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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th December, 2018

\+ CRL.A 143/2000

BHARAT BHUSHAN ..... Appellant

Through: Mr. Uday Gupta, Advocate with Mr. Shivani Lal, Mr. M.K. Tripathi & Mr. Hiren Dasan, Advocates with appellant in person.

versus

STATE THROUGH C.B.I. ..... Respondent

Through: Mr. Narender Mann, Spl. PP with Mr. Manoj Pant, Advocate

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

JUDGMENT (ORAL)

1. The appellant was arrested on 19.01.1993 during the course of investigation into first information report [RC No.8(A)/93-DLI] of the Central Bureau of Investigation (CBI), it having been registered on the basis of complaint (Ex.PW-1/A) lodged on the said date by Panna Lal Yadav (PW-1). He was brought to trial in the court of Special Judge (Prevention of Corruption Act) on the basis of evidence that had been gathered during the said investigation, it having been presented in the form of report (*"charge sheet"*) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on 08.10.1993. The trial in the said case (CC No.131/1993 – later registered as CC No.128/1999 was held on charge for offences punishable under

Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('P.C.Act, 1988', for short). On conclusion of the trial, in the course of which CBI led evidence by examining eleven witnesses, the trial court rendered its judgment on 17.02.2000 holding the appellant guilty, as charged, on both counts. By subsequent order dated 21.02.2000, he was awarded rigorous imprisonment for one year and rigorous imprisonment for two years respectively for offences under Section 7 and 13(2) of the Prevention of Corruption Act, 1988 along with fine of Rs.1,000/- and in default further rigorous imprisonment for three months on each count.

2. The present appeal assailing the said judgment and order on sentence was filed in March, 2000 and has come up for consideration more than eighteen years thereafter.

3. The basic background facts which were part of the gravamen of the charge brought against the appellant may be noted at this stage. It is alleged that the complainant Panna Lal Yadav (PW-1) (*"the complainant"*) was desirous of obtaining learner's driving licence, a resident of Laxmi Nagar Delhi, he approached the Regional Transport Office (RTO) located at Tilak Marg, New Delhi on 18.01.1993. The appellant indisputably was working in the post of stenographer in the erstwhile Delhi Administration (now Govt. of National Capital Territory of Delhi). He was posted during the said period in the office of Motor Licensing Officer (MLO) in the said RTO at Tilak Marg, New Delhi. It is alleged that the complainant met him on 18.01.1993 and presented before him his application form (Ex.PW-1/E) for

issuance of learner's driving licence. The appellant allegedly demanded Rs.250/- to be paid as illegal gratification indicating that otherwise the work would not be done, he having asked the complainant to come with the money on the next date, *i.e.* 19.01.1993 by 1:00 p.m. The complainant instead approached CBI by his written complaint (Ex.PW-1/A) which was translated into FIR (Ex.PW-8/A), the matter for laying of a trap and further proceedings in that regard being entrusted to Inspector R.S. Khatri (PW-8).

4. It is alleged that on 19.01.1993, after registration of the FIR (Ex.PW-8/A), the trap laying officer (TLO) requisitioned the services of two witnesses, they being Bhu Dev Sharma (PW-2) and Puran Singh (PW-5), both government servants working in Central Translation Bureau, a department of official language in the Ministry of Home Affairs, located at CGO Complex, Lodhi Road, New Delhi. The complainant had allegedly arranged the trap money of the value of Rs.250/- in the form of three currency notes, two of denomination of Rs.100/- and one of denomination of Rs.50/-. The pre-trap proceedings, styled as *"handing over memo"* (Ex.PW-1/F), would show that the trap money was treated with phenolphthalein powder, the procedure explained to the complainant and the two said witnesses and thereafter handed over to the complainant, it being put in the right side pocket of the jacket worn by him at the relevant point of time, the instructions being that he should handover the same on specific demand during the course of interaction on 19.01.1993. The prosecution case indicates that PW-2 was deputed to accompany the

complainant as a shadow witness and witness the transaction while PW-5 was to remain with the other members of the trap party including the TLO, his role being of recovery witness that would follow after the trap had been sprung.

