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

% *Judgment reserved on: 05.03.2018*

Judgment delivered on: 12.03.2018

+ CRL.A. 280/2012
VIKRAM SINGH

..... Appellant

Through: Mr Harsh K. Sharma, Ms Vaibhavi
Sharma, Mr Rohit Gaur, Mr Vivek
Punia and Mr Pulkit Jain, Advs

versus

CBI

..... Respondent

Through: Ms Rajdipa Behura, SPP for CBI, Mr
Philomon Kant, Ms Kriti Handa and
Ms Hansika Sahu, Advs.

+ CRL.A 306/2012
VIKRAM SINGH

..... Appellant

Through: Mr Manish Tiwari, Adv.

versus

CBI

..... Respondent

Through: Ms Rajdipa Behura, SPP for CBI,
Mr Philomon Kant, Ms Kriti Handa
and Ms Hansika Sahu, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These appeals are directed against the impugned judgment and order on sentence 31.01.2012 and 24.02.2012 wherein both appellants (police personnel) ASI Vikram Singh and constbale Vikram Singh had been

convicted under Section 13 (1)(d) read with Section 13 (2) and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act) as also under Section 120-B of the IPC. The maximum sentence awarded to each of them was RI for a period of 18 months besides payment of fine. Separate sentences were awarded to them qua their convictions under Section 7 as also Section 13 (2) read with Section 13 (1)(d) of the said Act. Benefit of Section 428 of the Cr.PC had been granted to the convicts.

2 The nominal rolls of the appellants reflect that they had hardly remained incarcerated for any period of time. They remained on bail during trial. Even when the appeals were filed, their sentences were suspended on the very first day vide order dated 13.03.2012.

3 Record shows that the present case was registered against both the accused persons on 07.02.2004 on a written complaint of the complainant Satish Kumar Gupta (PW-5). The initial RC was registered under Section 7 of the said Act. The allegation of the complainant was that the traffic police was demanding money from the complainant while he was plying his public transport vehicle; on 07.02.2004 ASI Vikram Singh and Constable Vikram Singh, both police personnel of the Delhi Traffic Police demanded a bribe of Rs.100/- as an entry fee for allowing the plying of the vehicle through

Kodiapul Bus stand. The complainant was threatened that his vehicle will be challaned if this bribe money was not paid by 08.02.2004. The complainant was not willing to pay this bribe. He made a complaint to the Superintendent of Police, Anti Corruption Branch, Head Quarter, New Delhi on 07.02.2004. The case was entrusted to Inspector H.K. Lal (PW-10) for laying a trap. A trap team was constituted. In the presence of two independent witnesses Jitender Bhardwaj (PW-7) and Suresh Kumar (PW-9) pre-trap proceedings were conducted. These were recorded in the handing over memo dated 08.02.2004 (Ex.PW-5/B) which was prepared at the office of the complainant. A Samsung digital recorder was handed over to the complainant to record the version with the accused persons. The trap team boarded the vehicle to reach the spot i.e. R.R. bus stand at Kodiapul where the vehicle was stopped by constable Vikram Singh. PW-5 along with his driver Parshuram (PW-15) alighted from the bus and walked towards the police officials. The shadow witness (PW-9) was directed by PW-10 to remain in the vehicle and to watch the transaction which was visible from the bus. PW-5 approached ASI Vikram Singh. The complainant recorded the conversation that ensued between him and ASI Vikram Singh. ASI Vikram Singh had directed the complainant to handover the bribe money of Rs.100/-

to Constable Vikram Singh who thereafter made an entry in the pocket diary produced by the complainant. The accused persons were arrested at the spot. Their hand washes were obtained and were accordingly forwarded to the FSL for a chemical examination. The FSL vide its report dated 18.03.2004 gave a positive opinion about the presence of phenolphthalein powder in the RHW, LHW and LSPPW i.e. right hand wash, left hand wash and left side pocket wash of constable Vikram Singh i.e. the person who had pocketed the money.

