IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-567-MA-2014 (O&M)
Date of decision: 29.01.2020

Central Bureau of Investigation

....Applicant

Versus

Ajay Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sumeet Goel, Standing counsel for the applicant-CBI.

Mr. Kanwaljit Singh, Sr. Advocate with Mr. Satjot Chahal, Advocate for the respondent.

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ARVIND SINGH SANGWAN, J.

This application has been filed seeking leave to file appeal against the judgment of acquittal dated 09.10.2013 passed in CC Case No.28 of 07.09.2009, by the Special Judge, CBI Court, Chandigarh.

Brief facts of the case are that on 21.04.2009, respondent-accused Ajay Kumar, while posted as Lower Division Clerk in the office of Deputy Chief Labour Commissioner, Kendriya Sadan, Sector-9A, Chandigarh, allegedly demanded a bribe of Rs.4,000/- from complainant Major RPS Malhotra, for the purpose of processing his labour licence file for Gurdaspur and on 27.04.2009, he accepted the bribe of Rs.4,000/- as illegal gratification along with some other legal remuneration from the complainant and while acting so, he had misused his official position, as public servant. On 27.04.2009, a written complaint Ex.PW8/1 was submitted by Major RPS Malhotra to the SP, CBI, ACB, Chandigarh. In the complaint, it was alleged the complainant that he had applied for labour licences for BSNL, Pathankot SSA(for Batala and Qadian Circle) in District Gurdaspur and BSNL Ludhiana SSA (for Ludhiana City) on 13.03.2009. On 13.04.2009, he received two letters dated 08.04.2009 from Deputy Chief Labour Commissioner (Central) Kendriya Sadan, Sector 9, Chandigarh, pointing out discrepancies in applications and calling for his reply within 10 days. On 21.04.2009, he visited office of the Deputy Chief Labour Commissioner (Central) along with reply, where, at instance of Assistant Labour Commissioner Sh. R.K. Aggarwal, he gave two fresh applications same day. Accused Ajay Kumar, dealing Clerk, in connection with applications demanded a bribe of Rs.4,000/- for processing the licence file for Gurdaspur. He received licence for Ludhiana area on 23.04.2009 by post and contacted accused Ajay Kumar on 23.04.2009 and 25.04.2009 telephonically, who told him that licence for Gurdaspur is under process and again demanded bribe of Rs.4,000/-. The accused asked complainant to make a call to him, after making arrangement of the money and before coming to his office. On the basis of complaint, the FIR was registered at about 11.30 a.m.

During investigation, IMS Negi, Inspector constituted Trap Laying Team consisting of MS Brar, Anil Sharma, SL Sharma, Inspectors CBI, ACB, Chandigarh, complainant and independent witnesses, namely

Ranjit Singh, Manager (General) FCI, RO, Punjab, Sector 31, Chandigarh and Mohinder Pal Singh, J.E., Electricity (Operation), Sub-Division 7, Sector 35, Chandigarh.

Complainant was introduced to members of trap team. He was shown pre-trap memos, which were read over to all. Witnesses asked certain questions. On asking of IMS Negi, Inspector, complainant produced eight notes Nos.6BU 616830, 5CD 254098, 6BC 640990, 1BL 957962, 2BG 230143, 9BE 098510, 9BQ 695994 and 5BB 712006 of Rs.500/- each.

Thereafter, a raid was conducted in the office of the respondent, after making necessary preparation and he was caught red-handed by accepting Rs.4,000/- from the complainant. Thereafter, again the procedure was adopted for effecting the recovery etc. and completing the investigation.

The trial Court framed charge against the accused on 15.01.2010 and he pleaded not guilty and claimed trial. Thereafter, the trial Court recorded evidence of the prosecution.

PW1 Deputy Chief Labour Commissioner stated that he handed over certain documents mentioned in the seizure memo Ex.PW1/1 and Ex.PW1/4 to PW9 Inspector Bhoori Singh along with details of the service record of accused as Ex.PW1/2, Ex.PW1/3 and Ex.PW1/5. He also produced on record certain documents regarding R.K. Aggarwal, Assistant Labour Commissioner, the Licensing Officer, and the notification/instructions etc. Ex.PW1/6 to Ex.PW1/14. This witness also produced on record the licence Ex.PW1/16 issued by the Assistant Labour Commissioner under his signatures and the proceedings initiated for terminating the service of the respondent-accused Ex.PW1/17.

PW2, a Peon in the office of Deputy Chief Labour Commissioner, Chandigarh, proved the diary register, wherein an application Ex.PW2/1 received from Uniforce India Security and Allied Services was entered under his hand-writing. This witness stated that he dispatched the labour licence of complainant's company on 22.04.2009 and 23.04.2009 and made the entries in the dispatch register Ex.PW2/3 and also proved the corresponding entries in the diary register.

