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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th November, 2018

+ CRL.A. 953/2005

KRISHAN KUMAR RATHI Appellant

Through: Mr. M.L. Yadav, Adv.

versus

STATE Respondent

Through: Mr. K.S. Ahuja, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was employed at the relevant point of time (October, 1996) as personal assistant (PA) to the General Manager (GM) of Haryana Roadways in its office at Delhi. On 11.10.1996, he was apprehended in the course of a trap that had been laid by Inspector S.K. Banta (PW-10) of Anti Corruption Bureau (ACB) of Govt. of NCT of Delhi, in the wake of complaint (Ex.PW-6.A) that had been lodged with him by Dharam Chand (PW-6) about demand for illegal gratification. It is alleged that the appellant had received a total amount of Rs.3,000/- in the form of twenty-five currency notes (Ex.P-1 to P-25) each of denomination of Rs.100/- along with one currency note (Ex.P-26) of the denomination of Rs.500/-, on the pretext of receiving compounding fee against a challan (Ex.PW-2/B) in respect of jeep bearing registration No.DL-4CE-0737 which had statedly been found being used for carrying passengers unauthorizedly

in the area of Bahadurgarh, Rohtak in the State of Haryana, the appellant having acknowledged receipt (Ex.P-34) of Rs.2,500/- only.

2. The police proceedings (Ex.PW-8/B) relating to the trap on which endorsement (Ex.PW-10/A) was made by PW-10 resulted in registration of FIR No.46/1996 of Police Station ACB. The matter was subjected to investigation through Inspector S.K. Banta (PW-10). The report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) which was submitted in the court of Special Judge (Prevention of Corruption Act) on 31.01.2000 led to prosecution (vide CC No.5/2000) in which the appellant stood trial on the charge framed on 25.07.2001 on the accusations for offences punishable under Section 7 and 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988.

3. On conclusion of the trial, by judgment dated 10.09.2005, the appellant was held guilty as charged. By order dated 21.11.2005, the Special Judge awarded sentence of rigorous imprisonment for six months and rigorous imprisonment for one year with fine of Rs.500/- and Rs.1,000/- respectively on the two counts, directing both the substantive sentences to run concurrently and the appellant to be entitled to benefit of set off under Section 428 Cr.P.C.

4. Feeling aggrieved, the appellant filed the present appeal challenging the judgment of conviction and order on sentence, his plea being that he has been falsely implicated on mere suspicion.

5. Having heard the learned counsel on both sides and having perused the record, certain background facts are found to be beyond the pale of any dispute. The same may be taken note of upfront.

6. The appellant, as mentioned earlier, was posted as PA to the GM in the office of Haryana Roadways at Delhi. Ordinarily, given the position he was holding, it would not be within his domain or area of his responsibility to receive money for the purposes of compounding of the traffic offences. His superior (PW-14) did testify to that effect. But then, the prosecution had also examined Bhoop Singh (PW-5), assistant cashier, also posted in the same office, who deposed that it was a prevalent practice and accordingly, the appellant had been orally authorized by the DM to deal with the cases of compounding of challans and consequent to such authorization he had been issuing compounding receipts. This part of the evidence was not refuted by the prosecution and, therefore, cannot be wished away.

7. Even otherwise, it has to be borne in mind that the evidence also includes the document (Ex.P-34) which was a receipt formally issued, concededly by the appellant, under his signatures, on 11.10.1996 acknowledging the payment of Rs.2,500/- to him by PW-6 (the complainant) in respect of the Jeep, particulars of which were duly noted in the said document. The fact that the official receipt book wherein the deposit of money with the department was acknowledged, for and on behalf of the Govt. of Haryana (Transport Department), was in the possession and use of the appellant, reinforces the evidence of PW-5 about the prevalent practice. There is no explanation worth

the name as to why the appellant would be called upon to issue such a receipt, it also not being a case of the prosecution that the money which he had received and thereby acknowledged had not been accounted for to the department.

8. The appellant does not dispute the evidence that he was on duty in the aforementioned office on 11.10.1996. There is clear evidence, and the appellant does not dispute the same, that the aforementioned Jeep was the subject matter of the challan (Ex.PW-2/B) relating to its unauthorized and commercial use in the State of Haryana. Though Om Pal (PW-7), owner of the vehicle, would not support the prosecution case about the complainant (PW-6) having any connection with it, the fact remains that it was PW-6 who was pursuing the matter arising out of the challan to which the said vehicle had been subjected.