4 In view of the aforementioned evidence collected by the prosecution, charge-sheet was filed against the accused persons. The charges which were leveled against them were under Section 13 (1) (d) read with Section 13 (2) and Section 7 of the said Act as also Section 120-B of the IPC.

5 The prosecution examined 15 witnesses of whom the star witness of the prosecution was the complainant examined as PW-5. The recovery witnesses were examined as PW-7 & PW-9. PW-8 (Subhash Chand) was a chance witness. The driver of the bus was examined as PW-15 and the conductor of the bus was examined as PW-14 (Deepak Sharma). The TLO of the case was PW-10. The report of the FSL has been forwarded to the TLO and the relevant witness who had given a positive opinion in favour of

the prosecution were Dr. Rajinder Singh (PW-1), Sh. Deepak R. Handa (PW-2) and C.L. Bansal (PW-4). Sanction for prosecution of the accused persons had been granted by Shri Mukesh Kumar Meena (PW-3) DIG for both the accused persons (Ex.PW-3/A and Ex.PW-3/B).

6 The Special Judge had convicted the accused persons and sentenced them in the manner as noted supra.

7 On behalf of the appellants, it has been argued that the case of the prosecution must necessarily fail as all witnesses of the prosecution including the complainant himself had turned hostile. It is pointed out that although PW-5 had initially supported the case of the prosecution but in a later part of his examination he has given a totally different version and is in clear contrast to the version set up by the prosecution. Attention has been drawn to the testimony of PW-7 & PW-9 in this regard. It is pointed out that the chance witness who had been examined as PW-8 is in fact the brother of the complainant and this is clear from his parentage; he has also not spoken a word in support of the version of the prosecution. It is reiterated that the rule of criminal jurisprudence is clear; the prosecution must stand on its own legs. Even assuming that the FSL report was in favour of the prosecution, this can

only be a piece of corroborative evidence and in the absence of any substantive evidence, the case of the prosecution must fail. Learned counsel for the appellants in support his submission has relied upon the judgment of the Apex Court reported as 2015 X AD (S.C) 369 P. Satyanarayana Murthy Vs. Dist. Inspector of Police And Anr. as also another judgment of the Apex Court reported as AIR 1987 SC 2402 G.V. Nanjundiah Vs. State (Delhi Administration). It is pointed out that to prove the offence under Section 7 and 13 (2) read with Section 13 (1)(d) of the said Act, a demand has to be proved and in the absence of which a conviction under the aforementioned sections cannot be sustained. The demand has not been established. Benefit of doubt must accrue in favour of the appellants.

8 Arguments have been countered by the learned counsel for the CBI. It is argued that the judgment of the trial Court suffers from no infirmity; even presuming that there is some discrepancy in the testimony of PW-5 but that by itself would not mean that the entire version of PW-5 has to be set at naught; PW-5 had even otherwise retracted from his earlier version only in the course of cross examination; his examination-in-chief has necessarily to be read. Testimony of PW-5 read along with testimony of officers of the CBI coupled with the corroborative evidence which is in the nature of report

of the FSL clearly makes out a case of conviction of both the appellants. Impugned judgment thus should not be interfered with.

9 Arguments have been heard. Record has been perused.

10 Record shows that that on a written complaint dated 07.02.2004 (Ex.PW-5/A) the present case was registered. The RC was initially registered under Section 7 of the said Act. The other sections were added later on which was pursuant to the investigation. Testimony of PW-5 who is the complainant is relevant. He has on oath deposed that Parshuram (PW-15), the driver of his vehicle had a permit for plying his vehicle on the basis of bookings. PW-15 had informed him that traffic police officials were harassing him and demanding a bribe and had threatened him that if the bribe is not given, his vehicle will be challaned under the provisions of Motor Vehicles Act. On 07.02.2004, PW-5 along with PW-15, driver of the bus went in the vehicle. When they reached RR office at Kodiapul accused ASI Vikram Singh made a signal to stop the vehicle. PW-15 stopped the vehicle. PW-5 got down from the vehicle and talked to ASI Vikram Singh. ASI Vikram Singh demanded Rs.200/- on account of entry. PW-5 stated them that he was not in a position to pay the amount. He was informed by ASI Vikram Singh that if this amount is not paid, he will issue a challan for the

