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

+ **CRL.L.P. 198/2017**

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through: Ms Kusum Dhalla, APP for State.  
SI Bijendra, PS Anti Corruption  
Branch.

versus

SURENDER SINGH ARYA & ANR

..... Respondents

Through: Mr Harsh K. Sharma, Ms Vaibhavi  
Sharma, Mr Rohit Gaur and Mr  
Lakshya Parasher, Advocates for R-1.  
Mr N.K. Sharma and Ms Vipasha  
Sharma, Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**29.01.2020**

1. The State has filed the present petition seeking leave to appeal against the judgment dated 26.10.2016 whereby the Special Judge-07, Central, PC Act, Delhi, had acquitted the respondents of the offence under Section 7/13 of the Prevention of Corruption Act, 1988 (hereafter 'PC Act').

2. It is the prosecution's case that on 14.12.2005, the complainant had lodged a complaint in the presence of *panch* witness in the Anti-Corruption Branch, Delhi. The complainant stated that Municipal Corporation of Delhi (MCD) had awarded work of improvement of road in Kabutar Market, Welcome, Shahdara, Delhi to the complainant. He claimed that he had incurred expenses of ₹3.75 lakhs for execution of the works and had met

Om Prakash Tomar, Executive Engineer (respondent no. 3) for the payment of the bill of ₹3.75 lakhs. He alleged that respondent no.3 had demanded payment of commission for disbursement of the bill and further directed the complainant to meet Surender Singh Arya, Assistant Engineer (respondent no.1) and Gaurav Jaiswal, Junior Engineer (respondent no.2). Om Prakash told the complainant that he would have to pay 2% commission to him, 3% commission to Surender Singh and 4% commission to Gaurav Jaiswal. The complainant thereafter met Surender Singh who told him to do as directed by Om Prakash.

3. The prosecution alleges that in the afternoon of 13.12.2005, the complainant went again to the office of the Om Prakash, where he met Surender Singh. Surender Singh called him at the store of Ward No. C-90, at Gorakh Park, Babar Road, New Delhi, along with ₹15,000/-, which was the commission amount and was to be distributed between the three respondents. The complainant agreed to pay the same, however, he went to ACB Delhi and lodged a complaint against the three respondents on 13.12.2005 and met DCP Paldan. DCP Paldan introduced the complainant to the Raid Officer (RO), Inspector Sunder Dev (PW12) and Inspector Chandrahas (PW13). The complainant submitted a written complaint (Ex. PW 8/A) to RO (PW12) in the presence of the *panch* witness (PW10).

4. The prosecution also stated that the complainant handed over thirty currency notes of the denomination of ₹500/- each, to the Recovery Officer (RO). The RO got the currency notes treated with phenolphthalein powder and explained to the complaint and to the *panch* witness, the significance of the Sodium Carbonate Solution Test. The details of the trap were planned

and explained to all persons. The raiding team headed by RO/PW12 entered the MCD Store Room and apprehended the accused Surender Singh Arya and Gaurav Jaiswal. The GC notes were recovered from the outer coat pocket of the accused Gaurav Jaiswal by the RO. Thereafter, sodium carbonate test was conducted on the left hand of the accused Gaurav Jaiswal as well as his left coat pocket. Both tests were proved to be positive.

5. After completion of investigation, the chargesheet was filed against the respondents. Upon grant of sanction for prosecution, cognizance of the offences was taken, charges were framed against the respondents, to which they pleaded not guilty and case was set down for trial.

6. On 24.05.2014, the trial *qua* Om Prakash Tomar was stayed in view of the report of the Medical Board of AIIMS that he was diagnosed as suffering from Parkinson disease. However, the prosecution was granted liberty to get the trial revived as and when his condition improved. The impugned judgment in respect of the trial against respondent no.1 and 2.

7. The Trial Court noted that the two material witnesses who held the key as to whether the accused persons were guilty or not, were the complainant (PW8) and the *panch* witness (PW10). The Trial Court perused the testimonies of these witnesses.

