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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2018

\+ CRL.A 47/2000

D.V. SINGH ..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr. Atif Shamim, Advocate

versus

C.B.I. ..... Respondent

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

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

ORDER (ORAL)

1. The appellant was working as Junior Engineer in the Building Department of Municipal Corporation of Delhi (MCD), his office being at Town Hall, Delhi in January, 1996. It was concededly part of his duty to examine and put up before the authorities, the applications for grant of sanction for building activity. Indisputably, an application in the name of Mrs. C.K. Khurana, wife of Mr. O.P. Khurana (PW-1) for sanction of building plan in respect of the property described as plot no.M-12, New Multan Nagar, Rohtak Road, New Delhi, had been submitted and the appellant was to process the same. Indisputably, O.P. Khurana (PW-1), the husband of the applicant had approached the appellant in such context, having met him, at least thrice, in the

month of January, 1996, once on 04.01.1996 and thereafter on 17th and 18th January, 1996. On 17.01.1996, pursuant to the instructions of the appellant, PW-1 deposited the requisite fee of Rs.374/- with the cashier, it being the charge for the building plans to be sanctioned.

2. On 18.01.1996, PW-1 approached the Central Bureau of Investigation (CBI) with a complaint (Ex. PW1/A) about demand of illegal gratification in the sum of Rs.5,000/- by the appellant. On the said complaint, Deputy Superintendent of Police, S.K. Peshin (PW-6) was directed to lay a trap. It is alleged that FIR (Ex. PW1/A) was registered and, thereafter, a trap was laid on 19.01.1996 in which 50 currency notes of the denomination of Rs.100/- each were treated with phenolphthalein powder and after pre-trap proceedings (PW1/C), the complainant (PW-1) accompanied by a shadow witness Rakesh Kumar Gandhi (PW-2) were sent to the office of the appellant on 19.01.1996. The trap team also included another *panch witness* A.K. Bhatia (PW-4). It is alleged that during the interaction in the office of the appellant, the demand of illegal gratification was reiterated by the appellant, in the presence of PW-2, and the trap money was accepted, the same having been later recovered in the presence of a shadow witness (PW-4), the trap proceedings (Ex. PW1/D) having been overseen and witnessed, amongst others, by PW-6, the trap laying officer (TLO).

3. On the basis of the charge-sheet which was laid in the court of the Special Judge, the appellant was put on trial on 21.02.1997 on the charge for offences punishable under Sections 7 and 13(2) read with

Section 13(1)(d) of Prevention of Corruption Act, 1988, the gravamen essentially being that he had demanded, and accepted, Rs.5,000/- as illegal gratification for carrying out official duty in the above nature.

4. The prosecution led evidence by examining Mr. O.P. Khurana (PW-1); Mr. Rakesh Kumar Gandhi, LDC in Central Hindi Training Institute (PW-2); Mr. Pushkar Sharma, Assistant Engineer (Building), MCD (PW-3); Mr. A.K. Bhatia, Assistant, CPWD (PW-4); Mr. K.S. Chhabra, Sr. Scientific Officer Grade-1-cum- Assistant Chemical Examiner (PW-5); DSP S.K. Peshin (PW-6); and DSP Ramnish (PW-7).

5. The appellant had pleaded not guilty and, in his statement under Section 313 Cr. PC, denied the evidence as incorrect claiming to be innocent. He examined one P.K. Sharma, Assistant Law Officer from the vigilance branch of MCD as witness in defence (DW-1).

6. The learned special Judge, by his judgment dated 18.01.2000, found the appellant guilty as charged. By order dated 21.01.2000, the sentence of rigorous imprisonment for two years with fine of Rs.10,000/- on each count was awarded with further direction that in case of default of payment of fine, the appellant would undergo further simple imprisonment for six months. The judgment, and order on sentence, rendered by the Special Judge were challenged by the appeal at hand.

7. The submissions of both sides have been heard and the record has been carefully perused. There are some glaring deficiencies, gaps

and discrepancies in the evidence on which account serious doubts arise as to the extent of the truthfulness of the prosecution case against the appellant. This may be elaborated hereinbelow.

8. In the complaint on which the FIR was registered by the CBI, there is no reference to the status of the application for sanction of the building plan. The complainant (PW-1), while deposing in the court was also conspicuously silent on this during his chief-examination. The relevant file of the application of his wife for sanction of building plan (Ex. PW3/B) had been seized during the investigation that followed after the trap. This file contains (at page 43/C), a document (Ex. PW1/DA) on which signatures of PW-1 would appear at the bottom – encircled portion at point 'A'. PW-1 was confronted with this document, during his cross-examination, when he conceded that he had appended the said signatures on the said document in the relevant file on 18.01.1996 at the time of he being handed over the sanction of the building plan duly accorded and issued.

9. There is no explanation worth the name in the court testimony of PW-1 as to why there would still be a demand for illegal gratification if the official duty for purpose of which such money had been demanded, had already been carried out. Though there was some indication in the complaint that the appellant had extended threats that he would cause obstruction to the construction work if money was not paid, PW-1 is totally silent in such regard in his court testimony. Without facts of such threats having been testified, mere allegations at some earlier stage cannot be treated as the gospel truth.

10. PW-2 was the shadow witness who was supposed to be with the complainant at the time of the trap. Undoubtedly, he would speak about this on the lines of prosecution story. But then, the demand followed by handing over of the trap money to the appellant may not have possibly taken place within his ear shot or within his view. This is brought out by the sequence of events narrated not only by the said witness (PW-2) but also by the complainant (PW-1). Both of them speak about the appellant having gone to the room of his superior, Assistant Engineer (AE) where the demand was reiterated and the money passed on, it statedly pocketed by the appellant while he was still inside the room of the AE. Though PW-1 would state that the shadow witness (PW-2) was behind him, adding at one stage that he was within the room of the AE, PW-2 would contradict him and show otherwise. As per the version of PW-2, he was at least one and half yards away from the door of the room of the A.E. From the manner in which he testified, it is clear that he was present not inside but outside the room. The possibility of the entire exchange being witnessed cannot be assumed in this scenario.

11. More than the above, the sequence of events narrated by PW-1 with regard to what happened after the money had statedly been taken over by the appellant renders a fatal blow to the prosecution case. As per the PW-1, after the money had been handed over and the pre-determined signal had been given, the appellant was apprehended in the presence of the shadow witness (PW-2) and *panch witness* (PW-4). The appellant had allegedly taken out the trap money from his

pocket and thrown it on the floor. He added that, at that stage, PW-2 and PW-4 had picked up the trap money from the ground and put it back into the pocket of the trouser of the appellant questioning him as to why he was throwing the money and rather he should keep it in his pocket. Though the TLO and the other witnesses would not say so, the evidence of PW-1 to this effect cannot be ignored. The fact that the trap money was forced into the pocket of the appellant by the two *panch witnesses* gives rise to the probability that the money had been thrust upon him. At any rate, it renders the result of hand wash or pocket wash meaningless.

12. In the above facts and circumstances, the benefit of doubt will have to be extended to the appellant. In the result, the appeal is allowed. The impugned judgment and the order on sentence are set aside. The appellant is acquitted. The bail bonds are discharged.

R.K.GAUBA, J.

NOVEMBER 29, 2018
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