PW3, an Upper Division Clerk in the same office, stated that accused Ajay Kumar was working in the office and he was receiving the documents on behalf of the Assistant Labour Commissioner. The licence file was put up by the accused before the Assistant Labour Commissioner on 21.04.2009, which was signed and forwarded by him and the office copy of the licence issued to the complainant's company was exhibited as Ex.PW1/16. This witness also proved the forwarding letter regarding sending the licence as Ex.PW3/4 and Ex.PW3/5. Certain notes were also proved, which were put on the record regarding dispatch of the licence. Thereafter, the complainant's company gave an application for withdrawal of the application and to apply afresh, details of which were proved by this witness (which are not necessary for the purpose of deciding this case, as it is proved by PW2 that licence of the complainant was signed on 21.04.2009 and it was dispatched on 22.04.2009).

The statement of shadow witness Ranjeet Singh was recorded in examination-in-chief as PW4 and his cross-examination could not be conducted due to his death, therefore, his statement was not considered by the trial Court.

PW5, a Junior Engineer from the Electricity Department, stated that on verbal directions of SDO, he visited CBI office and reported the case to the Inspector. He also gave details of the proceedings conducted at the spot, when the respondent was trapped and caught red-handed while accepting bribe of Rs.4,000/-. This witness has also proved certain memos, which were prepared during the investigation.

PW6, the Investigating Officer/Inspector, also gave the complete version of the investigation, from the time, when the complaint was received from the complainant and other witnesses were joined; the pre-trap proceedings initiated by him and the proceedings initiated at the time of laying down the trap and arresting the accused and thereafter, conducting the investigation at the spot and taking in possession all the relevant documents and also sealing of the bottles, after washing hands of the accused.

PW7, Nodal Officer, Bharti Airtel proved call details of the phone numbers of Raman Kumar son of Ajay Kumar with another mobile number of the complainant.

PW8, the complainant, also supported the prosecution version, by stating that he got registered the company Uniforce India Security and Allied Services, Patiala and as he was providing security, he had to apply for the labour licence for employing more than 20 persons in a District and he had given an application on 13.03.2009. Thereafter, he received two letters pointing out certain discrepancies in the labour licences on 21.04.2009 and visited the office of Deputy Chief Labour Commissioner, Chandigarh and Assistant Labour Commissioner and gave two applications dated 21.04.2009 with respect to Pathankot and Ludhiana. Later on, he withdrew his previous applications and submitted fresh applications as Ex.PW3/19 and Ex.PW2/2. The complainant further stated that he met accused Ajay Kumar, who demanded Rs.4,000/- as bribe for processing the licence for Gurdaspur. This witness admitted that he has received the licence for Ludhiana area on 23.04.2009 and he telephonically contacted Ajay Kumar on 23.04.2009 and 25.04.2009 about the licence for Gurdaspur, for which he demanded Rs.4,000/- as processing fee. Since the complainant did not want to give the bribe, he went to the office of Superintendent of Police, CBI, ACB, Chandigarh and gave a complaint on 27.04.2009 and thereafter, a raiding party was constituted and he offered Rs.4,000/- to the accused, who was caught red-handed by the CBI team.

In cross-examination, this witness stated that when he along with one Ranjeet Singh went to meet the Deputy Chief Labour Commissioner, he made the entry in the reception register Ex.PW8/2 to meet the Assistant Labour Commissioner and Ajay Kumar and after some time, the staff told them to go and meet Ajay Kumar. It was normal conversion and Ajay Kumar offered tea and told him that licence for Gurdaspur has been dispatched two days ago and asked him to confirm the same from his residence. Upon this, the complainant called at his residence on telephone and he came to know that licence for Gurdaspur has been received on the same day. A photocopy of the same was supplied by Ajay Kumar and thereafter, he asked the complainant to come to another room, where he allegedly demanded the money and was trapped.

PW9, Inspector Bhoori Singh, also stated that investigation was entrusted to him on 11.05.2009 and during the investigation, he seized certain documents and received report from the FSL Ex.PW9/2 and also recorded statement of the complainant and witnesses and thereafter, he filed the charge-sheet, after obtaining the sanction. In the statement under Section 313 Cr.P.C., the accused stated that he is innocent and he has been falsely implicated, as the proposed trap was against the Assistant Labour Commissioner R.K. Aggarwal, who came to know about the same on account of leakage of secrecy of the trap and the accused was deceitfully called from the office and the complainant put some money in his box, to which he resisted and thereafter, he was taken away by the CBI officials.