5. It is alleged that PW-1 and PW-2 approached the appellant in his office and, during the interaction, the appellant reiterated the demand, he having accepted the trap money with his right hand, the money allegedly being later recovered from the left side pocket of his trousers. It is also the case of the prosecution that the appellant had made an endorsement on the application for issuance of the learner's driving licence (Ex.PW-1/E) asking a colleague employee "Mr. Sharma" to do the needful, this endorsement – at point "Q1" – on the said document – having been confirmed by (GEQD), the government examiner of questioned document of Central Forensic Science Laboratory (CFSL) Mr. T.R. Nehra (PW-6), to be in the hand of the appellant.

6. It is also the case of the prosecution that the appellant had gone to the relevant counter in the office of RTO for deposit of the government fee of Rs.15/- in cash, in connection with the application of PW-1 and had obtained cash receipts (Ex.PW-1/B and Ex.PW-1/C) without making any payment. The TLO, and the other members of the trap party, are stated to have caught hold of the appellant, after the pre-determined signal had been given, post the handing over of the trap money on demand, and during personal search the recovery of the trap money was effected from the left side pocket of the trousers of the

appellant. It is also the case for the prosecution that the wash of the left hand, right hand and the left hand pocket of the appellant were taken and sent to CFSL where, upon examination by Mr. V.S. Bisaria (PW-7), Senior Scientific Officer, the same confirmed the presence of phenolphthalein powder, this corroborating the case for the prosecution that the appellant had indeed touched the trap money, having handled it and having put it in the left side pocket of his trousers. On this basis, the CBI also relied on presumption arising from Section 20 of the P.C. Act. 1988, its contention being that the onus to explain why the appellant had received the said money would lie on him, it pressing for finding of guilty on the ground that there has been no such explanation forthcoming.

7. During the trial, as said earlier, eleven witnesses were examined. These witnesses would include Panna Lal Yadav (complainant) (PW-1); Bhu Dev Sharma (PW-2), the shadow witness; Dharam Singh (PW-3), the MLO posted at the RTO in question; Meera Jain (PW-4), an Upper Division Clerk (UDC) who statedly was deputed at the cash counter; Puran Singh (PW-5), recovery witness; Mr. T.R. Nehra (GEQD) (PW-6), who gave opinion about the questioned writing on application (Ex.PW-1/E); Mr. V.S.Bisaria, Senior Scientific Officer, CFSL (PW-7), who gave report about the hand washes and pocket wash; Inspector R.S. Khatri (PW-8); Shri C.S. Khairwal, Commissioner-cum-Secretary (PW-9), who had given the sanction for prosecution; Mr. Surinder Kumar Sharma (also PW-9 and therefore referred to as PW-9A), the clerk working in the RTO,

his duty being to receive applications for learner's driving licence; and, Inspector R.K. Saini (PW-10) who had conducted the investigation after the trap.

8. The appellant, in the course of his statement under Section 313 Cr.P.C. denied the incriminating evidence as incorrect. He denied that he had any role to play or he had demanded any illegal gratification or having received any money from the complainant. He pleaded innocence submitting, *inter alia,* that the witnesses joined in the trap were stock witnesses of the CBI and that the evidence was not credible. He, however, chose not to lead any evidence in defence.

9. The Special Judge accepted the case for prosecution and, thus, held the appellant guilty, returning the finding that the prosecution had proved its case beyond any manner of doubt, the entire circumstances having been clearly brought out.

10. Having heard the arguments on the appeal and having been taken through the evidence which was led before the trial court, this court finds that there are many a gap and many discrepancy, in which view it is difficult to uphold the judgment of conviction, the appellant being entitled to the benefit of consequent doubts that arise. This may be elaborated hereinafter.

11. The learned Special Public Prosecutor for the CBI fairly conceded, on being pointedly asked, that there is no evidence worth the name indicating that the appellant was deputed for duty at the counter where the applications for learner's driving licence were to be

accepted, as was the case for which purpose PW-1 had approached the RTO on 18.01.1993. It has come in the evidence that the task of receiving of such applications was that of PW-9A, he having been stationed at counter No.8.

12. The evidence also clearly shows that the requisite fee for issuance of the learner's driving licence was to be deposited at counter No.16 which is described as the *"cash counter"*, PW-4 being the official deputed for the task. The evidence is totally silent as to what was the assignment given to the appellant during the relevant period. PW-9A, the official who would state that it was his first day of the posting in the said RTO, he having been brought in from some other department, was on duty where the application (Ex.PW-1/E) was presented on 19.01.1993. If the said matter pertained to the duties of PW-9A at counter No.8, in absence of any clarity as to where and on which particular seat the appellant was deputed to discharge his responsibilities, it had to be explained as to how and why the complainant should meet, contact or approach the appellant for such purposes on 18.01.1993.

