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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 25th July, 2019

+ CRL.A. 753/2000

RAMESH CHANDER TYAGI

..... Appellant

Through: Mr. Suhail Malik, Mr. Vikas Malik
and Mr. Vikas Bhalla, Advocates

versus

STATE THR. C.B.I.

..... Respondent

Through: Mr. Mridul Jain, SPP

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant was arrested by Central Bureau of Investigation (CBI) on 09.09.1994, statedly during the course of investigation into first information report (FIR) registered vide RC No.64(A)/94 on the complaint (Ex. PW1/A) of Manoj Kumar Sharma (PW1), and was brought to trial in the court of the Special Judge (Prevention of Corruption Act) on the basis of evidence gathered and presented by report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.PC), which was registered as criminal case (CC no.138/99). The trial was held on the accusations for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act), the gravamen being

that while he was employed as a casual worker in the Regional Passport Office, Bhikaji Cama Place, New Delhi, he had demanded and accepted from the said complainant an amount of Rs.100/- for giving information as to the correct position of issuance of passport and also to get the process of police verification expedited. The Special Judge, by his judgment dated 17.11.2000, held the appellant guilty, as charged. By order dated 18.11.2000, the sentence of rigorous imprisonment for two years with fine of Rs.2500/- on the first count and rigorous imprisonment for three years with fine of Rs.2500/- on the second count was awarded.

2. The above mentioned judgment, and order on sentence, were assailed by the present appeal instituted in December 2000. It is unfortunate that the appeal has come up for final hearing and disposal almost nineteen years thereafter, a quarter of a century having gone by after the events leading to the registration of the case, arrest and prosecution. It is indeed a matter of deep concern that the matter awaits decision at first appellate level while the appellant has turned 89 years' old.

3. Having heard both sides and having gone through the record carefully, this court is of the view that the prosecution itself was unjust, unfair and unauthorized, this justifying the appeal to be allowed on point of law. It may be added that even otherwise the evidence led primarily through the mouthpiece of the complainant and the two trap witnesses – Dinesh Kumar (PW2) and Suresh Chander

(PW6) - is found to be on shaky grounds and therefore not worthy of reliance.

4. Since the appeal is being allowed on question of law, detailed discussion of evidence is wholly unnecessary. Suffice it to say that the demand was allegedly made on 08.09.1994 when PW1(complainant) had visited the office in question to enquire about the delay in the process on the application for issuance of passport when he is said to have come across the appellant. The appellant was then aged about 64 years' old (the counsel for the appellant would explain that he was an ex-serviceman and had been engaged in casual jobs by the office in question). The complaint lodged with CBI was that there had been a demand of Rs.100/- and for this the complainant was instructed to come the next day with requisite papers and the bribe money.

5. The trap was arranged by CBI joining PW-2 (shadow witness) and PW6 (recovery witness). The manner in which all the said three witnesses have been examined at the trial has left much to be desired. Each of the said witnesses was declared hostile and subjected to cross-examination by the public prosecutor on crucial aspects. The material part of the incriminating story was brought out essentially during such cross-examination, diluting the veracity of the version. Crucially, the complainant himself was unsure as to the demand of bribe by the petitioner himself. His lack of conviction came out during cross-examination by the prosecutor himself. It has come out in the evidence of these witnesses that the bribe money was handed over to

the appellant, during trap on 09.09.1994, concealed in certain papers relating to the passport application. It is debatable as to whether the appellant received the bribe money, so concealed in the papers, consciously or with knowledge that he was receiving illegal gratification. The conversation that was exchanged at that point of time is differently stated by the three witnesses, the prosecution case about demand during trap also not being fully established.

6. Be that as it may, what turns the matter in favour of the appellant is the admitted position that he was not a regular employee of the passport office. He had been engaged as a casual worker, the evidence of official witnesses itself bringing out that his services were availed on need basis from day-to-day. Reference in this regard may be made to the evidence of Superintendent in the passport office (PW5).

7. The record of the trial court also contained, and the special judge in the impugned judgment took note of this, letter dated 28.10.1994 of the Assistant Passport Officer affirming that the services of the appellant had been terminated with effect from 08.09.1994. If that is the position of the employment, the argument of the appellant that he was not a public servant on 09.09.1994 cannot be rejected. With this admitted position and the status of the service of the appellant, the charge for offences under Sections 7 and 13 of the P.C. Act cannot stand in as much as one of the essential ingredients and pre-requisite would be that the person should be a “public servant”.

8. The argument raised by CBI, on the other hand, is that the appellant was a public servant on 08.09.1994 when he had made the demand which also is an offence. But then, if that be the position, then sanction under Section 19 of the P.C. Act was a condition precedent for prosecution to be launched, which is amiss.

9. The CBI presented the charge-sheet before the Special Judge without a sanction under Section 19 of the P.C. Act on the plea that the appellant was not a public servant on the relevant date, his services having been terminated on 08.09.1994. It is clear that the CBI has been taking inherently contradictory stands. If the appellant was a public servant at the relevant point of time, the prosecution without sanction under Section 19 was impermissible. In contrast, if he was not a public servant, he could not have been prosecuted for offences under Sections 7 and 13 of the P.C. Act. Reference was made during arguments to offences punishable under Sections 8 and 9 of the P.C. Act, wherein taking of illegal gratification to exercise influence over or on the public servant is also punishable under the law. But then, the appellant not having been charged for such offences under Sections 8 or 9 the argument cannot save the day for the prosecution.

10. The learned counsel for the CBI submitted that the need for previous sanction under Section 19 is a matter to be considered at the threshold. His submission was that the case having been decided, and having resulted in conviction, the appellate court ought not interfere on account of omission or absence of sanction. This argument cannot be accepted in view of the provisions contained in sub-sections (3) and

(4) of Section 19. Even the judgment of the trial court shows the appellant has been raising the issue of absence of sanction since beginning.

11. On the foregoing facts, and in the circumstances, the impugned judgment and order on sentence cannot be allowed to stand. They are set aside. The appellant is acquitted.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 25, 2019

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