



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

% **Reserved on: April 01, 2022**

Pronounced on: April 26, 2022

(i) + **CRL.A.1195/2012**

KULDEEP SINGH DHANKAR Appellant

Through: Mr.Dhruv Gautam &
Ms. Shachi Mittal, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI

(ii)+ **CRL.A.1229/2012**

SANJAY GUPTA Appellant

Through: Mr.Dhruv Gautam &
Ms. Shachi Mittal, Advocates

Versus

CBI Respondent

Through: Mr. Mridul Jain, Special Public
Prosecutor for CBI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. In the above captioned two appeals, challenge is to the impugned judgment dated 13.09.2012 and order on sentence dated 29.09.2012, vide which appellant- Kuldeep Singh Dhankar has been held guilty for the CRL.A.1195/2012 & CRL.A. 1229/2012

Page 1 of 19



offence under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 (henceforth referred to as the “PC Act”) read with Section 120-B IPC and directed to undergo sentence of rigorous imprisonment for a period of three years and to pay fine of Rs.1,00,000/-; and in default of payment of fine, he has been directed to undergo simple imprisonment of six months.

2. In addition, the impugned judgment and order on sentence also holds guilty appellant-Sanjay Gupta for the offence under Section 13(2) read with Section 13(1) (d) of the PC Act read with Section 120B IPC and he has been directed to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.10,000/-; and in default of payment of fine, he has been directed to undergo simple imprisonment of one month.

3. With the consent of learned counsel representing both the sides, these appeals have been heard together and are being disposed of by this common judgment.

4. Appellant- Kuldeep Singh Dhankar was working as Food and Supplies Officer, Civil Supplies, Enforcement Branch, who has purportedly called up the complainant- Subhash Chand Sharma alleging



him that he was adulterating light diesel oil with kerosene oil and demanded Rs.10.00 Lacs threatening that he would shut down his shop and according to complainant, the matter was settled at a bribe of Rs.3.50 Lacs. On the complaint of complainant dated 17.01.2005, RC bearing No. 05(A)/2005/CBI/ACB/New Delhi was registered on 18.05.2005 and a trap was laid. Appellant-Sanjay Gupta was apprehended accepting bribe of Rs.2.00 Lac and thereafter, appellant - Kuldeep Singh Dhankar was also arrested. After completion of the investigation, charge sheet was filed before the learned trial court on 07.11.2005 and charge was framed for the offence under Sections 7, 13(2) r/w Section 13(1) (d) of the PC Act read with Section 120 IPC against both the appellants/accused persons.

5. Prosecution had got examined fourteen witnesses comprising of Prem Raj Kaushik (PW-1), Officer in Food and Supplies Department, in support of documents seized from the department; C.L. Bansal (PW-2) & Dr. Rajinder Singh (PW-4), Senior Scientific Officer and Principal Scientific Officers, CFSL; Mr. S. Raghunathan (PW-3), Chief Secretary, Delhi Government to prove sanction order; Gulshan Arora (PW-5), Nodal Officer, HUTCH and Umesh Kalara (PW-7) Nodal Officer Idea



Cellular Limited, to prove call detail records; Laxmi Narain (PW-6) waterman in the department where appellant was working; Complainant- Subhash Chand Sharma (PW-9) and Pancham Singh (PW-8), who was working for complainant and B.B. Bhatia (PW-10) an independent witness. Besides, official witness, Mridula Shukla (PW-12) Deputy SP, who had investigated, laid the trap and collected the documents and filed the charge sheet; Inspector Alok Kumar (PW-13), who had arrested the appellant from his office and Inspector C.K. Sharma (PW-14), Trap Laying Officer were also got examined by the prosecution. Appellants/accused in their statements recorded under Section 313 Cr.P.C before the learned trial court had claimed that they were innocent and have been falsely implicated in this case. Appellant- Kuldeep Singh Dhankar had sought to examine witnesses in his defence, whereas appellant- Sanjay Gupta did not lead any evidence. Trial court had relied upon evidence of afore-referred prosecution witnesses to convict and sentence the appellants as noted herein above.

6. Challenging the guilt and conviction of the appellants by the learned trial court, learned counsel appearing on behalf of appellants submitted that the trial court has grossly erred in not considering the



inherent inconsistencies and contradictions in the story of prosecution and testimonies of witnesses and benefit of doubt ought to be given to the appellants.

7. Learned counsel for appellants emphatically submitted that the complainant on earlier occasions also contravened the provisions of Essential Commodities Act and had no license to sell petroleum products in Delhi and multiples case are pending against him. It was brought to the notice of this Court that in one of the case being FIR No. 348/2003, registered at police station Sarita Vihar, Delhi, appellant-Kuldeep Singh Dhankar is a witness against the complainant and therefore, complainant is trying to settle the scores with the appellants by implicating him in a false case.