13. Be that as it may, the application (Ex.PW-1/E) itself shows that it had been prepared by the complainant on 18.01.1993. It may be assumed that he had taken the said application to the RTO on the said date. Though he would vaguely state that he was accompanied by someone else on 18.01.1993, there was no revelation to this effect in the complaint or the FIR. The person accompanying him on 18.01.1993 has not been produced. This is why the trial Judge was

also not very convinced about the demand of illegal gratification that may have been made on 18.01.1993.

14. From the sequence of events in the pre-trap proceedings reduced into writing in the form of handing over memo (Ex.PW-1/F), it is clear that the three currency notes which were used in the trap were treated with phenolphthalein powder and demonstration of the manner of their use was given for the benefit of the complainant and the independent witnesses who had been joined. But the fact remains that the precaution of it being ensured that the hands of the complainant, who would also have handled the said trap money in the process, being rendered untainted was not taken. The pre-trap memoranda or the witnesses relating to the trap are conspicuously silent in this regard. Thus, it may be flagged here that the application (Ex.PW-1/E) and the trap money (treated with phenolphthalein powder) were made over together by the TLO to the complainant, the same to be tendered at the time of transaction in the office of RTO.

15. The charge sheet was accompanied by, amongst others, a site plan (Ex.PW-2/A) which would indicate that almost all the counters for public dealing, starting with counter No.4 right up to counter No.19 were located on the eastern periphery of the office building. The cash counter (counter No.16) would be close to south-eastern end and quite a distance from counter No.8, where the transaction allegedly of reiteration of the demand and handing over the trap money took place. As was explained at the hearing, the portion behind the said counters (counter No.s 4 to 8 in one line) was an open

hall, the office of the MLO (PW-3) being located across. As per the site plan, the complainant, with the shadow witness, were present in the said hall where the exchange with the appellant took place, he also being present there.

16. In contrast to the above depiction in the site plan, the narration of the sequence appearing in the evidence of the complainant and the shadow witness would indicate that they had met the appellant at the counter. There is a whole lot of confusion as to which counter was the place where the appellant was met by the complainant. While the complainant would not specify counter number, the shadow witness expressly said that the transaction took place – at counter no.16. There was no effort by the prosecution to iron out the discrepancy. The evidence of the complainant also reveals that he had approached counter no.8, initially by passing through the office of MLO but this is not how the shadow witness, or the other members of the trap party, would describe the route to have been taken.

17. Be that as it may, though the evidence of PW-6 confirms that the endorsement at point "Q1" on the application (Ex.PW-1/E) is in the hand of the appellant, there is no clarity in the narration in the charge sheet, or in any of the pre or post-trap proceedings, or in the evidence, as to at what stage this endorsement was recorded. It is, however, clear that this endorsement would not have come about on 18.01.1993 when the complainant had statedly met the appellant for the first time. None of the witnesses speak about this endorsement having been made. This endorsement assumably was addressed to

PW-9A, the clerk deputed at counter no.8, to which the matter pertained. PW-9A gave a very confusing account of how the events occurred with regard to this particular document. During his examination-in-chief he would state that two of the persons who he later learnt to be officials of CBI had come to him and had given this application form for learner's driving licence, he having told them that they should keep the form on the counter and that he would make the requisite entry in the register. He would add that he had not made any entry in his register, he not being to called upon to explain as to why he would not do so. The prosecution declared the said witness to be hostile and subjected him to cross-examination. During this exercise, he admitted that on 19.01.1993, one person had come to him and had placed the application of the complainant in front of him, telling him that the appellant had sent this, the same person asking him to do the needful. He would not remember whether or not he had checked the application. He would also say that CBI official had taken away that application from him. There was no effort made by the prosecution to discredit his earlier statement about the arrival of CBI officials having come to present the said application leaving it at his counter. The only change brought out through his cross-examination by the prosecution was that instead of two persons having come to him, it was clarified to be that only one person had come. Curiously, the identity of the said one person who had brought the said application to him was not elicited or got disclosed in any other manner. From this, it cannot be assumed that the person who would have brought the said application would be either the complainant or person other than the CBI officials.

