he is not a witness to the demand of bribe.

16. PW-8 (Sanjay Sehgal)'s testimony is of no relevance to prove the charges against the accused. He did not state if any demand of bribe was ever made by the accused from the complainant. Other allegations regarding demand of ₹2,50,000/- from him on some other occasion for some other transaction, are not relevant in the instant case.

17. No other worthwhile evidence has emerged on record to prove demand of bribe by the accused from the complainant. Nothing has come on record to show if on 31.12.2003 the accused was the Investigating Officer in the case where the accused was apprehended in case FIR No.06/2004 PS Sarai Rohilla. It is highly unbelievable that after acceptance of ₹50,000/- as

alleged as bribe from the complainant the accused would implicate him in a case and the complainant would remain in judicial custody for about one and a half month before release on bail without demur. It is highly unbelievable that in that scenario the complainant or his wife would not lodge any complaint against the accused. It is again amazing that after so much torture and harassment, the complainant would remain in contact with the accused for long and would assist him in his alleged nefarious activities. No reliance can be placed upon the complainant's testimony to base conviction as he himself was involved in number of criminal cases. He had availed various legal remedies but had not indicated any such demand of bribe by the accused from him. Complainant's conflicting statements have remained uncorroborated. No Call Detail Records have been placed on record. Status of the case in which the complainant was apprehended at first instance has not been disclosed.

18. In the light of above discussion, I am of the considered view that conviction and sentence recorded by the Trial Court on the highly scanty evidence cannot be sustained and are set aside. The appellant deserves benefit of doubt and is acquitted. The appeal is accordingly allowed.

19. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

20. Bail bond and surety bond of the appellant stand discharged. Pending application also stands disposed of.

JANUARY 03, 2017 /sa/ tr

**(S.P.GARG)
JUDGE**