vehicle. 4-5 constables were also present there along with ASI Vikram Singh but their names were not known to PW-5; however one of them was constable Vikram Singh. PW-5 lodged a complaint with the CBI on 07.02.2004. On 08.02.2004 the CBI team came to the office of PW-5. A GC note of Rs.100/- was produced by the complainant and handed over to the CBI officer who gave a pre-raid demonstration; he noted the number of the note and applied some powder on the said note. This note was kept by the complainant in his left said shirt pocket. A tape-recorder was also handed over to him to record the conversation; this was recorded in the handing-over memo Ex.PW-5/B. PW-5 along with members of the CBI reached the spot where ASI Vikram Singh gave a signal to PW-15 to stop the vehicle. PW-15 stopped the vehicle. PW-15 got down from the vehicle. ASI Vikram Singh started following him. PW-5 was asked to pay Rs.200/-. PW-5 asked ASI Vikram Singh to reduce the amount and take Rs.100/-. The GC note which the complainant had kept in his pocket was handed over to ASI Vikram Singh who directed him to pay the money to constable Vikram Singh who was also standing with him. The money was received by constable Vikram Singh who accepted the same and kept it in his left pant pocket. PW-5 was accompanied by PW-9 who was also with him. This money was given to

accused No. 2 in the presence of PW-9. The pre-appointed signal was given by raiding party who reached the spot. Accused persons were apprehended. Their hand-washes were taken. Further investigation was conducted. PW-5 identified his voice in the cassette which was played over and which had recorded the conversation which had ensued between him and the two accused persons.

11 PW-5 was subjected to a lengthy cross examination. He had appeared on several dates for his cross-examination. In his cross examination conducted on 29.04.2010, he stated that he had not heard the conversation between PW-15 and ASI Vikram Singh. In another part of his testimony which has been highlighted by the learned counsel for the appellants and which is relevant for the decision of this case is reproduced herein as under:-

“It is correct that I have not heard the talks between my driver and accused no.1 It is correct that there are 3-4 traffic police officials at RR office Korla Pul where my RTV was signalled to stop.

After receiving signal to stop the vehicle my driver got down from the RTV, I also got down from the RTV money was demanded from us, either I gave money or my driver gave money, I am not sure about this but we gave money. Thereafter CBI officials came down from the bus, started rushing

standing in a group of three traffic police officials, These two accused persons were standing in another group, After seeing some person getting down from the RTV those three persons including the persons who accepted money dropped the money on the ground and run away. After those three persons had run away CBI officials apprehended these two accused persons. The tainted currency notes was not picked up by CBI officials from the road but the same was picked up by either of the accused persons from the road and handed over the CBI officials. The three persons who had run away had run towards Hanuman mandir, they were chased by CBI officials but could not be apprehended by some other CBI officials. All CBI officials including, myself, both accused persons and other team members present on the vehicle of CBI. There was large gathering of the people but I cannot say whether CBI officials asked any one of them to join the proceedings. After apprehending accused persons and also after giving chase to run away persons it took 15-20 minutes for all of us to start coming back to CBI office. It is wrong to suggest that after running from the spot the accused persons were kept in a separate room. It would be wrong to suggest that room in which CBI officials prepared their papers was a separate room or that I was not made to sit in the said room. Vol. Said we were all sitting in one room. It

is wrong to suggest that accused persons were made to sit in a small cabin after having brought to CBI office.

When my deposition was recorded for first time in this case, I was explained about the statement to be made by me by the prosecutor.”