8. It was submitted by learned counsel for appellants that the testimony of Complainant (PW-9) read with the testimony of B.B. Bhatia (PW-10), an independent witness, creates a substantial doubt to the sequence of events as laid down by the prosecution. Learned counsel next submitted that the claim of prosecution that the transcript of Spot Conversation between appellant and complainant (Ex. PW 9/D) made on 17.01.2005, deserves to be rejected as the complainant in his testimony



has specifically stated that he was not carrying digital recorder on 17.01.2005 and also, Deputy SP Mridula Sharma (PW-12), to whom the investigation was entrusted, in her testimony has admitted that there is no mention of transcript in the Complaint Verification cum Seizure Memo (Ex/PW-9/C). Dr. Rajinder Singh Principal Scientific Officer, CFSL (PW-4), also in his testimony stated that the voice specimen marked as S-2, Ex. PW10/C was of co-accused and not that of the appellant- Kuldeep Singh Dhankar and such fundamental defects are contradictory to the story of prosecution. Also, trial court has dismissed the testimony of --- (PW-6), an independent witness which gapes holes in the prosecution story as well as testimony of B.B. Bhatia (PW-10), another independent witness, who has denied the events of 17.01.2005 i.e. pre-trap proceedings laid down by the prosecution, which is bad in law and amounts to abuse of process of law.

9. Leaned counsel for appellants submitted that the phone number alleged to have been used by the appellant- Kuldeep Singh Dhankar was registered in the name of Sandeep Gupta, who was not examined before the learned trial court. Further submitted that the learned trial court has failed to consider that the original digital recorder and the unsealed



cassette were never produced in evidence before the Court and the data was transferred to two cassettes, one of which when played in Court had noises, disturbances and inaudible voices, however, the CFSL Report (Ex.PW4/A) does not indicate so. Learned counsel submitted that in the pre-trap conversation of 17.01.05, name of one Pradeep Chaudhary, partner of complainant and co-accused in FIR No. 348/2003, registered at Sarita Vihar, also cropped up, however, no investigation was carried out against him nor he was cited as a witness by the prosecution and this fact, has been completely ignored by the learned trial court in the impugned judgment.

10. Learned counsel for appellants also submitted that the charge of Section 120 IPC levelled against the appellants is unfounded, as prosecution has failed to lead any cogent evidence to suggest existence of criminal conspiracy between the appellant and the co-accused, Mr. Sanjay Gupta. To submit that the existence of a criminal conspiracy, there must be direct or circumstantial evidence which clearly depicts an agreement between two or more persons to commit an offence, reliance was placed upon decision in *Kehar Singh & Anr. Vs. State (Delhi Administration)* 1988 (3) SCC 609 and *V.C. Shiikla Vs. State* 1980 (2)



SCC 665.

11. Learned counsel for appellants placed reliance upon decision in ***Esher Singh Vs. State of A.P.*** 2004 (11) SCC 585J to submit that under Section 120 of the IPC, to prove criminal conspiracy on the basis of evidence which is purely circumstantial in nature, the circumstances, when taken together on their face value, should indicate the meeting of the minds between conspirators for the intended object of committing an illegal act, which is absent in the present case to suggest existence of a criminal conspiracy between the appellant.

12. Reliance was also placed upon decision in ***Suraj Mal Vs. State (Delhi Administration)***, AIR 1979 1408 to suggest that if a witness makes two inconsistent statements in the evidence, the testimony of such witness becomes unreliable and unworthy. In the present case, only the limited portion of statement of (PW-9), which strengthens the case of prosecution, has been taken into consideration by the learned trial court and by selecting certain pieces of evidence disregarding others completely, the learned trial court has abused process of law. Lastly, learned counsel for appellants submitted that presumption of guilt can only be raised when certain foundational facts have been brought on



record or proved by the prosecution and unless proven guilty, an accused is innocent. However, in the present case, prosecution has not been able to prove guilt of the appellants beyond reasonable doubt and there were several contradictions and discrepancies existing in the statement of prosecution witness, however, trial court did not extend the benefit of doubt to the appellants. Reliance was placed upon decisions in ***Babu Vs. State of Kerela***, 2010 (5) Law Reports on Crimes 320 (SC) and ***Kashi Ram & Ors. Vs. State of M.P.***, 2002 (1) SCC 71 to submit so.

13. On the other hand, learned counsel Special Public Prosecutor appearing on behalf of respondent /CBI submitted that based upon the testimony of witnesses, prosecution has been able to successfully prove its case. Learned Special Public Prosecutor submitted that Complainant-Subhash Cander (PW-9) in his complainant has stated that demand was made by appellant-Kuldeep Singh Dhankar and in case of non-payment, he was threatened and the said fact has been proved on the basis of complaint as well as conversation transcript (Ex.PW 9/D), which took place in the office of appellant/accused Kuldeep Singh Dhankar. Further, prosecution has also been able to prove that appellant/co-accused- Sanjay Gupta had contacted Complainant (PW-9) to collect bribe amount on



behalf of appellant- Kuldeep Singh Dhankar.

