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

+ **CRL.L.P. 527/2016**

STATE

..... Petitioner

Through Ms Meenakshi Chauhan, APP for State.

versus

RAVINDER KUMAR & ANR.

..... Respondent

Through Mr A.K. Bhakt, Advocate.

ASI Mahinder Singh, P.S. A.C. Branch.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.10.2019

1. The State has filed the present leave to appeal seeking permission to file an appeal against the judgment dated 30.03.2016 passed by the Special Judge (PC Act), Tis Hazari Courts, whereby the Trial Court acquitted the respondents for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 120 B of the Indian Penal Code, 1860 (IPC).

2. It is contended on behalf of the State that the Trial Court had failed to take into account that the testimonies of various witnesses had established that the respondents were guilty of the offences, for which they were charged. It is contended that SI Ram Kishore (PW8) had proved that on 05.01.2010, three open body TSRs were seized for violation of the Mines and Minerals Act, 1957 – for illegally loading sand. PW10 (complainant), PW15 (Shamshad) and PW12 (*panch* witness) had established that accused

Ravinder Kumar had taken a bribe of ₹3,000/-, and reduced it ₹2,000/- on negotiation, to setup a meeting with the accused person, SDM, Seelampur.

3. The proceedings commenced pursuant to a written complaint made to the Anti-Corruption Branch, on 08.10.2010, by Jabir Ahmed and Shamshad on 08.10.2010. In the said complaint, it was stated that on the intervening night of 4-5.01.2010, their three wheelers and that one of *Pappu* were impounded by PS New Usmanpur. The police officials told them to approach SDM/ Seelampur to get their vehicles released. On 07.01.2010, at about 10:00 am, they met SDM/Seelampur (respondent no. 2 herein) and he asked them to meet his driver. When they met his driver (accused Ravinder Kumar –respondent no. 1 herein), he demanded ₹3,000/- for arranging a meeting with the SDM. The said amount was reduced to ₹2,000/- on negotiation.

4. The complainant went to the police station and informed the police officials regarding the demand of bribe and a trap was laid to catch the respondents red handed. It is the prosecution's case that the complainant Jabir Ahmed handed over ₹2,000/- (comprising of four notes of the denomination of ₹500/-) to the police officials. Inspector Rajesh Kumar and *panch* witness Mahesh Chand noted down the numbers of the GC notes in the pre raid report and thereafter, the said notes were smeared with phenolphthalein powder by Inspector Rajesh Kumar. Thereafter, at about 10:45 am, the raiding party reached the SDM office. At about 11:10 am, accused Ravinder Kumar met the complainant Jabir Ahmed and they were seen talking to each other. On receiving the signal, Inspector Rajesh Kumar along with the members of the raiding party, immediately reached there. The

panch witness, Mahesh Chand told Inspector Rajesh Kumar that the accused Ravinder Kumar had demanded illegal gratification of ₹2,000/- and had received the same from the complainant and had kept the money in his right hand. Inspector Rajesh Kumar recovered the notes from Ravinder Kumar and the details of the seized notes tallied with the details, as given by the complainant. Further, when the right hand of the accused Ravinder Kumar was dipped in colourless solution of Sodium Carbonate, it turned pink, which further confirmed that those were the same notes which were initially in the possession of the complainant, Jabir Ahmed.

5. Thereafter, investigation was conducted and prosecution sanctions were obtained from the competent authority. Charges were framed vide the order dated 06.01.2015 against the respondents, to which they pleaded not guilty.

6. To prove its case, the prosecution examined fifteen witnesses. Out of the fifteen witnesses, thirteen witnesses were formal witnesses (police officials). Three material witnesses were examined, which are the complainant, Jabir Ahmed (PW 10), Shamshad (the other person whose vehicle was allegedly impounded) (PW15) and *panch* witness, Mahesh Chand (PW12).

7. The Trial Court noted that the star material witnesses, Jabir Ahmed (PW10) and Shamshad (PW15) became hostile and the testimony of the *panch* witness (PW12) did not completely support the case of the prosecution, since it was characterized by inconsistencies.

8. The Trial Court first considered the testimonies of the material witnesses to establish the fact whether accused A.K. Sharma had entered into a conspiracy with accused Ravinder Kumar to demand and accept illegal gratification from the complainant Jabir Ahmed.