12 As rightly pointed out by the learned counsel for the appellants this part of the testimony of PW-5 suggests that the person who had collected the money was standing in a group along with three traffic police officials. The two accused persons were standing in another group meaning thereby that the person who had collected the money was not one of the two accused persons. The three persons including the person who had accepted the money dropped the money on the ground and ran away; after these three persons had run away, the CBI officials apprehended the two accused persons and the tainted money was picked up from the road by one of the accused persons and handed over to the CBI officials. The three persons who had run away were chased by the officials of the CBI but they could not be traced. This part of the testimony again suggests that the two accused persons who were apprehended were not amongst the persons who had accepted the money; one of the two accused persons picked the money from the ground and put in his pocket. PW-5 had turned turtle in his cross examination. He

has given a different version. The money which had been picked up by constable Vikram Singh from the ground was touched by him and that is how the report of the FSL had opined positive qua the left and the right hand-washes of the constable; this appears to be but obvious. The version of the prosecution as set up in the charge-sheet has not been proved.

13 This Court notes that PW-5 was in fact the star witness of the prosecution and the entire version of the prosecution has been based largely upon his testimony as the other witnesses have not really supported the case of the prosecution. Testimony of a witness has to be accepted and read as a whole and no one part which suits the prosecution can alone be picked up to order an conviction. There is no doubt to the settled legal proposition that testimony of a hostile witness can also be examined but the wholesome reading of the evidence led by the prosecution has to be scrutinized before the Court returns a positive finding that this version is sufficient to order a conviction against the accused persons. The Trial Judge has not touched upon this part of the cross examination of PW-5. He has largely relied upon the version of the witness given in his examination-in-chief and although reference has been made to the cross examination of PW-5 but this part of

the cross examination, as has been highlighted by the learned counsel for the appellants, has not been examined.

14 PW-9 (Suresh Kumar) who was also stated to be present along with PW-5 at the spot has not supported this part of the version of the prosecution. His testimony is to the effect that he was sitting in the vehicle and after the signal had been given, he along with trap team rushed to the spot where one ASI and one constable were apprehended. He was not present at the spot when the money was paid by PW-5 to the accused. PW-9 admitted that he had signed certain documents including handing-over memo and recovery memo. Further part of his testimony being that these documents were prepared in the office of the CBI. This part of his testimony is not in consonance with the version as set up by the prosecution as the version of the prosecution was that all documentation including the taking of the hand washes of the accused was done at the spot.

15 PW-7 was the recovery witness. He was a part of the pre-trap proceedings. Thereafter, he joined the trap proceedings. Since there was a rush at the spot, he could not notice as to whom the money was paid. He deposed that hand-washes of the constable and ASI were taken in his presence. In his cross-examination, he stated that the note was recovered

from the pocket of the constable in the office of the CBI; he could not say from which pocket it was recovered; he was asked to take out the goods lying in the pocket of constable Vikram Singh and the CBI official told him that this note was recovered from the aforementioned goods. His version is also to the effect that the recovery proceedings were conducted in the office of the CBI and not at the spot.

16 PW-8 was a chance witness. His testimony is neither here and nor there. His parentage suggests that he is the brother of the complainant. This is not really disputed by the learned counsel for the CBI. His testimony is only to the effect that two person were arrested in his presence and he signed the recovery memo Ex.PW-5/D.

17 PW-15 was the driver of the vehicle and PW-14 was the conductor of the vehicle. PW-15 was the person who had stopped the bus at the spot. ASI Vikram Singh had directed the vehicle to stop the vehicle at Kodiapul. He had got down from the vehicle along with the complainant and proceeded towards the ASI. PW-15 did not support the case of the prosecution. In his deposition, he had stated that the owner/complainant-PW-5 never accompanied him in the vehicle and he accompanied them only when the vehicle was to get repaired. He denied the fact that the vehicle was stopped

by ASI Vikram Singh and he along with the complainant approached him who had then made a demand of bribe of Rs.100/-. As already noted supra, this witness had been cross-examined by the learned Public Prosecutor as he has not supported the version of the prosecution. This witness has necessarily to be discarded by the prosecution.