14. Learned Special Public Prosecutor next submitted that Joginder Singh (PW-11), an independent witness, has supported the case of prosecution by submitting that he had recovered the bribe money from the hands of appellant/accused- Sanjay Gupta. It was further submitted that prosecution has been able to prove the demand, conspiracy between the accused, acceptance of illegal gratification and recovery from the accused persons in the present case.

15. To submit that *“When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case”*, reliance was placed upon decision in ***B. Noha Vs. State of Kerla*** SC MANU/SC/8635/2006. It was thus submitted that contention of appellants for the prosecution to establish a demand for illegal gratification for sustaining the allegation of an offence under Section 13(1)(d) of the PC Act, as in force prior to 26.07.2018, is without merit.

16. Further, reliance was also placed upon decision in ***M.O. Shamsudhin Vs. State of Kerala*** MANU/SC/0677/1995 to submit that



corroboration of trap witness with that of the complainant is not a rule, as has been claimed by the appellants.

17. Learned Special Public Prosecutor submitted that corroborating evidence can also be circumstantial evidence and no general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness, which would depend upon its own facts and circumstances. In the present case, complainant has fully supported the case of the prosecution and by corroborating the evidence of witnesses and other evidence with the circumstantial evidence, it is proved beyond doubt that there was demand of bribe by appellant- Kuldeep Singh Dhankar and appellant- Sanjay Gupta had accepted the same on his behalf. Lastly, it was submitted that the impugned judgment and order on sentence suffers from no illegality and are well merited and do not call for any interference by this Court.

18. Learned counsel representing both the sides were heard at length and decisions cited as well as other material placed on record has been carefully perused. Upon perusal of impugned judgment, I find that the learned trial court has elaboratively taken into consideration the testimonies of prosecution witnesses.



19. As per impugned judgment, Mr. Prem Raj Kaushik (PW-1), who was working as Food and Supplies Officer had handed over documents giving details of Food and Supplies Officer; charge of enforcement given by Mr. Ramesh Tiwari, Additional Commissioner Cum Secretary (Administration) and transfer/ posting order of appellant- Kuldeep Singh Dankar and; notifications under Essential Commodities Act. This witness has also stated that he has no personal knowledge as to whether complainant or Asian Petro Chemical are suppliers of light diesel or they were holding valid license as contemplated in the notification. However, this witness has not been able to bring-forth anything incriminating against appellant and has only produced documents available in the office in usual course of duty. Also this witness has pleaded ignorance of his business or license in respect thereof and thereby, cannot be said to have supported the case of prosecution in any manner.

20. With regard to testimony of Dr. Rajinder Singh (PW4), Principal Scientific Officer, CFSL, the impugned judgment has returned the finding that this witness had examined Q2 and Q3 containing voice recordings and had compared them with the voice samples of the accused/appellants, which had tallied. But at the same time this witness



in his cross examination has also admitted that he was a Physicist and not a medical officer or sound engineer and he had only compared selected sentences between questioned recording with specimen recording to make comparison in the voice of Kuldeep Singh Dhankar. He has also admitted that the sample was sent to him by the CBI and he had not recorded the voice himself.

21. Impugned judgment notes that the complainant – Subhash Chand Sharma (PW-9) in his statement has stated that he had filed a complaint EX. PW9/A to CBI and Mr. Tiwari, SP, CBI and Inspector C.K.Sharma had laid a trap and handed over a digital recorder and he was instructed to switch on the digital recorder. He along with one independent witness B.B. Bhatia, went to the room of appellant- Kuldeep Singh Dankar. The complainant had told him that he is able to pay Rs.2.00 Lacs within a day or two and the balance of Rs.1.50 shall be paid later. Thereafter, they went back to the CBI office and the recording was transferred to two audio cassettes and the conversation recorded into these two cassettes was reduced into document i.e. transcript (Ex. PW 9/D), which was signed by him as well as B.B. Bhatia. This Court finds that the complainant has specifically stated that after the trap, the CBI officials



had gone to his office for convenience of completion of further proceedings where the audio was played and the voice was transferred to another cassette and that he cannot tell as to in how many cassettes the said voice was transferred. He was called to the CBI office after a month to identify the voice. When the audio cassette was played on a tape recorder before the Court, the witnesses identified three voices i.e. Pradeep Chaudhary and Dhankar. Thereafter, a CD was played before the trial court and the complainant identified the voice as that of Sanjay. This witness has stated that the cassettes were not converted into CDs in his presence. It is pertinent to mention here that witness has specifically stated that only a portion of audio cassette was played. The witness has also admitted that when cassette was played voice of ‘telephone bell ring’ and ‘someone lifting the receiver and saying hello’ was also heard and in transcript Ex. PW9/D. The complainant has also admitted that when he had entered the room of appellant, one or two persons were there in the room and they were under conversation, which fact also has not been recorded in the transcript Ex. PW9/D. Though as per the complainant, he was taken to a separate room where allegedly appellant-Kuldeep Singh Dankar had demanded money, however, this witness has



also stated that on 17.01.2005, he was not carrying any tape recorder to his office.

