

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

CRL.A. 168/2013

Reserved on : 06.02.2020

Date of Decision : 04.05.2020

IN THE MATTER OF:

SANDEEP DESHWAL alias SANJU Appellant

Through: Mr. Jaideep Malik,
Advocate

Versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Dr. M.P. Singh, APP for
State with ASI Mahinder
Singh, P.S. Anti Corruption
Branch

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present appeal is directed against the judgment dated 11.01.2013 passed by the Special Judge, Delhi in CC No.22/2009 arising out of FIR No.04/2007 registered under Section 8 of the Prevention of Corruption Act, 1988 at Police Station, Anti Corruption Branch (hereinafter referred to as ACB).

2. The Trial Court vide impugned judgment convicted the appellant under Section 8 of the Prevention of Corruption Act, 1988 and vide order on sentence dated 15.01.2013, sentenced him to undergo RI for one year and to pay fine of Rs.5,000/-, in default whereof to further undergo SI for four months. The appellant was granted benefit of Section 428 Cr.P.C.

3. The facts, as noted by the Trial Court are as under:-

“In brief, the case of the prosecution is that Rajesh Chauhan lodged a complaint that he went to the office of Food & Supply Department, Vikaspuri, Delhi in February, 2007 to obtain a ration card but he failed to get proper information about the procedure to procure aration card but met one Sandeep Deshwal @Sanju who offered to help him to get a ration card as he knew some officials working in the Food & Supply Office. Sandeep Desiiwal @Sanju demanded gratification of Rs. 1,000/- for the same. The case of the prosecution further is that on 22.02.07 Rajesh Chauhan again met Sandeep Deshwal @Sanju when he went to collect his ration card and obtained the same from him on payment of Rs. 1,000/- who was caught red handed while demanding and accepting Rs.1,000/- as illegal gratification from Rajesh Chauhan.”

4. During trial, the prosecution examined a total of 17 witnesses. The complainant, Rajesh Chauhan was examined as PW-7. The Panch witness, Jagdish Prasad was examined as PW-10. The Raid Officer, Insp. Jai Prakash was examined as PW-16. During the raid, some ration cards were seized from the spot. In trial, all those persons whose ration cards were seized during the raid, were cited as prosecution witnesses. The aforesaid witnesses are Ram Niwas (PW-1), Zile Singh (PW-4), Amit Kumar (PW-5), Jagdish Babu (PW-8), Kailash Kumar (PW-9), Ram Avtar (PW-11), Tara Chand (PW-11) and Israfil (PW-15).

MATERIAL WITNESSES

5. The complainant, during his testimony, failed to support the prosecution case to the extent that he gave any bribe money to the appellant for obtaining the ration card. He stated that on 22.02.2007, he went to the Office of Food & Civil Supply Department at about 10:30

a.m. where he saw one person carrying few ration cards and going towards the photocopying shop. He went to the photocopying shop and gave Rs.10/- to the person for making copy of his ration card. At this stage, the Investigating Officer caught hold of the person making photocopies while the person who had brought the ration cards, managed to escape. The complainant denied having any talks with the appellant and also any demand of bribe by him. He was declared hostile. In cross-examination by the learned prosecutor, he admitted giving the complaint (Ex.PW7/A) and also his signature on it. He also admitted being given two notes of Rs.500/- by the officials of the ACB to be used as the bribe amount. He admitted his signatures on the seizure memos relating to hand wash, blank application forms for the ration cards and the ration cards including his own. He also identified the two GC notes as Ex. P3 and P4. He denied his signatures on the personal search memo of the appellant. In his cross-examination conducted by the defence counsel, he stated that the complaint was given by him after the accused was apprehended.

6. Jagdish Prasad, the Panch witness proved the pre-raid, spot proceedings as well as the post-raid proceedings. He stated that on 22.02.2007, he accompanied the complainant to the Office of Food & Civil Supply. On asking of the complainant, the appellant took out the ration card from the drawer of his table and handed it over to the complainant. On the appellant demanding Rs.1,000/-, the complainant handed over the treated GC notes to the appellant, who accepted the same. He gave the predetermined signal to the Raid Officer and recovered the treated GC notes from the appellant's hand (Ex. PW-7/B). He further stated that the Raid Officer seized four blank application

forms (Ex. PW-7/E-H), other blank forms and 18 ration cards (Ex. PW 7/D) vide seizure memo (Ex. PW-10/A) from the appellant. In cross examination by the Id. Prosecutor, he denied that he seized the bribe amount from the hand of the appellant. During cross examination by the defence counsel, he was confronted with his statement recorded under S.161 Cr.P.C. where he had not stated about the appellant taking out the ration card from the drawer of his table. He denied the suggestion that the complainant already had the ration card in his possession and had gone to the PCO shop for getting a photocopy of the ration card.

