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

**Decided on: 15th November, 2018**

\+ CRL.A. 126/2000

OM PARKASH CHHIKARA ..... Appellant
Through: Mr. Dushyant Sisodiya, Advocate

versus

STATE ..... Respondent
Through: Mr. Narender Mann, SPP for CBI with Mr. Manoj Pant, Advocate

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

**ORDER (ORAL)**

1. The appellant was employed as Inspector in the office of Municipal Corporation of Delhi, his posting at the relevant point of time being in the Zonal Health Office of Shahdara, South Zone at Shalimar Park, Shahdara, Delhi. He was indisputably dealing with the matter arising out of an application (Ex. PW1/D2) dated 03.06.1994 submitted in the name of Sanjay Kumar (PW-3) son of the complainant Kulwant Singh (PW-1) for issuance of a municipal licence for running a shop (provisional store) in the name and style of *Sanjay Di Hatti*.

2. On 19.12.1994, on the complaint (Ex. PW1/A) of Kulwant Singh (PW-1), Central Bureau of Investigation (CBI) registered first information report (Ex.PW10/A) regarding demand of illegal

gratification by the appellant, it constituting an offence under Section 7 of Prevention of Corruption Act, 1988. It is alleged that a trap was arranged in which, besides the complainant (PW-1), two independent witnesses named O.P.Kala (shadow witness) and R.C. Verma (PW-5) were joined by the trap laying officer, DCP S.K. Peshin (PW-10). It is alleged that during the trap, the appellant demanded and received from the complainant, an amount of Rs.3,000/- in the form of 30 currency notes of the denomination of Rs.100/- which earlier had been treated with phenolphthalein powder, to be used as trap money. The trap money was allegedly recovered, it being found kept in a polythene bag in the bottom drawer of the office table of the appellant.

3. The investigation into the FIR culminated in charge-sheet being submitted on the basis of which criminal case (CC 19/1995) came up before the court of the Special Judge. The appellant was put on trial on the charge for offences under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. He was held guilty as charged by judgment dated 18.02.2000, the trial court awarding, by subsequent order dated 28.02.2000, punishment in the form of rigorous imprisonment for two years with fine of Rs.10,000/- on each count.

4. Feeling aggrieved, the present appeal was filed by the convict challenging the judgment and order on sentence rendered by the trial court.

5. Submissions at length on both sides have been heard and the record has been perused.

6. This court is of the view that the case of the prosecution primarily resting on the testimony of Kulwant Singh (PW-1) and recovery witness, R.C. Verma (PW-5) is not credible, serious discrepancies having been brought out through the evidence of various witnesses giving rise to doubts as to the extent of truthfulness not only in the version of the complainant but also in the proceedings leading to the trap and arrest of the appellant. This may be elaborated hereinafter.

7. Having regard to the evidence of PW-1, the application for the shop licence had been submitted sometime in May 1994, he having visited the office of the appellant in June 1994 followed by the crucial visit of 16.12.1994 in the morning hours when the demand for illegal gratification was made. His son (PW-3), in contrast, would testify that the first visit to the office of the appellant was in May 1994 followed by another visit two-three months later and it was on that date that he was made to sign the application (Ex. PW1/D2). Going by this sequence, the application would have been submitted sometime in July or August 1994 but crucially the application bears the date 03.06.1994. The son (PW-3) would not speak of any other visit.

8. The complainant while approaching the CBI with his complaint (Ex. PW1/A) on 19.12.1994 also would not speak of any visit with the son to the office of the appellant. Yet, when deposing in the court at the trial the complainant talked at length of his son having accompanied him on 16.12.1994 in the morning hours when after taking certain papers the demand for bribe was brought out. As

mentioned earlier, son has not spoken about any demand either in his presence or behind his back at any stage. It is inconceivable that the son would not be privy to this, particularly when his father pursuing the matter of shop licence on his behalf was inclined to take it to CBI.

9. The testimonies of PW-1 and PW-3, read together, clearly bring out that there were several discrepancies in the application for shop licence which had been noticed and pointed out by the appellant. These discrepancies also concerned the site plan (PW1/D6) initially submitted by the appellant wherein the staircase and a store room within the shop had been concealed. The son (PW-3) clearly spoke about an inspection carried out by the appellant prior to the visit to his office on 16.12.1994. The complainant (PW-1), on the other hand, spoke of there having been no such prior inspection, he attributing an inspection carried out in the afternoon on 16.12.1994 which would be after he had met the appellant earlier in the morning hours in his office.

10. There is evidence adduced in defence through the testimony of Mr. C.B. Sharma (DW-2) supporting the plea of the appellant that he was accompanying the said superior officer (administrative officer) attending the court of a Civil Judge at Tis Hazari Courts in the morning hours on 16.12.1994. This defence was put to the complainant (PW-1) when he gave an evasive plea of ignorance if the appellant was not even in office at the time he was supposed to have met him on that date, his presence being in the court at Tis Hazari Court, a place several kilometers away from the office.

11. The complainant (PW-1) narrated the sequence of events in the office of the appellant on the date of the trap giving a version which is improved one in several ways. He spoke about the appellant having first questioned the presence of O.P.Kala (the then shadow witness) and after it had been projected that the said person had come along, he being a draftsman, had asked him to go away. The witness also spoke about the appellant having taken him out into a street where he would question him as to whether the money had been brought along. He then spoke about the two of them returning to the office where he (PW-1) instructed that he would give the money only if the issuance of licence was guaranteed. He narrated the sequence to include he and O.P. Kala being made to wait outside the office till they were called in and further that after he had been called back to the office, he had told the appellant, in the presence of a third person (Lachhman Dass Arora), that he had brought the amount of Rs.3,000/- and the appellant should accept a reasonable amount out of it for the licence. He spoke about he being made to put the money in a plastic bag, this occurring at a place behind a partition in the room, the plastic bag with money being kept by him (PW-8) in the bottom drawer of the office table from where the proceedings would show, the same to have been later recovered.

