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

\+ CRL.L.P. 277/2016

STATE (NCT OF DELHI) ..... Petitioner

Through Mr. Ashish Dutta, APP.

versus

OM PRAKASH CHADHARA ..... Respondent

Through: Mr.Yudhistar Kahol, Adv.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

<u>O R D E R</u>

% 16.05.2017

<u>Crl.M.A. 8322/2016</u>

For the reasons stated in the application, the delay of 22 days in filing the appeal is condoned.

Application stands disposed of.

<u>CRL.L.P. 277/2016</u>

The State has called in question the judgment dated 22.12.2015 passed by Ms.Poonam Chaudhary, Special Judge-07 (Central) (P.C Act Cases of ACB, GNCTD) in C.C No.08/15 in connection with FIR No.18/12 (P.S.Anti Corruption Branch, Delhi) whereby the respondent has been acquitted by giving him benefit of doubt.

The respondent while working as zonal engineer in Delhi Jal Board, Najafgarh, Delhi had demanded bribe of Rs.3000/- per month from the complainant for the purposes of withdrawing the penalty and clearance of dues of the complainant. On refusal to pay the aforesaid amount per month, the complainant was threatened that penalty of Rs.10,000/- would be imposed upon him. Since the complainant was not willing to pay the bribe, he approached the Anti Corruption Branch police station and submitted his written complaint (Exh.PW-2/A) on 12.10.2012.

After verification of the aforesaid complaint, a trap was laid and the tainted money was recovered from the drawer of the table of the respondent. The money, on test was found to be positive.

Thereafter chargesheet was submitted on which cognizance was taken and the respondent was put on trial.

The Trial Court after examining 15 witnesses on behalf of the prosecution and 3 on behalf of the defence, acquitted the respondent vide the impugned judgment.

Mr.Abhishek Kumar Yadav, Mr.Vijay Kumar Sharma and one Superintending Engineer who were examined as defence witnesses have all denied the occurrence and have stated that the tainted money was deliberately/forcefully put in the drawer of the respondent.

For bringing home the charges under Sections 7 and 13(1)(d) of the P.C Act, the demand of illegal gratification has to be proved. Mere recovery of currency notes is not sufficient to hold anybody guilty.

The charge against the respondent is of demanding illegal gratification of Rs.3000/- per month from the complainant as a motive for not imposing any penalty on him and clearance of his dues. The respondent is also being charged of obtaining illegal gratification of an amount of Rs.9000/-.

The complainant (PW-2) has deposed before the Trial Court that in the year 2012, he was informed that a penalty of Rs.10,000/- has been imposed upon him for his default in supplying water. He was told by one staff of the Delhi Jal Board that he would have to pay Rs.3000/- per month to the zonal engineer, the respondent. He has proved his complaint (Exh.PW-2/A).

In his cross examination he denied that the respondent had himself demanded Rs.3000/- per month as bribe from him.

From the deposition of PW-2 it becomes evident that the entire prosecution version has not been supported by him. As regards demand and acceptance of bribe, the only evidence which has come through his mouth is of the tainted currency notes having been kept in the drawer of the respondent. However, on the aspect of demand of bribe, the complainant/respondent No.2 has resiled from his earlier statement.

Mr.Dhan Singh Meena (PW-12), a panch witness, has also not supported the case of the prosecution so far as demand of bribe is concerned. He has stated before the Trial Court that he could not hear the conversation between the complainant and the respondent and specifically denied the suggestion that he had heard the respondent demanding Rs.9000/- from the complainant/respondent.

There are several contradictions in the version of PW-2 and PW-12 with respect to the vitals of the prosecution version especially with regard to the process of trap, preparation for trap and recording of the proceedings after the trap.

Section 59 of the Evidence Act provides that all facts, except the contents of documents or electronic records may be proved by oral evidence.

Section 60 of the Evidence Act further provides that oral evidence must be direct which is to say that if a fact which could be seen, the witness must say that he saw it or if a fact could be heard, there ought to be some witness who says that he heard it. Likewise, if a fact which could be perceived by any other sense or in any other manner, there is a requirement to have a witness who would testify that he perceived it by that sense or in that manner. Even with respect to holding of an opinion regarding certain fact, the evidence of the person who holds that opinion is relevant. Thus, hearsay evidence is not admissible.

As PWs.2 & 12, the material witnesses, have not proved the demand of bribe by the respondent, no verdict of guilty could have been pronounced.

The law in this regard is very clear that mere recovery of currency notes would not prove the guilt in the absence of any incriminating evidence regarding demand of bribe by an accused.

Taking the aforesaid ground in favour of the respondent, benefit of doubt was given to him by the Trial Court.

The learned counsel for the State has not put forward any argument to discredit the aforesaid finding of the Trial Court.

As such, the present leave petition is dismissed by declining the leave to appeal.

ASHUTOSH KUMAR, J

MAY 16, 2017
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