9. The Trial Court noted that the complainant, Jabir Ahmed (PW10), in his cross examination, did not utter a word regarding his meeting with the accused AK. Sharma. He did not testify regarding his meeting Ravinder Kumar, at the behest of AK Sharma. On cross examination, PW10 did not depose anything with regard to his meeting the accused persons on 07.01.2010. The Trial Court noted that his cross-examination further reflected that he even denied that he was dealing in sand and Badarpur in the area of Shastri Park, Buland Masjid or that on the intervening night of 04/05.01.2010, his vehicle and that of Shamshad were seized by the officials of PS Shastri Park.

10. PW10 firstly admitted that he had visited SDM, Seelampur on 07.01.2010, but he subsequently clarified that he had visited the office of SDM Seelampur only on 08.01.2010. The Trial Court noted that he categorically denied visiting the court of SDM, at about 10:00 am on 07.01.2010 and he also negated that he and Shamshad (PW15) had met the accused persons. He further negated the suggestion that on meeting the accused AK Sharma, he had been told that his vehicle containing sand had been impounded, pursuant to which, he was instructed to meet his driver, that is, the accused Ravinder Kumar. He further denied that the accused Ravinder Kumar had demanded ₹3,000/- and on negotiation, reduced the

amount to ₹2,000/-.

11. PW10 (the complainant) was shown the undated complaint (Ex. PW10/A) addressed to Inspector PS Anti-Corruption Branch. On being shown the same, he admitted his signature on the complaint but denied making any such complaint. On the contrary, he stated that the complaint was in the handwriting of Shamshad and he denied the suggestion that the complaint was written by Shamshad on his dictation.

12. Shamashad (PW15) had allegedly accompanied the complainant Jabir Ahmed to the office of the SDM on 07.01.2010. He deposed that he was engaged in the business of loading and unloading and did not remember the exact date, month or year when his TSR, along with two other TSRs loaded with sand, were impounded. One impounded vehicle was owned by him and the other was owned by Jabir. He did not remember the name of the person who owned the third vehicle. The Trial Court noted that PW15 did not depose anything regarding his visit to SDM on 07.01.2010. On being cross examined by the Learned Additional PP for the State, PW15 admitted that on 07.01.2010, he along with Jabir (PW10) had visited the office of SDM Seelampur at 10:00 am. However, he categorically denied meeting the accused persons on 07.01.2010 and requesting them to release their vehicles. PW15 also refuted the suggestion that accused A.K.Sharma had directed them to meet his driver, accused Ravinder Kumar.

13. PW15 was shown his statement under Section 161 of the CrPC, 1973 (Ex PW 15/A) and even after being shown the same, he denied the suggestion that he and the complainant had met the accused person,

Ravinder Kumar who had demanded ₹3,000/- and had reduced it to ₹2,000/- on further negotiation. PW15 deposed that he was forced to write the complaint (Ex. PW10/A).

14. With regard to the time of writing the complaint, the Trial Court also perused the testimony of PW12 (*panch* witness – Mahesh Chand). In his cross examination, PW12 has deposed that the complaint (PW 10/A) was written after they had returned from the raid.

15. In view of the above, the Trial Court noted that it was apparent from the testimonies of PW10, PW15 and PW12, that none of them supported the case of the prosecution that the complaint (Ex. PW 10/A) was voluntarily submitted in pursuance of the alleged incident that took place on 07.01.2010.

16. After perusing the testimonies of the material witnesses, the Trial Court concluded that the prosecution had failed to establish any link between the two accused persons so as to infer that there was any conspiracy between them for demanding and accept any illegal gratification from the complainant (PW10).

17. The Trial Court further examined the testimonies of the material witnesses to ascertain the fact of demand and acceptance of bribe amount of ₹2,000/- by accused, Ravinder Kumar, at the spot on 08.01.2010, in pursuance of their conspiracy.

18. During his cross-examination, PW10 testified that on 07.01.2010, he

reached PS ACB at about 9:00 a.m and left for the raid at about 9:45 am. He testified that at PS ACB, proceedings were carried out in a room where two officials in civil dress were present and no discussions took place in his presence. He even testified that the complaint (Ex. PW 10/A) was written during the post raid proceedings. He categorically denied the suggestion that the complaint (Ex.PW 10/A) was made and signed by them before they had left the raid. He denied that he had handed over four GC notes of ₹500/- each to the RO. He denied that he was instructed by the RO that he had to remain close to the *panch* witness to watch and hear the proceedings of giving illegal gratification to the accused Ravinder Kumar. He denied that he was instructed to hand over phenolphthalein powder treated GC notes only on demand and not otherwise or that the *panch* witness was instructed to give a signal by waving his right hand over his head twice, on GC notes having been handed over after the demand. He further negated the suggestion that he, Shamshad (PW15) and *panch* witness Mahesh (PW12) were given any instructions about the raid at the spot or that he was instructed to introduce the *panch* witness as his relation to the accused Ravinder Kumar.

