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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th April, 2019

\+ CRL.A. 628/2000

ASHOK KUMAR ..... Appellant

Through: Mr. D.C. Mathur, Sr. Adv. with Mr. Nishit Kush & Ms. M. Hussain & Mr. Vinod Jain, Advs.

versus

STATE THRU CBI ..... Respondent

Through: Mr. Rajesh Kumar, SPP for CBI with Ms. Santawana Agarwal, Adv.

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

ORDER (ORAL)

1. The appellant was working as a lower division clerk (LDC) in the office of Sub Divisional Magistrate (SDM) of South District at Patiala House Courts Complex, New Delhi in October, 1995. On 19.10.1995, the Central Bureau of Investigation (CBI) registered first information report (FIR) vide Ex.PW-7/C at 10.00 a.m., on the basis of complaint (mark 'B') of Rishi Pal (PW-2) about demand of illegal gratification in the sum of Rs. 500/- from him by a clerk named Ashok Kumar in the said office in the context of action to be taken on the application (Ex.PW-7/A, also Ex.PW-2/A) of his sister Neera (PW-8), for issuance of a scheduled caste certificate. In the follow-up action on the said FIR, the appellant herein was arrested, after personal

search (vide Ex.PW-3/B) in the office of the SDM on 19.10.1995, the allegations against him being that he had received from the said complainant (PW-2) an amount of Rs. 200/- in the form of four currency notes of the denomination of Rs. 50/- each, he having reiterated the demand for illegal gratification, this having been witnessed by Ashok Chaudhary (PW-4), a superintendent in the vigilance department of New Delhi Municipal Council (NDMC), who had been joined, alongside Laxman Dass (PW-3), another similarly placed government official, as independent witnesses in the trap that had been laid, the pre-trap proceedings having been recorded vide handing over memo (Ex.PW-3/A) leading to the post-trap proceedings (Ex.PW-3/C).

2. The appellant was brought before the Special Judge (Prevention of Corruption Act) and put on trial on the basis of evidence which was submitted with the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the charge having been framed on 27.05.1997 for offences under Section 7 and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

3. The trial court, by its judgment dated 22.09.2000, found the appellant guilty, as charged, and convicted him accordingly. By order dated 23.09.2000, the trial court awarded rigorous imprisonment for two years with fine of Rs. 5,000/- for offence under Section 7 of PC Act and rigorous imprisonment for three years with fine of Rs. 5,000/- for offence under Section 13 (2) read with Section 13 (1) (d) of PC Act.

4. The present appeal was filed on 20.10.2000 seeking to assail the afore-mentioned judgment and order on sentence. By order dated 30.01.2001, the sentence was suspended and the appellant was released on bail pending consideration of the appeal. The turn of the appeal for hearing and final disposal, has come up eighteen years thereafter.

5. Both sides have been heard at length. The trial court record has been perused with the assistance of the learned counsel.

6. Some facts have emerged from the evidence led as indisputable. The appellant was working as LDC in the office of SDM during the relevant period. Though sanction for prosecution was proved by competent authority namely Mr. G.S. Patnaik, the then Deputy Commissioner, Delhi (PW-1), there is nothing on record to indicate as to the nature of duties allocated at the relevant point of time to the appellant. It is his version that there was no specific assignment of duty on a particular seat and this is not countered by any evidence to the contrary. Mere statement of K.S. Ranganathan (PW-6) who was working as reader to the SDM at the relevant point of time that the appellant was dealing with SC certificates cannot suffice in absence of office order affirming the said task to be part of his regular duties. This is relevant in view of how the evidence would unfold during the trial.

7. Going by the evidence of PW-2 and PW-8, there is no doubt that PW-2 would have carried the application (Ex.PW-7/A) to the office of SDM on or about 19.10.1995 for issuance of a SC certificate in her favour. Though PW-8 would make a statement which creates

some confusion in this regard, giving rise to some arguments of the defence (the appellant), not much turns on the same.

8. As per the complaint, on which the FIR was registered, PW-2 had visited the office of the SDM only once. There is no specific date of the said visit. The said witness has disowned the complaint (mark 'B') stating that it was written by the CBI Inspector from some of his own subordinates but it can be assumed, for sake of arguments, that the complaint was presented by PW-2 having got it written from someone, there being clearly no evidence to affirm that it was in his own hand writing. Be that as it may, in the complaint, there is a reference to conversation between PW-2 and the counter clerk who had given his own name as Ashok. It is apparent from the entire evidence that PW-2 did not know the clerk from before. In the court testimony, he would explain, and CBI would not make any endeavour to contradict him, that there was a name displayed on the counter where the application was to be submitted, the name somehow connecting the matter to the appellant. At the same time, it must be said that there is nothing on record to confirm that there was only one clerk deputed in the concerned office bearing the name of Ashok Kumar for such purposes.

9. The complainant (PW-2) in the court testimony did not support the prosecution story with regard to the complicity of the appellant. He was declared hostile and cross-examined at length by the public prosecutor. From his entire testimony, it emerges that his version is that he had picked up the name of Ashok Kumar from the display board at the counter on the visit prior to the complaint being lodged

with the CBI. He had arranged money for the trap in the sum of Rs. 200/-. He would say that it was in the form of currency notes in the denomination of one currency note of Rs. 100/- and two of Rs. 50/- each. The pre-trap proceedings, on the contrary, would show four currency notes of denomination of Rs. 50/- each having been presented. This being a small contradiction can be ignored. There is always a possibility that the witness may have arranged some denomination, but the trap laying officer may have thought it proper to use different denomination.