18 PW-14 (Deepak Sharma) was the conductor of the bus. His version is that on 08.02.2004, he along with PW-15 and other passengers was in the bus. Satish Gupta was standing near the Kodiapul. He told PW-15 to stop the vehicle as other persons had to sit in the vehicle. His version did not go beyond this statement. This version does really help the case of the prosecution.

19 The evidence collected as a whole does not inspire confidence. PW-5 was the star witness of the prosecution. He did not support the case of the prosecution. He set up a new version in his cross examination. As per him, the person who had collected the money was standing in a group along with three traffic police officials. The two accused persons were standing in another group meaning thereby that the person who had collected the money was not one of the two accused persons. The three persons including the person who had accepted the money dropped the money on the ground and

ran away. The police party chased them but they could not be traced. Further version of the complainant being that one of the accused person (most likely constable Vikram Singh as his hand-wash had tested positive as per the report of the FSL) had picked up this money from the ground and handed it to the CBI officials. This is not the case as set up by the prosecution. The version of the prosecution being that a demand was made by the ASI to PW-5 in the presence of PW-9 and the money was then handed over and received by the constable. This version is not established.

20 The demand of money by the accused persons and its acceptance, which is the essential ingredient for an offence to be proved under Section 7 and Section 13 (1)(d) of the said Act and under which the accused persons have been convicted, has not been proved. The version of the prosecution is tainted. The Special Judge relying upon the testimony of PW-5 and ordering a conviction has thus committed a grave illegality. The witnesses of the prosecution i.e. PW-7 and PW-9 although have supported the version of the prosecution qua the recovery but both of them have categorically stated that the recovery has been effected in the office of the CBI and not at the spot. This also destroys the credibility of the recovery of the GC note and subsequently the report of the FSL as if the recovery is tarnished, the report

of the FSL would necessarily have to be ignored. Thus the report of the FSL noting that the hand-wash of constable Vikram Singh had tested positive would not really help the case of the prosecution because apart from the fact that PW-7 & PW-9 have stated that this recovery has been effected in the office of the CBI and not at the spot, even otherwise the version of PW-5 shows that this note had been touched by constable Vikram Singh when he picked it up from ground after it had been dropped by the person who had accepted the money from PW-5 meaning that constable Vikram Singh was not the person who had accepted the money; he was standing in a separate group along with 3-4 other CBI officials who all had managed to flee from the spot. PW-14 & PW-15 have also not supported the prosecution.

21 There is no doubt to the settled principle of criminal jurisprudence that before a conviction is proved, the prosecution must stand on its own legs. The prosecution should have established beyond reasonable doubt that the accused persons had demanded Rs.100/- as bribe money from the complainant which was paid by the complainant to them. This has not been proved. At the cost of repetition, PW-5 has himself stated that this money was handed over to a person who had managed to flee from the spot. The subsequent recovery has also been tarnished as the recovery witnesses

(signatories to the recovery memo) had stated that this recovery had been effected at the CBI office and not at the spot. The report of the FSL is thus of little consequence.

22 The Apex Court in P. Satyanarayana Murthy (supra) has inter-alia held as follows:-

“The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence Under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence Under Section 7 and not to those Under Section 13(1)(d) (i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption Under Section 20 of the Act would also not arise.

21. *The proof of demand of illegal gratification, thus, is the gravamen of the offence Under Sections 7 and 13(1)(d)(i) & (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of*

any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence Under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

23 Benefit of doubt must accrue in favour of the appellants. Accused persons are accordingly acquitted of the charges levelled against them. Their bail bonds stand cancelled and sureties discharged.

24 Both the appeals are allowed and disposed of in the above terms.

INDERMEET KAUR, J

MARCH 12, 2018

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