7. ACP Jai Prakash, the Raid Officer supported the prosecution case. He stated that after receiving the predetermined signal, he reached the spot and the appellant became perplexed and opened his right fist and showed the bribe money to him. It was further stated that the bribe money was recovered from the appellant by the Panch witness.

8. The persons whose ration cards were seized, were examined but none of them supported the prosecution case. However, Zile Singh stated that on his visit to the office of Food & Civil Supply, he met the appellant who took his phone number and undertook to inform him as soon as his ration card was traced. Israfil deposed that he could not get the ration card despite efforts and the appellant asked for his deposit receipt and assured him that his ration card would be ready soon.

9. Insp. Sukdev Meena was the Investigating Officer who proved the various recoveries from the appellant and the Office of Food & Civil Supply. The other witnesses examined namely KL Meena, ACP Kanchan Lal Meena & HC Surinder Kumar were formal in nature and were cited to prove various steps taken in the investigation.

DISCUSSION AND ANALYSIS

10. Learned counsel for the appellant contended that the prosecution has failed to prove the basic ingredients of Section 8 of the P.C. Act, as no officer/public servant has been mentioned at whose behest, the appellant is alleged to have accepted the money. He submitted that the appellant himself not being a public servant, it was incumbent upon the prosecution to name some public servant to prove the case under Section 8 of the P.C. Act. It was further contended that there were material contradictions in the testimony of Panch witness and the Raid Officer on the manner of recovery of the bribe amount. While, Jagdish Prasad, the Panch witness stated that it was Insp. Jai Prakash who seized the bribe amount from the hands of the appellant, on the other hand, the Raid Officer deposed that the GC notes were seized by the Panch witness. It was also contended that whereas the Panch witness stated that they had gone to the Office of Food & Civil Supply, the Raid Officer stated that they went to a PCO booth. It was also contended that the Panch witness admitted to be part of as many as 40-45 raid proceedings. He was a stock witness of the ACB and hence his testimony was wrongly relied upon by the trial court.

11. Learned APP for the State, on the other hand, has supported the impugned judgment and stated that the testimony of the Panch witness and the Raid Officer is trustworthy and reliable.

12. I have heard learned counsels for the parties and gone through the case records.

13. Section 8 of P.C. Act, 1988 reads as follows:

“8. Taking gratification, in order, by corrupt or illegal means, to influence public servant:- Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

14. The contention raised by learned counsel for the appellant that a public servant needs to be named for maintaining a case under Section 8 of PC Act is fallacious and no longer *res integra*. The Supreme Court in State through CBI, New Delhi v. Jitender Kumar Singh reported as **(2014) 11 SCC 724** held as under:

“28..... Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two.

29. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:

(i) A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

(ii) A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

30. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties, the Special Judge can proceed against private persons who have committed offences punishable under the PC Act.”

(emphasis added)

15. The prosecution had cited complainant and other witnesses to prove the fact the appellant had approached them in relation to preparation of their ration cards. The complainant and those witnesses turned hostile. The complainant not only failed to identify the appellant

but also gave a different story about the incident. The trial court noted that the complainant identified his signatures on the seizure memos relating to seizure of GC notes, right hand wash of the appellant, his ration card, blank application forms, other ration cards etc.

16. The trial court relied upon the testimony of Panch witness to prove the demand and acceptance. For recovery, reliance was additionally placed on the testimony of the Raid Officer.