8. The complainant had resiled from his earlier statement and was cross examined by the Learned Additional PP. In his cross-examination by Ld. Addl PP, the complainant denied that on 13.12.2005, when he met the accused Surender Singh Arya and Gaurav Jaiswal at the Gorakh Park Store, accused Surender Singh Arya had told him to come to the same store the

next day on 14.12.2005 with atleast ₹15,000/-, so that ₹5,000/- could be shared by them. The complainant was confronted with his complaint (Ex PW 8/A). However, he also denied that the accused Surender Singh Arya had demanded a bribe from him directly. Complainant further denied that pursuant to the demand made by the accused Surender Singh, he had paid the bribe to him. The complainant stated that he had falsely stated in the complaint Ex. PW 8/A regarding the demand of the bribe by Surender Singh Arya. In his cross examination, the complainant stated that he had not met the accused Surender Singh Arya in the room of Om Prakash Tomar and stated that the accused Surender Singh Arya never demanded money from him.

9. On the basis of the same, the Trial Court held that no reliance could be placed on the testimony of the complainant as he denied every role assigned to the accused Surender Singh Arya. The Trial Court also held that the complaint (Ex. PW 8/A) could not be relied upon since the complainant had altered his statement. The Trial Court was of the view that if the complainant could alter his statement against the accused Surender Singh Arya, his statement against Gaurav Jaiswal was not credible either.

10. The learned counsel for the accused Gaurav Jaiswal contended that as per the allegations, the first demand of bribe was made by the accused Om Prakash Tomar when he was alone on 01.12.2005. Thereafter, the demand was allegedly repeated by the accused Gaurav Jaiswal. However, the complainant had not lodged any complaint against them till 14.12.2005. The Trial Court noted that the delay in filing of the complaint raised doubts with reference to the truthfulness of the complaint.

11. Thereafter, the Trial Court evaluated evidence with reference to the role of Gaurav Jaiswal in the alleged incident. The Trial Court noted that the complainant had admitted the fact, in his cross examination, that in his complaint (Ex. PW 8/A), pre-raided report (Ex. PW 8/B), post raid report (Ex. PW 8/D1), he had not alleged that the accused Gaurav Jaiswal had directly demanded money from him. The complainant also admitted that in his statement under Section 161 of the CrPC, and his statement in the previous trial, he had not stated that the accused Gaurav Jaiswal had demanded money from him. After ten years of the alleged incident, the complainant for the first time had stated in his testimony that the accused Gaurav Jaiswal had demanded money from him. The Trial Court held that in view of the improvement in his testimony, no reliance could be placed on his deposition. The complainant also did not give any cogent explanation for his silence in this regard for a long time. In light of the same, the Trial Court held that no reliance could be placed on his testimony.

12. The Trial Court also observed that the credibility of the complainant was compromised since he did not state anything in his statement before the police and withheld the truth till his examination in court. The Trial Court held that his testimony could not be relied upon without corroboration from other sources, which were not forthcoming.

13. The other material aspect which was considered by the Court was that the recovery of the tainted money from the possession of the accused Gaurav Jaiswal. To examine the said aspect, the Trial Court examined the testimonies of the *panch* witness and the complainant.

14. The version of the complainant as regards the demand and the acceptance of the bribe money, was that he and the *panch* witness had entered the room/spot where the accused Surender Singh Arya and Gaurav Jaiswal were found to be present. The complainant stated that he greeted both persons and then took out the treated GC notes from the pocket of his coat with his right hand and handed over the same to Gaurav Jaiswal who accepted the same with his left hand and kept the same in the left outer pocket of his coat. The version of the *panch* witness in this regard is that the complainant had wished accused Surender Singh Arya and thereafter Surender Singh Arya enquired from the complainant “*Kal Jo Baat Hui thi wo le aaye*” and “*Jo laye ho Gaurav Jaiswal ko De Do*”. The *panch* witness further stated that the accused Gaurav Jaiswal enquired as to what amount was meant for, upon which the accused Surender Singh Arya told him (Gaurav Jaiswal) that he would take the same afterwards. *Panch* witness stated that thereafter, he gave the predetermined signal to the raiding team and they reached the spot. The *panch* witness also stated that after seeing the raiding team, both accused persons left the money on the table and ran away.