12. The above was not what was projected in the trap proceedings (Ex. PW1/C) proved at the trial. If one goes by the version of PW-1, the trap laying officer and other witnesses, who were part of the raiding team, were following the appellant and him (PW-8) when they

had gone out of the office into the back-lane. The recovery memo (Ex. PW1/E) would not reflect such to be the sequence.

13. The manner in which recovery witness (PW-5) was examined by the prosecution has left much to be desired. He was questioned, during examination-in-chief, with regard to the sequence of events till the stage of preparation by the CBI officials for laying the trap. During that part of the testimony, he pleaded lack of memory with regard to some facts including as to the names of the complainant or the other witnesses joined in the trap and the denomination of the currency notes that had been arranged. It is on that basis that the prosecutor declared him hostile submitting to the trial judge that the witness was "*suppressing the truth and resiling from the previous statement*". The request of the prosecution for permission for cross-examination of its own witness was granted. In the considered view of this court, the stage had not yet been reached for such request to be made by the prosecution or to be granted by the trial court. The entire subsequent sequence of events – post taking of steps for the trap to be laid – has consequentially came on record on being spoon fed on leading questions being put during the cross-examination by the public prosecutor. The deposition recorded reflects that all the facts were suggested to and put in the mouth of the witness who would simply concede the same to be correct. This procedure was not only impermissible but also most unfair and cannot be the basis for such evidence to be accepted.

14. It is clear from the evidence that the appellant had left his office for sometime during the raid proceedings. His office table would thus have remained unattended. The witness (Lachhman Dass Arora) whose presence is mentioned by the complainant at the time of exchange between him and the appellant regarding the arrangement of money and his readiness to pay for early issuance of licence, did not support the prosecution story when examined at the trial (as PW-4). O.P. Kala (the shadow witness) was not examined by the prosecution. Thus, the complainant (PW-1) is the solitary witness about the alleged demand or acceptance of the bribe by the appellant. In view of the serious contradictions appearing in his version, it is not deemed safe to act on his sole word particularly because the evidence of the independent recovery witness (PW-5) is also found to be not trustworthy.

15. Aside from the above, there is one more very crucial circumstance shown by the testimony of PW-1 which renders the prosecution case highly suspect. PW-1 deposed that during the proceedings in the wake of the trap that had been laid, he had introduced O.P. Kala (the shadow witness) deputed by the CBI as a draftsman to the appellant. He also had told the appellant that he had brought along fresh site plans – since the previous site plan (Ex. PW1/D6) had been found to be discrepant – for being handed over. It has come out vividly in the testimony of PW-1 that pursuant to this submission, he had handed over, prior to handing over money, to the appellant the two fresh site plans, he referring to them specifically as

Ex. PW1/D and PW1/D-1. It is also his testimony that the said site plans were kept by the appellant in the top right drawer of his office table at that time, the reiteration of the demand for money and its acceptance, in a polythene bag following later.

16. From the above chronology of events, the new site plans (Ex. PW1/D and PW1/D1) are bound to be documents that would have been recovered from the upper drawer of the office table of the appellant. This undoubtedly is also how the recovery memo (Ex. PW1/E) would narrate the sequence of events. This is also how the trap laying officer (PW-10) would testify. But then, noticeably, PW-10 scrupulously avoided making any particular reference to any specific documents in such context. To put it more clearly, the two site plans which he would mention to have been recovered from the drawer of the office table of the appellant were not exhibited or referred in any other manner for record in his deposition.

17. As per the case for the prosecution, the CBI officers had made an endeavour to search for the file relating to the application of PW-3 for grant of shop licence after the recovery had been made. The said file, however, could not be found in the office after the trap. It is the case for CBI that, upon interrogation, it was brought to light that the file in question was lying at that point of time at the residence of the appellant. It may be mentioned here that the appellant was residing during those days at H-28, LIG Flats, Ashok Vihar, Delhi, a locality concededly 15-20 kilometers in the minimum away from the office where the appellant way apprehended. The CBI officers alongwith the

trap witnesses then visited the house of the appellant statedly around 7.20 p.m. It is the case for the prosecution that during the house search, the relevant file (Ex. PW10/C) was recovered, this being subject matter of search-cum-seizure memo (Ex. PW10/B).

18. The complainant (PW-1) during his deposition identified the site plans (Ex. PW1/D and PW1/D1) which form part of the file (Ex. PW1/C) which had been seized under the cover of seizure memo (Ex. PW10/B) from the residence of the appellant. It is not explained as to how the said two site plans which had been handed over during the trap proceedings prior to handing over of the money would find their way into the file of the application for shop licence lying several kilometers away at the residence of the appellant.

19. Apparently, there is something more to the case than meets the eye. Serious doubts arise as to the credibility of the entire proceedings and the deposition of the complainant and other witnesses. The benefit will have to go to the appellant.

20. In the result, the appeal is allowed. The impugned judgment and order on sentence are set aside. The appellant is acquitted. His bail bonds are discharged.

**R.K.GAUBA, J.**

**NOVEMBER 15, 2018**
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