The trial Court, after hearing the arguments, vide impugned judgment dated 09.10.2013, acquitted the respondent-accused, by passing the following order: -

> *"In view of above, following point for determination arises for adjudication:-*
>
> > *i) Whether the prosecution has proved guilt of accused punishable under Sections 7 & 13 (1) (d) read with 13 (2) of the Act?*
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> *From examination of record in light of aforesaid rival contentions, it is crystal clear that as per PW-1 A.K.Bhise, PW-2 Gurdev Singh and PW-3 Thakur Chand as well as entries*

Ex.PW-2/4 and Ex.PW-2/5 of dispatch register, the labour licences of company of PW-8 RPS Malhotra complainant were dispatched on 22.04.2009 and 23.04.2009. So, it is evident that no official work of complainant was pending with office of accused after 23.04.2009. As per complaint Ex.PW-8/1 and PW-8 RPS Malhotra complainant, accused Ajay Kumar had demanded bribe of Rs.4,000/- on 21.04.2009 when he had submitted fresh applications and during telephonic conversation dated 23.04.2009 and 25.04.2009. In cross-examination PW-8 RPS Malhotra stated that accused did not demand bribe on mobile telephone or landline telephone. The recording or transcription of telephonic conversation which took place during pre-trap proceedings was not submitted to the Court. The statements of PW-5 Mohinder Pal Singh and PW-8 Major RPS Malhotra regarding recording of telephonic conversation which took place between complainant and accused during pre-trap proceedings are in direct conflict with statement of PW-6 Shri IMS Negi, Inspector, who stated that recording was not made. Except PW-8 RPS Malhotra, no prosecution witness stated that accused had demanded bribe on 27.04.2009. The conduct of PW-8 RPS Malhotra and shadow witness during the trap of visiting the office and waiting for 30 minutes to meet Assistant Labour Commissioner before meeting accused is unreasonable and unnatural since it was not discussed during pre-trap *proceedings. The contradictions and discrepancies as highlighted by learned counsel for accused are material and apparent on record. The above said glaring contradictions and discrepancies strike at the root of the credibility of statements of PW-8 RPS Malhotra complainant, PW-5 Mohinder Pal Singh, recovery witness and other witnesses.*

As per Mukut Bihari and another Versus State of Rajasthan and C.M.Sharma Versus State of A.P's cases (supra), it is well settled that absence of shadow witness does not vitiate whole trap proceedings. As per ratio of Syed Ahmed Versus State of Karnataka; Bhola @ Paras Ram Versus State of H.P and State of West Bengal Versus Kailash Chandra Pandey's cases (supra), it is well settled that cosmetic contradictions in statements of witnesses cannot improbablise the prosecution story. As per "B.Noha Versus State of Kerala and Anr. ; M. Narsinga Rao Versus State of Andhra Pradesh and Madhukar Bhaskar Rao Joshi Versus State of Maharashtra's cases (supra), it is quite settled that if it is proved that there was voluntary acceptance of money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. As per ratio of Rakesh Kapoor Versus State of Himachal Pradesh's case (supra), it is well settled that in absence of demand and acceptance accused is entitled to benefit of doubt where the order itself was ready and available in the hands of *complainant, the demand by the accused as claimed by prosecution was highly improbable. According to A. Venkatachalam & another Versus State rep by The Deputy Superintendent of Police Chennai's case (supra), it is quite clear that burden of proof placed upon accused-person against whom the presumption is drawn under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond the reasonable doubt. Preponderance of probability is enough to discharge the accused.*

Realities or truth apart, the fundamental and basic presumption in administration of criminal law and justice delivery system is the innocence of the alleged accused till the charge is proved beyond shadow of reasonable doubt on basis of clear, cogent, credible or unimpeachable evidence. Mere suspicion however strong it may be, cannot take the place of proof. Grave the charge greater should the standard of proof required. In view of above material facts and well settled principles of law, it is evident that prosecution has not produced clear, cogent, credible and convincing evidence to prove the guilt of the accused. Therefore, it is held that prosecution has failed to prove the guilt of the accused. Accordingly, the point of determination is decided against the prosecution.

Hence, in view of above findings, it is held that the prosecution has failed to prove guilt of the accused upto hilt *beyond shadow of all reasonable doubt. Thus, by giving benefit of doubt accused Ajay Kumar is acquitted of charges framed against him. After expiry of period of limitation for preferring appeal, case property be disposed of as per rules. Documents be sent to the concerned quarters. After due compliance file be consigned to record room."*

Present application seeking leave to appeal is filed against the impugned judgment of acquittal and the same is pending since 2014.