9. According to the sequence of events unfolded by the prosecution story, as set out in the charge sheet, PW-6 had earlier gone to the office in question on 10.10.1996 where he had met the appellant and as per the conversation exchanged at that time it had been indicated by the appellant that there would be a levy of Rs.2,000/- as fine while the overall demand for money was Rs.3,000/- to be paid, the excess being understood to be the illegal gratification demanded. It is with this version that PW-6 had approached PW-10 in the office of ACB, as is mentioned in document Ex.PW-6/A.

10. PW-6 had also arranged Rs.3,000/- in the form of aforementioned currency notes – twenty-five currency notes each of denomination of Rs.100/- and one of Rs.500/-. There is no explanation

as to why such was the breakup of the currency notes. It may be assumed, for the sake of argument, in favour of the prosecution, that this was the nature of the currency notes as could be immediately mustered, the total amount being Rs.3,000/- only which was the amount equivalent to the amount that had been demanded.

11. The trap laying officer (PW-10), as per his proceedings (Ex.PW-8/B subjected all the twenty-six currency notes to phenolphthalein powder. All the twenty-six currency notes, thus treated with phenolphthalein powder were handed over to the complainant (PW-6) for being passed on, at the time of demand, to the appellant in his office. This is how the pre-trap steps were taken.

12. In the proceedings (Ex.PW-8/B), on the basis of which FIR was registered, it is indicated that PW-6, accompanied by the independent witness Jitin Kataria (PW-8) who was working as a lower division clerk in the health department, his services having been requisitioned as a shadow witness, had gone to the office where they met the appellant sitting at his office desk where the money was demanded and Rs.3,000/- handed over against which receipt for Rs.2,500/- only was issued, this being followed by the duo coming out and giving the pre-designated signal in the wake of which trap laying officer with other witnesses came in, challenged the appellant, and upon taking search recovered the phenolphthalein treated currency notes, of the total value of Rs.3,000/-, from his shirt pocket, his hand-wash and shirt-wash confirming the same to having been handled by him. In the court testimony, however, neither PW-6 nor PW-8 would corroborate

the prosecution case about the appellant having made any demand or having accepted the amount of money at any stage. Both the witnesses would not even identify the appellant to be the official with whom there had been some exchange concerning the challan.

13. The inability of PW-6 or, for that matter, of PW-8, an independent witness who had come on the scene for the first time, to identify the appellant by face may be of no consequence, inasmuch as the appellant himself admits that he had had a dealing with PW-6 on 11.10.1996 in the context of compounding of the challan in question and he having received the amount of money, which he had acknowledged vide receipt (Ex.P-34). But, the crucial aspect on which the fate of the case cannot turn in favour of the prosecution is the fact that the independent witness PW-8 does not corroborate the story of recovery of the tainted money from the possession of the appellant. In his deposition, he only stated that when PW-6 was earlier before the appellant in the context of compounding of the challan, he had placed the '*packet*' of currency notes of the denomination of Rs.100/- on the office table. He would not speak of the appellant having "received" any such wad of notes or having counted the notes which had been handed over or placed on his table. In the eyes of PW-8, what had been passed on by PW-6 to the appellant was a set of notes which were of the denomination of Rs.100/- only. He is conspicuously silent about inclusion of currency note of denomination of Rs.500 in the said set of notes which were placed by PW-6 on the table of the appellant. Thus, the possibility that the currency note of Rs.500/- was stealthily

kept as part of the wad of notes of Rs.100/- (they being larger in number) cannot be ruled out.

14. From the sequence of events, as narrated by PW-6 and PW-8 – they only being at the scene – it is clear that the appellant did not touch the currency notes while the said two persons were present at his table. It is also clear that he had issued the receipt (Ex.P-34), pocketing which the complainant (PW-6), accompanied by shadow witness (PW-8) had come out of the office. The possibility that the appellant would have picked up the wad of notes from the office table and put them in his pocket later cannot be ruled out. There is no witness produced to state that the appellant at any stage checked the currency notes, their number, or the denomination. Without such formal evidence being adduced, the possibility that amount of Rs.3,000/- by inclusion of additional currency (Ex.P-26) of the denomination of Rs.500/- reaching his pocket out of ignorance cannot be ruled out.

15. In the considered view of this court, it was most unfair on the part of the trap laying officer to have included the currency notes which were meant to be the money to be passed on officially with the notes which were meant to be illegal gratification for being treated as the trap money subjected collectively to phenolphthalein powder. The mixing up may have led to confusion. There is no evidence, as said above, about the appellant having demanded Rs.3,000/-. The possibility of he having received the additional amount of Rs.500/- on

account of confusion cannot be ruled out. In the facts and circumstances, the benefit of doubts will have to be given.

16. The appeal is allowed. The impugned judgment and order on sentence are set aside. The appellant is acquitted. Bail bonds stands discharged.

R.K.GAUBA, J.

NOVEMBER 15, 2018

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