17. A perusal of the testimony of Jagdish Prasad, the Panch witness would reveal that he has unequivocally stated about the demand of Rs.1000/- made by the appellant and acceptance of the said amount by him. He gave a predetermined signal on which the raiding team came. The GC notes were recovered from the appellant. The appellant's hand wash was taken and the solution turned pink. The Panch witness also identified the GC notes and the bottles containing the hand wash solutions. He also identified various seizure memos prepared during the raid with respect to seizure of ration cards and application forms etc. from the appellant. The Raid Officer, ACP Jai Prakash proved the pre-raid and raid proceedings. He deposed that the complainant came with a complaint (Ex.PW7/A) against the appellant. During the raid, on getting a signal from the Panch witness, the raiding team entered the PCO booth and recovery of the two GC notes of Rs.500/- each was effected from the appellant. Subsequent proceedings were proved by Insp. Sukhdev Meena who deposed about recovery of 18 ration cards and blank application forms from the appellant. The testimony of the Panch witness on the demand and acceptance of the bribe amount of Rs 1000/- is cogent,

credible and reliable. The complainant's ration card was also seized from the complainant vide seizure memo Ex. PW7/J.

18. The contradiction about the place of recovery, whether it was a PCO booth or the Office of Food & Civil Supply, is baseless. The Panch witness deposed that on the day of the raid, they had gone to the aforesaid office and thereafter went inside a PCO booth where the appellant was present. Even in his cross examination, the Panch witness gave a description of the PCO booth. I do not see any contradiction on this point and the contention is rejected.

19. So far as inconsistency in the testimonies of the Panch witness and the Raid Officer as to who recovered the bribe amount is concerned, the same pales into insignificance as not only the Raid Officer clarified in his cross examination that he had seized the bribe amount, but also the fact that the appellant failed to give any satisfactory explanation as to how he came in possession of the treated GC notes. Even in his statement recorded under Section 313 Cr.P.C., he admitted being present in the PCO booth on the day of the raid but stated that he was falsely implicated. A perusal of the testimony of the complainant would show that he stated about being given two GC notes of Rs. 500/- by the officials of the AC Branch prior to raid. He stated that he gave a note of Rs.10/- to the appellant for photocopying. But what was recovered from the appellant at the spot were two treated GC notes of Rs.500/-. The complainant identified his signatures on the seizure memos of the GC notes as well as the hand wash solutions of the appellant. Although the complainant in his testimony stated that he never handed over the GC notes to the appellant and the same were taken back from him by the Raid

Officer subsequently in the office but neither any suggestion was given to the Raid Officer that the appellant's hand washes were not taken at the spot nor any such defence was taken by the appellant at the time of recording of his statement under Section 313 Cr.P.C. How the solution turned pink after the hand wash of the appellant, was not explained by him. The FSL report observed as under:

“On Chemical and U.V. Spectroscopic examination, exhibit RHW-1 was found to contain Phenolphthalein and Sodium Carbonate.”

20. It has come in the testimony of Zile Singh that in the Office of Food & Civil Supply where he had gone for the purpose of obtaining a ration card, he met the appellant who took his telephone number to inform him whenever the ration card was traced. Israfil also deposed of meeting the appellant in the aforesaid office and of the appellant taking his deposit receipt to inform him whenever his ration card was ready.

21. Lastly, learned counsel for the appellant, though not argued before the trial court, in support of his contention that the appellant was falsely implicated, submitted before this Court that the complainant's ration card stood already prepared on 15.01.2007 i.e., prior to the incident or giving of the complaint. In this regard, it is relevant to note that the raid proceedings were conducted on the same day when the complaint dated 22.02.2007 was handed over by the complainant. In the complainant, it was stated that the complainant had gone to the Office of Food & Civil Supply about 1½ months prior and tried to follow the progress on subsequent dates. The date on complainant's ration card shows that though it was prepared but it was not handed over to the complainant till

the date of the complaint/raid. Thus, I find no merit in the contention and the same is rejected.

22. From the testimonies of the Panch witness and the Raid Officer, this Court is of the opinion that the prosecution has successfully proved that the appellant demanded and accepted the bribe amount of Rs.1000/- from the complainant as a motive or reward for inducing the officials of the Food & Supply Department for preparing and obtaining the ration card.

23. In view of the above conclusion, the appellant's conviction and sentence under Section 8 of Prevention of Corruption Act, 1988 is upheld. Consequently, the appeal is dismissed. The appellant's bail bonds are cancelled and he is directed to surrender within two months from the passing of this judgment.

24. A copy of this judgment be communicated to the concerned trial court and the Jail Superintendent.

(MANOJ KUMAR OHRI)
JUDGE

MAY 04, 2020

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