15. The Trial Court noted that the complainant did not testify that the accused Surender Singh Arya had inquired from him as to whether “*Kal Jo Baat Hui thi wo le aaye*” and “*Jo laye ho Gaurav Jaiswal ko De Do*”. On the basis of the same, the Trial Court held that on this crucial aspect, the version of the *panch* witness was not corroborated by the complainant. In his cross examination, the *panch* witness denied the fact that he had heard Surender Singh Arya enquire from the complainant as to whether “*Kal Jo Baat Hui thi wo le aaye*” and “*Jo laye ho Gaurav Jaiswal ko De Do*”. Thus,

the *panch* witness had contradicted his own version.

16. The Trial Court also noted that the *panch* witness (PW10) in his cross examination stated that he could not recollect whether he stated in his statement to the police under Section 161 of the CrPC that the complainant had handed over bribe money to the accused Gaurav Jaiswal. He was confronted with his statement in the previous trial (Ex. PW 10/A), wherein it was so recorded. PW10 further stated that he had not made any statement to the effect that PW12 had taken the search of the accused Gaurav Jaiswal and had recovered ₹15,000/- from the pocket of the coat worn by him. He was again confronted with his statement (Ex PW 10/A) wherein it was so recorded.

17. The Trial Court held that it was significant to note that the *panch* witness stated that after the arrival of the raiding team in the store room, there was ruckus in the room and for about five to ten minutes as everybody started running out and he could not remember whether at that time, he was standing outside the store room. The *panch* witness also stated that when he entered the room, Surender Singh Arya and Gaurav Jaiswal were found sitting and he could not remember whether any talks took place between the complainant and the accused person in his presence. In light of the aforementioned observations, the Trial Court held that the demand and acceptance of gratification, by the accused from the complainant, was not duly proved as there was no corroboration of evidence from the complainant.

18. The Trial Court noted that with regard to the recovery of bribe money,

the versions of the complainant, *panch* witness and the RO were contradictory. The complainant had stated in his examination in chief, that the raiding team, probably the RO, had taken the search of the accused Gaurav Jaiswal and the recovered treated GC notes from the left side of his coat. Whereas, the *panch* witness had resiled from his previous statement. He stated in his cross examination that he had not stated that on the instructions of the RO, he took the search of the accused and ₹15,000 was recovered from the pocket of his coat. The Trial Court held that the version given by the witnesses in court is different in material particulars from his earlier statement and hence, the case of the prosecution became doubtful.

19. With reference to the recovery of the bribe money, RO (PW12), had stated that on his instructions, the *panch* witness had recovered the bribe money from the pocket of the accused Gaurav Jaiswal. But the *panch* witness stated in his cross examination that the accused Gaurav Jaiswal threw the notes on the table on seeing the raiding team and started running with Surender Singh. Since the testimonies of the complainant, *panch* witness and RO with reference to the crucial aspect of recovery were contradictory, the Trial Court held that they could not be relied upon.

20. The Trial Court held that mere recovery of currency notes could not constitute an offence under Section 7 of the PC Act unless it is proved beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. In view of the inconsistent statements of the complainant, *panch* witness and the RO, the Trial Court held that the prosecution had failed to prove its case beyond reasonable doubt.

21. This Court does not find any manifest error with the conclusion of the Trial Court. Therefore, no interference is warranted with the impugned judgment.

22. The present petition seeking leave to appeal against the impugned judgement is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**JANUARY 29, 2020**  
**RK**