18. What stands out from the testimony of PW-9A is that the application (Ex.PW-1/E) had reached the appropriate counter clerk (PW-9A) and, yet, it was not formally entered in any official register. This is what the two witnesses would say and the prosecution made no effort to prove facts to the contrary. This is a discrepancy which cannot be described as inconsequential, particularly because there is evidence showing payment of government fees acknowledged by official receipt issued correspondingly. The witness PW-9A, it has to be noted again, said it expressly on this information being ascertained by the prosecution, that the application form (Ex.PW-1/E) had been taken away from him by CBI officials. There is no formal seizure memo showing such application to have been taken over by CBI officials. On the contrary, the evidence shows that the application form and documents connected thereto were seized from the complainant, reference being made to recovery memo (Ex.PW-1/G) of the relevant witness having deposed on the same line.

19. If PW-9A were to be believed, the application form had already been seized by CBI from the official clerk. There was no question of the said application form and the accompanied documents being found at the same time in control and possession of the complainant. In fact, the complainant had no business to be in control and possession of such official document which had been formally presented and particularly when the government fee there against had already been deposited.

20. There are discrepancies in the evidence even with regard to deposit of the money towards government fee against the application of the complainant for learner's driving licence. The two receipts - Ex.PW-1/B and PW-1/C are, in fact, counterfoils of each other bearing same serial no.079837. It appears that they were prepared with use of a carbon. The name of the complainant (P.L.Yadav) can be deciphered as the person making the deposit of Rs.15/- there against. Though with difficulty the date 19.01.1993 can also be read on these documents which were proved to have been issued by PW-4, the clerk deputed by the MLO at the cash counter (counter No.16).

21. There are different theories propounded about the deposit of cash Rs.15/- against the above mentioned receipt. Different individuals have different stories to tell which do not match with each other. PW-4 would state that the appellant had come to her and had got these receipts issued telling her he would pay the money later. She would also add that money was not given by the appellant (or anyone else), she being constrained to deposit the equivalent amount from her own pocket. She is contradicted in this regard by the complainant who would say that he had paid the money for such deposit to be made, the appellant having taken him along for the purpose to the cash counter. The visit to the cash counter after the payment of the trap money, assumably at counter No.8, does not form part of the narration by the TLO or the recovery witnesses. As per their version as soon as the money was given, the trap team had sprung into action and caught hold of the appellant leading to the recovery proceedings.

22. There is discrepancy even as to the place where the money was given. As noted earlier, the complainant would talk of he accompanied by the shadow witness contacting the appellant at his seat where the money was paid, this happening before he moving on to the cash counter for deposit of the fee. The shadow witness would take this entire sequence to the counter No.16, quite a distance away. The prosecution case, on the other hand, would take this exchange away from both the counter no.8 or counter no.16 claiming it all had happened in the hall behind the row of counters.

23. Aside from the above, there is one more circumstance, of far reaching import and consequence, which cannot be lost sight of. As noted earlier, the treated currency notes (three in number) had been handed over to the complainant who was also holding the application (Ex.PW-1/E) and the document connected thereto in his hands. As noted earlier, his hands would have come in contact with tainted currency notes. The possibility of taint of the notes coming on the application form or the documents which were connected thereto cannot be ruled out. No precaution was taken to ensure that this did not affect the purity of the trap. Assumably, when the application (Ex.PW-1/E) was being handled by the appellant, at least for recording endorsement (at point "Q1"), his hands would have come in contact with the said application form. The taint of the phenolphthalein powder transferring to his hands at that point of time cannot be ruled out. This renders the hand washes meaningless. Further, the recovery witness (PW-5), in the course of his testimony revealed that before the

TLO and members of raiding party were converging at the scene after the money had been allegedly handed over, the complainant and the shadow witness had taken it on themselves to physically overpower the appellant by holding him by his wrists. Since the complainant had undoubtedly handled the money even at that stage, it does not call for much imagination that the phenolphthalein powder on his hands would have moved on to the hands of the appellant at the time of such holding.

24. In the above facts and circumstances, the prosecution evidence does not inspire confidence. The benefit of doubts arising as a result, are extended to the appellant. The impugned judgment and order on sentence are set aside. The appellant is acquitted. Bail bonds are discharged.

R.K.GAUBA, J.

DECEMBER 13, 2018
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