

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

Date of Order: August 19, 2019

+ **CRL. A. 1256/2014 & CRL.M.A. 13992/2014**

S K BHATIA

..... Appellant

Through: Mr. Maninder Singh, Mr. Sermon
Rawat, Mr. Parikshit Goyal and
Ms. Aastha Vishwakarma,
Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Rajesh Kumar, Special Public
Prosecutor with Mr. Indranil
Mohan, Advocate

+ **CRL. A. 1136/2014**

AJAY KUMAR GOEL

..... Appellant

Through: Mr. S.A. Hashmi, Mr. Zeeshan
Hashmi & Mr. I.A. Alwi,
Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Mridul Jain, Special Public
Prosecutor

+ **CRL. A. 1193/2014**

S. S. SANAN

..... Appellant

Through: Mr. Gagan Manocha,

Mr. Kushdeep Gaur, Mr. Nikhil
Ahuja & Mr. R. Tyagi, Advocates

Versus

THE STATE (*through C B I*) Respondent
Through: Mr. Mridul Jain, Special Public
Prosecutor

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

In the above captioned three appeals, challenge is to impugned judgment of 31st July, 2014 vide which appellants have been held guilty for the offence under Section 120-B read with Sections 7, 12, 13(2) read with Section 13(1) (d) of *Prevention of Corruption Act, 1988* (henceforth referred to as the "*PC Act*"). In addition, appellants-Ajay Kumar Goel and S.S.Sanan have been also held guilty for the offence under Section 12 of *PC Act*. Vide impugned order on sentence of 5th August, 2014, all the three appellants have been sentenced to rigorous imprisonment for one year and fine of ₹25,000/- with default clause for committing offence under Section 120-B read with Sections 7, 12 and 13 (1) (d) of *PC Act*. In addition, appellant- S.K. Bhatia has been also sentenced to rigorous imprisonment of one year and fine with default clause for the offence under Section 7 of *PC Act* and rigorous imprisonment for three years and fine with default clause for offence under Section 13 (1) (d) of *PC Act*.

With the consent of learned counsel for both the sides, the above captioned appeals were heard together and are being disposed of by this common order.

Appellant- *S.K. Bhatia* was working as Junior Engineer (JE) in the Appropriate Authority, Department of Income Tax and at the relevant time was a member of the inspection team and was supposed to inspect the property for grant of 'NOC'. The allegations levelled against him by respondent-CBI are that he along with co-appellants – *Ajay Kumar Goel* and *S.S. Sanan* entered into a criminal conspiracy and demanded bribe in lieu of issuance of NOC for the transfer of property. The case set up by respondent-CBI is that on receipt of secret information, S.B.Sinha, Trap Laying Officer (PW-6), constituted a raiding team consisting of DSP S.K. Peshin, (PW-8), Inspector Rajesh Kumar (PW-9), DSP Ramnish (PW-10) and SI Shobha Dutta and took along two independent witnesses- *Baldev Khera* (PW-2) and *B.K. Agnihotri* to join the raiding team.

The factual background of this case, as noticed in the impugned judgment, are as under:-

“The prosecution case is that S.K. Bhatia arrived at the spot at 5.45 pm. He was carrying a plastic bag with him containing number of files including file no. 4433 of the subject property being maintained in the office of Income Tax Department for issuing of 'NOC' in the matter. As per prosecution case A3 A.K. Goel and A4 S.S. Sanan also arrived after ten minutes of arrival of S.K. Bhatia with a cloth check bag being carried by S.S.Sanan having bribe amount of Rs.3 lac in it. As per prosecution case A1 showed them one file and thereafter the money bag was handed over by A3 A.K. Goel to A1 S.K. Bhatia and on the asking of A1 chain of the bag was

opened by A3 A.K.Goel and S.K.Bhatia also took out one bundle of Rs.500/- from his pocket and mixed it with the bribe amount of Rs.3 lac handed over to him by A3 A.K.Goel and A4 S.S.Sanan.”