10. The complainant (PW-2) testified at the trial that when he and the shadow witness – he would insist that it was PW-3 as against the prosecution case that PW-4 was deputed as the shadow witness – he had gone to the counter in question and had presented the application form (Ex.PW-7/A) "with" the trap money to the counter clerk. He would categorically depose that the clerk at the counter was someone other than the appellant. According to him, the clerk at the counter had taken over the application form and the money as presented and around that time the appellant had also come to the seat of the said counter clerk. He spoke about exchange of words between the counter clerk and the appellant and this inclusive of passing on the trap money i.e. the four currency notes of Rs. 50/- each by the counter clerk to the appellant who had pocketed the same. He explained that the conversation which was undertaken between the said two persons would indicate some prior transaction wherein the counter clerk possibly owed some money to the appellant, there also being a reference to assurance that the balance would be paid in due course.

11. It may be mentioned here itself that when his turn came, the appellant entered the witness box (as DW-1), and testified that the clerk (at the counter) was one Nathi Ram, who had borrowed Rs. 350/- from him which was to be returned and it was against the said transaction that Nathi Ram had handed over to him the currency notes of the value of Rs. 200/- which he had received, he having been apprehended by CBI immediately thereafter.

12. The case of the CBI as set up, *inter alia,* through the recovery memo (Ex.PW-3/C), has been that when the complainant and the shadow witness (as per CBI it was PW-4) had approached the appellant at the counter, he had taken the complainant outside the office for a stroll in the direction of Tilak Marg leading him to service road where he had reiterated the demand and upon the complainant telling him that he had brought Rs. 200/-, he had asked for the same to be handed over, the money having been taken over from the complainant at that public place, soon whereafter he was apprehended upon the pre-appointed signal being given by the shadow witness. It is CBI's case that the appellant was then brought to the office of SDM who was informed and her reader joined in the proceedings, the search of the appellant by PW-3 leading to the recovery of money, the wash of his hand and of the left side pocket of his trousers being taken, the same eventually being confirmed by the forensic scrutiny, reliance in this regard being placed on the FSL report (Ex.PW-5/A).

13. Given the defence of the appellant, as noted earlier, there is no need to go at length into the evidence about the search leading to recovery of trap money from the pocket of the trousers of the appellant

or confirmation about he having handled the trap money around that point of time. It is an admitted case for him that he had dealt with that money and it was found from his possession. The question, however, persists as to whether he had received the said money pursuant to a demand and knowingly as illegal gratification directly from the complainant or that he has a valid explanation about this money having reached his pocket from another person to whom the complainant may have handed over the same earlier.

14. The detailed and lengthy cross-examination of PW-2 (complainant) by the prosecution could not bring out any affirmation of the prosecution story. The recovery witness (PW-3) was also partly hostile rather hostile on certain material particulars and was cross-examined by the public prosecutor. Interestingly, in the said cross-examination, the prosecution tried to introduce evidence which was hearsay. He was asked to narrate the conversation that had taken place between the appellant and the complainant when they were present in the service lane outside the Patiala House Courts Complex. He spoke about the exact words which the shadow witness had supposedly revealed to be the conversation after the trap had been sprung. These words coming from the recovery witness who apparently was not present and who apparently had not himself heard, being spoken could not have been introduced through his mouthpiece.

15. Be that as it may, what is crucial to note here is that as per the above version put to PW-3, the reiteration of the demand by the appellant during the trap proceedings, took place in the service lane alongside Tilak Marg outside the court complex and before the money

was handed over there itself. As would be noticed upon perusal of the evidence of PW-4, in contrast, such exchange would have taken place when the complainant had entered the office of the appellant, the shadow witness being in tow before the appellant is stated to have taken the complainant outside for a stroll in the general direction of Tilak Marg.

16. The recovery witness (PW-3) had initially spoken about the appellant being apprehended at the public place at a location he describes as Tilak Marg lane, this attracting a lot of crowd and he being brought "*to his office*" where he was asked to take off his pants, this being followed by the proceedings relating to hand wash or pant pocket wash. He did not volunteer any information about his role in search of the pocket of the appellant leading to the recovery. The same was spoon-fed to him during cross-examination by the public prosecutor and he would endorse the same in a parrot like manner. This is hardly the kind of evidence that the court can accept as credible, particularly against the backdrop of the version of the complainant as noted above. PW-4, the shadow witness, did stick to the story of the prosecution. But then, he made a statement which brings out a major discrepancy as to the particular point of time and place where the demand was reiterated during the trap proceedings.

17. There is one more jarring circumstance which renders the case one to be viewed with suspicion. As noted earlier, the complainant's version is that he had handed over the application of his sister, along with the trap money, to the counter clerk. There was no attempt made to discredit him on this aspect. Instead, it was suggested to him that

when the trap money had been passed on to the appellant, he (the appellant) had asked the complainant to come back to him after 2:00 p.m. This is what the shadow witness (PW-4) would also say in his deposition. From this, it naturally follows that the CBI's version is that the application (Ex.PW-7/A) had remained in the hands of the complainant. If it were so, there would be some proceedings, by which the application would have been seized from his possession and control. On the contrary, the recovery memo (Ex.PW-3/C) which primarily deals with the search and seizure of trap money from the appellant also talks of the seizure of the said very application form. The impression gathered from a perusal of the said document is that the application form was seized from the hands of the appellant. This cannot fit in with the larger story of the prosecution.

18. Indeed, there is more to the case than what meets the eye. The defence theory cannot be short-shrifted or disbelieved only because the shadow witness deposes about facts to the contrary. Given the version of the complainant, as noted above, serious doubts persist as to the credibility of the accusations against the appellant. The benefit of doubts will have to be extended to him.

19. For the foregoing reasons, the appeal is allowed. The impugned judgment and order on sentence are set aside. The appellant is acquitted.

R.K.GAUBA, J.

APRIL 12, 2019
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