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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 1162/2010**

DINESH KUMAR

..... Petitioner

Through: Mr. Khowaja Siddiqui, Mr. Manish
Sangwan & Mr. Raghav Kakar,
Advocates

Versus

STATE

..... Respondent

Through: Mr. G.M. Farooqui, APP.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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30.08.2018

This appeal seeks setting aside of the impugned order dated 08.09.2010, passed by the learned Special Judge, Anti-Corruption Branch, Delhi, in CC. No. 112/08, whereby the petitioner has been convicted under sections 7 and 13(1)(d) punishable under section 13(2) of the Prevention of Corruption Act, 1988 ("the Act"), for which, he had been sentenced to undergo rigorous imprisonment for three years and a fine of Rs.5,000/- each and in default of payment of fine, he would undergo three months simple imprisonment. All sentences are to run concurrently.

The petitioner was an employee of the MCD at the time of the incident. He has been convicted for demanding and accepting a bribe of Rs. 500/- for issuance of a cheque by the MCD for Rs. 55,632/-, in favour of the complainant.

The learned counsel for the State submits, that the petitioner had indicated that the bribe amount of Rs. 500/- be placed in the relevant file by

the complainant; it was to be later appropriated by the petitioner . The said Rs. 500/- placed by the petitioner was still in the file, when it was seized by the police/Anti-Corruption Branch in a raid conducted by them.

The impugned order dated 08.09.2010 noted as under:

“11. It is submitted by ld counsel for the accused that in a case u/s 7 of Prevention of Corruption Act, 1988 prosecution is required to accused demanded and accepted the bribe amount. It is submitted by him that in fact prosecution has failed to prove that accused demanded and accepted the bribe amount. It is submitted by Id defence counsel that as per the prosecution case bribe was demanded by the accused from the complainant for issuing the cheque but the statement of the complainant cannot be read in evidence as the statement of complainant is not complete.. It is submitted by him that complainant was examined in chief and partly cross examined on 27.8.2007 and his further cross examination was deferred on his request as he was to attend his wife. It is submitted by him that thereafter prosecution has failed to produce complainant (PWL) hence his statement is incomplete and cannot be taken into consideration at all. It is true that complainant was examined in chief and partly cross examined on 27.8.2007 and thereafter he could not be served though the summons were sent to him for about 14 times. Since his statement was not complete the same cannot be taken into consideration. It is further submitted by Id defence counsel that complainant even in his examination in chief did not support the prosecution case and was declared hostile and was cross examined by ld. Addl. PP for the state. It is submitted by him that as per the prosecution case accused asked the complainant to put the bribe amount in the file and thereafter the bribe amount was put by the complainant in the file and same was recovered from the file but complainant deposed that when he asked the accused to hand over his cheque the accused demanded the agreed bribe amount and thereafter he took out the tainted money

from left pocket of his shirt and extended towards the accused who took it in his right hand and kept the same in the left pocket of his jacket and thereafter the bribe amount was recovered from the left pocket Jacket of the accused. He was cross examined by Id. Addl. PP. He stated that accused asked him to put the money in that file and thereafter he put the money in file and thereafter accused took the money from the file and kept the same in left pocket of his shirt. Thereafter he gave another version and stated that tainted money was recovered from the file placed on the table of the accused by the panch witness. It is further submitted by Id. defence counsel that as per the prosecution case the bribe amount was brought by the complainant whereas complainant deposed that same was supplied to him by the inspector of Anti Corruption Branch. It is true that complainant gave an entirely different version. As already stated that statement of the complainant was not complete and probably he was won over by the accused that is why he did not support the prosecution case and did not appear in the court after his statement was recorded on 27.8.2007 though subsequently the summons were sent to him about 14 times. But simply because the complainant could not be fully examined in the court does not mean that prosecution has failed to prove demand of bribe on the part of the accused.

12. *In order to prove demand prosecution examined panch witness Satya Parkash (PW5) . He categorically deposed that on a 15.12.2004 he was on duty as a panch witness. He further deposed that at about 12.30 PM complainant came in Anti Corruption Branch and gave his hand written complaint Ex. PWI/A to the inspector of Anti Corruption Branch in his presence and the complaint Ex. PWI/A bears his signature at point B and that of the complainant at point A. He also deposed that complaint was regarding demand of bribe of Rs. 500/- and complainant brought one GC note of Rs. 500/-. He deposed about pre raid proceedings. He also deposed that pre raid proceedings bear his signature at point B. He also deposed*

about departure of raiding team. He deposed that he along with the complainant went to the office of accused. Complainant talked to the accused. Accused asked complainant to put Rs. 500/- in his file lying on the table and on that complainant kept the GC note of Rs. 500/- in said file and thereafter he gave pre assigned signal to the members of the raiding party and on that raiding team reached at the spot. He told the Raid Officer that complainant had put GC note of Rs. 500/- in the file lying on the table on the asking of the accused and the Raid Officer recovered the said GC note of Rs. 500/- from the file.

*13. It is submitted by Id defence counsel that he too was declared hostile and was cross examined by Id. Addl. PP for the state. It is submitted by him that as per the prosecution case accused took out the file of the complainant from his almirah and thereafter he asked the complainant to put the bribe amount in the file but panch witness nowhere deposed that accused took out the file from his almirah. It is submitted by him that even when he was cross examined by the Id. Addl. PP for the state he stated that he cannot admit or deny that accused has taken out the file from the almirah and kept the same on the table. It is further submitted by him that as per prosecution case bribe amount was recovered by panch witness on the asking of Raid Officer but when panch witness was cross examined by Id. Addl. PP for the state he stated that he cannot admit or deny if he had recovered the GC note of Rs. 500/- from the file. It is significant to note that post raid proceedings Ex. PW5/A were prepared by the Raid Officer at the instance of panch witness. He admitted that post raid proceedings were prepared by the Raid Officer in his presence and same bears his signatures. The post raid proceedings are akin to panchnama and are admissible in evidence. Reference is placed on the case of **Santa Singh V/s State of Punjab AIR 1956 Supreme Court 526** where it was held that mere presence of the police officer when a statement is made does not by itself render such a statement inadmissible. So long*

as a panchnama is a mere record of the things heard and seen by panchas and does not constitute a statement communicated to a police officer in the course of investigation by him it would not fall within the mischief of section 162 of the Code.”

What emanates from the proceeding discussion is that none of the prosecution witnesses had deposed that there was a demand of bribe for issuance of the said cheque; nobody saw the petitioner accepting the money; that there were contradictions in the testimonies of the main witnesses, namely, the complainant -Mr. Manoj Kumar and the *panch* witness of the Anti-Corruption Branch -Mr. Satya Prakash, who were both declared hostile during proceedings before the Trial Court. Insofar as there is no proof of the demand of bribe being made by the petitioner and more importantly, him not pocketing the said money, there is no clinching evidence to prove him guilty of the charges he was accused of.

Accordingly, the appeal is allowed and the impugned order is set aside.

NAJMI WAZIRI, J.

AUGUST 30, 2018

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