It is the case of prosecution that on search of polythene bag, many files of the Appropriate Authority including file pertaining to property in question were recovered from appellant-S.K. Bhatia. Prosecution had got examined fifteen witnesses in support of its case. Ravinder Kumar (PW-1) is the Sanctioning Authority; Baldev Khera (PW-2) is an independent witness; S.L. Kanojia (PW-4), Dharma Pal Satya (PW-5), Rajiv Sajai (PW-12) & Sunil Gupta (PW-14) are Officers from Income Tax Department; S.B.Sinha (PW-6) is Trap Laying Officer; Kailash Chand (PW-13) is an independent witness joined by the CBI. Appellants in their statements under Section 313 Cr.P.C. before the trial court, had claimed that they are innocent and have been falsely implicated and had got four witnesses examined in their defence. Trial court has relied upon evidence of afore-referred material prosecution witnesses to convict and sentence the appellants as noted hereinabove.

Learned counsel for appellants assailed the impugned conviction and sentence on the ground that the evidence led by respondent-CBI is contradictory and trial court has erred in relying upon it and in discarding the evidence led by the appellants. It was submitted by learned counsel for appellants that the alleged bribe money was not recovered from appellant- S.K.Bhatia and that he was not competent to issue the ‘NOC’ and so, there was no occasion for him to have demanded any bribe. It

was submitted that 'NOC' was issued in the instant case without fresh Verification Report, because the Old Verification Report (*Ex.D-4*) was already on record. It was further submitted that appellant- *S.K. Bhatia* was carrying various files pertaining to fifteen different properties and was going to his office and was apprehended just outside his office. It was next submitted that the case set up against appellants is highly improbable on the face of it and the independent witness- *Baldev Khera* (*PW-2*) has not supported the prosecution case on merits. It was pointed out by appellants' counsel that the Trap Laying Officer (*PW-6*) has also not testified that he had heard appellant- *S.K. Bhatia* demanding any bribe.

It was next pointed out by learned counsel for the appellants that in the face of evidence of *S.L. Kanojia* (*PW-4*), the prosecution case stands demolished, as this witness in his evidence has clearly deposed that the Valuation Report of the property in question was prepared way back in March, 1995. It was also submitted that the case set up by appellants- *Ajay Kumar Goel* and *S.S.Sanan* of going for a visit to a property dealer on the day and time of the incident stands probablised from the evidence led by them. Learned counsel for appellants submitted that the glaring contradictions in the prosecution case render it doubtful and so, benefit of doubt ought to be given to appellants. Reliance was placed upon decisions in *Vishal Chand Jain Vs. CBI* 2011 (1) JCC 570; *C.M. GirishBabu Vs. CBI* (2009) 3 SCC 779 and *State through CBI Vs. Shobha Chhabra* 2016 1 AD (Delhi).

On the contrary, learned Special Public Prosecutor for respondent-CBI supported the impugned judgment and submitted that the conviction of appellants is borne out from the evidence on record and so, these appeals deserve dismissal.

The submissions advanced by both the sides have been duly considered in light of the evidence on record and decisions cited and thereafter, this Court finds that the instant case is not a typical trap case. In this background, the evidence of independent witness *Baldev Khera* (PW-2) assumes importance. After having scrutinized his evidence and the evidence of *S.B.Sinha*, Trap Laying Officer (PW-6) and the remaining prosecution evidence, I find inherent contradictions *inter se* the evidence of material witnesses. In a trap case, like the instant one, the prosecution ought to have got the videography of the trap proceedings done, so that the contradictions in the oral deposition of witnesses do not prove fatal to the prosecution case. More importantly, trial court has erred in solely relying upon the prosecution evidence and in discarding otherwise probable defence version. Upon considering the prosecution case as well as the defence version in its entirety, this Court is of the considered opinion that the ingredients of the offence alleged and recovery of bribe money (not powdered) does not stand conclusively proved. Hence, benefit of reasonable doubt accrues to the appellants, as they have explained their presence at the spot by cogent evidence. It is settled legal position that mere recovery of the bribe money by itself, is not sufficient to prove the charge against an accused. In the absence of direct reliable

evidence regarding demand and acceptance of bribe money, the conviction of appellants cannot be sustained.

Consequently, the impugned judgment and order on sentence are hereby set aside and appellants are acquitted of the charges framed against them, while extending the benefit of doubt to them.

These appeals and application are accordingly disposed of.

AUGUST 19, 2019

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**(SUNIL GAUR)
JUDGE**