19. During his cross examination, PW10 also turned hostile and denied meeting the accused Ravinder Kumar at the office of the SDM on 08.01.2010. He denied that any episode took place where he had any conversation with the accused Ravinder Kumar regarding his demanding the bribe amount of ₹2,000/-. When the complainant (PW10) was confronted with Ex. PW10/A and the corresponding pre raid proceedings (Ex. PW 10/B), he refuted having made such statements.

20. On the basis of the abovementioned retractions on part of PW10, the Trial Court declared that the complainant (PW10) was an unreliable and an untrustworthy witness since he not only denied meeting the accused AK Sharma/ SDM Seelampur on 07.01.2010 but also denied that the accused Ravinder Kumar had demanded and accepted the bribe amount of ₹2,000/- at the spot on 08.01.2010, from him. The Court further noted that PW10 even denied that he had dealing in sand and *badarpur* and that his vehicle and that of Shamshad were seized by the officials of PS Shastri Park. He denied the suggestion that Soni s/o Safi Ahmed was driver of his vehicle, which was impounded.

21. The Trial Court also held that the *panch* witness Mahesh Chand, did not fully support the version of the prosecutrix, since he failed to depose regarding some crucial aspects of the case. The cross examination of *panch* witness (PW12) clearly shows that despite the Learned Additional PP pointing at accused Ravinder Kumar, PW12 failed to identify him. He justified the same on the basis that five years had passed since the alleged incident. In his cross examination, he testified that the complaint (Ex. PW 10/A) and the pre raid proceedings (Ex PW 10/B) were made post raid, which cannot rule out the possibility of manipulation. The Trial Court further held that his deposition revealed that he did not explicitly testify that a demand of money had been made by the accused Ravinder Kumar for illegal gratification.

22. The Trial Court noted that the material witnesses had also turned hostile regarding the recovery of the tainted GC notes amounting to ₹2,000/-

from the possession of the accused Ravinder Kumar on 08.01.2010. PW10 deposed that it was Shamshad (PW15) who had handed over some money, probably ₹2,000/- to some person. He stated that thereafter, there was some commotion and two persons were apprehended and accused Ravinder was brought to PS ACB in the same vehicle in which he had travelled. On reaching PS ACB, four notes were shown to him by the police officials and he counted the same. Thereafter, his hands were washed and they turned pink. He stated that he was not sure if the hand wash was taken before they left for the raid and he deposed that no proceedings were conducted in his presence.

23. Since the said witness had turned hostile even with reference to the recovery of the notes, the Additional PP cross examined him. On cross examination, he again categorically denied that on reaching the office of the SDM, he had met accused Ravinder Kumar and handed over the notes to him. Despite being confronted with his statements under Section 161 of the CrPC (Ex. PW 10/A) and post raid proceedings (Ex. PW/10E), he denied that any recovery of the tainted GC notes from the possession of accused Ravinder Kumar was done in his presence. According to him, it was Shamshad (PW15) who had met someone and handed over some money, probably ₹2,000/-.

24. The Trial Court noted that even Shamshad (PW15) had turned hostile with reference to the recovery of the tainted notes. In his examination-in-chief, he did not utter a single word regarding the raid and the raid proceedings. In his cross examination, he declined having witnessed the

accused Ravinder talking to the complainant and the *panch* witness. Despite being confronted with his statement under Section 161 of the CrPC (Mark PW15/A), he refused having participated in the raid/post-raid proceedings and any recovery having been affected in his presence.

25. The Trial Court noted that though PW12 (*panch* witness) supported the case of the prosecution regarding the recovery of the notes, PW12 had failed to identify the accused Ravinder Kumar despite sustained cross examination by the Learned Additional Public Prosecutor.

26. In light of the above, the Trial Court held that the prosecution had miserably failed to establish its case beyond reasonable doubt and acquitted the respondents.

27. In view of the fact that all the material witnesses have turned hostile and have not supported the case of the prosecution, the conclusion of the Trial Court to acquit the respondents cannot be faulted. The view that the prosecution has failed to establish its allegations beyond reasonable doubt warrants no interference.

28. The petition seeking leave to appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

OCTOBER 23, 2019

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