Learned Standing counsel for the applicant-CBI has assailed the findings of the trial Court that the trial Court has wrongly given the benefit of doubt on the ground that after 23.04.2009, since no official work of the complainant was pending, as his licence was dispatched on 22/23.04.2009, therefore, there was no motive to demand the bribe, whereas the respondent was caught red-handed. It is further argued that the accused made the first demand on 21.04.2009 and thereafter, on 23.04.2009, when the complainant came to inquire about his licence for Gurdaspur and the accused, after informing him that licence has already been dispatched two days ago, asked him to verify the same from his family members and upon verification, demanded the money. It is also argued that case of the prosecution is duly proved and the trial Court has wrongly disbelieved the statement of PW5 Ranjeet Singh, a shadow witness, on the ground that since his cross-examination was not completed, his statement cannot be read in evidence. It is next argued that from the statement of official witness, it is proved that a trap was laid and the accused was found accepting the bribe from the complainant.

In reply, learned senior counsel for the respondent has argued that the prosecution has miserably failed to prove the demand or any motive to demand the bribe. Learned senior counsel has referred to cross-examination of PW8 complainant Major RPS Malhotra, who stated that when he met the accused on 23.04.2009, he informed that 2-3 days prior to the same, licence for Gurdaspur was dispatched and on his asking, the complainant verified this fact from his residence and came to know that licence has been received. It is thus argued that there was no occasion for the accused to demand any bribe for the same, as licence was signed two days ago and it has come in the statement of PW2, official of the office of Deputy Chief Labour Commissioner, where the accused was working that licence was signed by the Assistant Labour Commissioner on 21.04.2009 and against due dispatch, which was entered in register of the office, the same was sent to the complainant. The complainant, who was keeping a trap of his application for the licence, in all probabilities, knew that his licence was signed on 21.04.2009 and the same has been dispatched at his residential address and therefore, he made an afterthought story that the respondent-accused demanded the bribe of Rs.4,000/-.

Learned senior counsel for the respondent has further argued that from the statement of complainant, it could not be made out that the respondent had ever made any demand from him and even if the prosecution version is taken on the face of it, demand of illegal gratification is *sine qua non* for constituting an offence under the provision of Prevention of

Corruption Act, as mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable and there is no evidence to prove that the money was taken voluntarily as bribe. It is also submitted that the trial Court has recorded a finding on the basis of proper appreciation of evidence that from the statement of complainant PW8, it is not made out that the accused ever made any demand of bribe.

Learned senior counsel has relied upon a judgment in **State of Punjab Vs. Madan Mohan Lal Verma, 2013 (3) RCR (Criminal) 972**, wherein the Hon'ble Supreme Court, in an appeal filed by the State against a judgment of acquittal under the Prevention of Corruption Act, has held that the appellate Court can reverse the findings only in exceptional circumstances. The operative part of the judgment reads as under: -

> *"....It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse, i.e. if the conclusions arrived at by the court below are contrary to the evidence on record; or if the court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice; or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence. (Vide:* ***Abrar v. State of U.P., AIR 2011 SC 354; Rukia Begum v. State of Karnataka, AIR 2011 SC 1585; and State of Madhya Pradesh v. Dal Singh & Ors., AIR 2013***

SC 2059).

The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide: ***Ram Prakash Arora v. The State of Punjab AIR 1973 SC 498; T. Subramanian v. The State of T.N., AIR 2006 SC 836; State of Kerala & Anr. v. C.P. Rao, (2011) 6 SCC 450; and*** Mukut Bihari & Anr. v. State of Rajasthan**,**

(2012) 11 SCC 642).”

After hearing learned counsel for the parties and going through the lower Court record, with the assistant of learned counsel for the parties, on re-appreciation of the evidence of PW8-complainant, I find no ground to differ with the well-reasoned and cogent findings recorded by the trial Court, acquitting the respondent-accused.

PW8, in cross-examination, admitted that accused never demanded bribe from him during his conversation on mobile/landline and he demanded the bribe personally on 21.04.2009, when he had gone to meet Assistant Labour Commissioner, who was authorized to sign the licence. It is a matter of fact that the licence was already signed on 21.04.2009 and was dispatched prior to the date and received by him, when he came to visit the office of respondent-accused on 23.04.2009, when the alleged demand of bribe was made or on 27.04.2009, when the amount was allegedly paid as bribe.

Therefore, finding that the prosecution has failed to prove the guilt of the accused punishable under Sections 7 & 13 (1) (d) read with Section 13 (2) of the Act, I find no merit in the present application seeking leave to file appeal against the judgment of acquittal dated 09.10.2013. Accordingly, the same is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

29.01.2020
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No