22. Also, in his cross-examination this witness (PW-9) has accepted that FIR No. 348/2003, at police station Sarita Vihar, Delhi, has been registered against him in which the aforesaid Pradeep Chaudhary was his partner and co-accused. Another, FIR No. (not mentioned) at police station Vasant Kunj, New Delhi and FIR No. 21/2003, at police station I.P.Estate, has also been registered against him. Filing of different FIRs against the complainant and his partner and co-accused Pradeep Chaudhary brings the conduct of complainant under clouds and it cannot be ignored that appellant- Kuldeep Singh Dankar is a witnesses in one of the case registered against him.

23. With regard to appellant No.2, this witness (PW-9) has stated he did not know Sanjay Gupta; nor he ever demanded bribe from him and also his name does not figure in the transcript EX.PW 9/D. The complainant has also admitted that a few cases were pending against him and in one case, appellant- Kuldeep Singh Dankar is a witness. However, he has also stated that he did not recollect the exact day and date when appellant- Kuldeep Singh Dankar had demanded bribe from him. Also



stated that the tape recorder handed over to him by the prosecution was not produced before the Court and the data in the said recorder was transferred to one cassette or two cassettes. He has further stated that when he had gone to meet appellant- Kuldeep Singh Dhankar, he had not taken any money with him and no third person was involved in it by that time.

24. Pancham Singh (PW-8), who was working for complainant at the relevant time, in his testimony has stated that he had never heard name of appellant- Kuldeep Singh Dankar nor had ever seen him at Nangloi or at the shop of his employer. He has also stated that complainant- Subhash Sharma was having mobile connection of No. 9891222540 and has denied the suggestion that he was consciously concealing the fact that the said number was being held by appellant/accused Sanjay Gupta.

25. Further, one of the independent witness B.B. Bhatia (Pw-10) has been declared hostile by the learned trial court. This witness has admitted that his statement under Section 161 Cr.P.C. was typed in two different fonts and the portion of small fonts was lying sandwiched between two portions of large font. The learned Trial court has observed that this witness had admitted his signatures on Ex. PW9/C, however, at



one place he has stated that he had signed on 17.01.2005 and on other place, he maintains a contradictory stand that he had signed documents after few days at the asking of CBI officials. In this manner, this witness has demolished the prosecution story.

26. So far as recovery of alleged amount of bribery from the person of appellant-Sanjay Gupta at the instance of appellant- Kuldeep Singh Dankar is concerned, the stand of prosecution is that the raiding party had recovered Rs.02 Lacs from the car in a scattered manner and thereby, recovery is proved. On this aspect, the Hon'ble Supreme Court in **B. Jayaraj Vs. State of A.P. 2014** (13) SCC 55 has observed and held as under:-

“8. The only other material available is recovery of tainted currency notes from the possession of the accused. Infact such possession is admitted by the accused himself. Mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive, in so far as, the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a “public servant” to



*obtain any valuable thing or pecuniary advantage,
cannot be held to be established”.*

27. This Court finds that the alleged recovery of amount from appellant-Sanjay Gupta itself would not prove charge against appellant-Kuldeep Singh Dankar or that appellant- Sanjay Gupta had voluntarily accepted the money knowing it to be bribe. In fact, the complainant in his statement has stated that he has never known Sanjay Gupta or that he has ever demanded bribe from him and thereby, the necessary ingredient of ‘demand’ and ‘acceptance’ to prove guilt under Section 7 of the Act, is not proved. Moreover, B.B. Bhatia (PW-10) independent witness has also not supported the case of prosecution.

28. It is settled proposition of law that unless proven guilty, accused should be taken as innocent, whereas the learned trial court seems to have presumed the appellants guilty while adducing and analysing the evidence led by the prosecution. The learned trial court has only relied upon the prosecution evidence otherwise disbelieving the version put forth in defence by the appellants.

29. In view of the aforesaid, judgment dated 13.09.2012 and order on sentence dated 29.09.2012 passed by the learned trial court are hereby set



aside and the appellants are acquitted of the charges framed against them, while extending them benefit of doubt.

30. These appeals are accordingly allowed and disposed of. Bail bonds stand discharged accordingly.

(SURESH KUMAR KAIT)
JUDGE

APRIL 26, 2022

r