IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 55 of 2020

PARTHA PRATIM GHOSH
VS.
THE STATE OF WEST BENGAL & ANR.

For the Appellant	: Mr. Milon Mukherjee, Sr. Adv. Mr. Abhra Mukherjee, Adv. Mr. Sauradeep Dutta, Adv. Mr. Arpayan Mukherjee, Adv. Mr. S.K. Mondal, Adv.
For the C.B.I.	: Mr. Kallol Kr. Basu, Adv. Mr. Pradyot Saha, Adv.
Hearing concluded on	: 6th February, 2023
Judgement on	: 23rd February, 2023

<u>Siddhartha Roy Chowdhury, J.:</u>

1. This criminal appeal challenges the judgement and order of conviction passed by learned Special (CBI) 1st Court, Calcutta pronounced in Spl. (CBI) Case No. 13/2009 on 18th December, 2019. By the impugned judgement learned Trial Court recorded an order of conviction under Section 7 read with Section 13 (1)(d) of the Prevention of Corruption Act against Partha Pratim Ghosh, and sentenced him to suffer imprisonment for one year for committing offence under Section 7 of the P.C. Act, three years for committing offence under Section 13 (1)(d) of the P.C. Act and to pay fine of Rs.

20,000/- with default clause subject to the provision of Section 428 of the Cr.P.C.

2. Fact of the case in short is that on 22nd August, 2007 the Superintendent of police, CBI, Anti Corruption Branch received an information in writing from one Tapas Ranjan Ghosh, Deputy Manager, K.E. Technical Textiles Pvt. Ltd. of Jakpur, Rupnarayanpur disclosing, *inter alia,* that on 9th July, 2007 an Audit was held by the officers of the Central Excise under EA/2000 Scheme in factory premises of K.E. Technical Textiles Pvt. Ltd. headed by Sri Paritosh Saha, Superintendent (Audit Group-C) of Haldia Commissionerate. On 9th July and 10th July, 2007 during the said audit, they checked various files/ records of the company for the last 5 years and at the spot, issued one letter asking for some more documents vide letter no. V(1)8-CE-Audit-Gr. C-Haldia dated 10th July, 2007. The audit team raised objection regarding Cenvat credit taken by the company on some imported machinery installed at Ballibhasha Unit, Paschim Midnapore. In terms of the requisition of the letter, company submitted all the required documents at the Princep Street office of Central Excise except two documents with proper explanation. The Superintendent, Shri Paritosh Saha, however, refused to appreciate the difficulty faced by the company in finding out two documents. However, subsequently those documents were found and Deputy Commissioner, Central Excise was informed vide letter dated 9th August, 2007. Paritosh Saha, however, got annoyed and decided to hold further audit. On 21st August, 2007 team of auditors from the

office of the Commissioner, Central Excise, Haldia Commissionerate, Princep Street led by Paritosh Saha came to the factory at Rupnarayanpur and conducted audit. Before starting the audit a letter was given to the company vide no. V91)8-CE-Audit-Gr.-C-Haldia-07 dated 21st August, 2007 indicating their observation which ought to have been given after holding the audit. Before leaving the office Paritosh Saha, Superintendent, Central Excise (Audit Group-C) told the informant that the company would never be able to satisfy the Central Excise and, thereafter, Partha Pratim Ghosh, Inspector separately called him and demanded a sum of Rs. 35,000/- as bribe. Sri Partha Pratim Ghosh directed him to call Shri Partitosh Saha over phone at 11.00 a.m. on 23rd August, 2007 to know about the place where he would give the money as bribe. The Directors of the company, however, did not want to pay bribe. So the matter was brought to the notice of the Anti Corruption Branch of CBI.

3. The information since disclosed offence cognizable in nature FIR was registered being CBI/SPC/ACB/Kolkata, 2007 No. RC0102007A0032 dated 22nd August, 2007 under Section 7 of the P.C. Act read with Section 120B of the I.P.C. Thereafter, trap was laid on 23rd August, 2007 and accused person Partha Pratim Ghosh was caught red handed. Paritosh Saha was also arrayed as an accused and after investigation charge sheet was submitted against the accused persons. Charge was framed against both the accused persons on 9th June, 2010 under Section 7/13(1)(d) of the P.C. Act,

1988 read with Section 120B and the accused persons stood trial by claiming their innocence.

4. Learned Trial Court having considered the evidence of prosecution witnesses both oral and documentary, was pleased to hold the accused Partha Pratim Ghosh, guilty for committing offence under Section 7/13(1)(d) of the P.C. Act and the other accused Paritosh Saha, however, was acquitted.

5. Assailing the impugned judgement Mr. Milon Mukherjee, learned Senior Counsel submits that the impugned judgement suffers from infirmity. There is lack of unity in time, place and action in the narrative of prosecution case. Drawing my attention to the testimony of prosecution witnesses Mr. Mukherjee submits that P.W. 1 stated that alleged demand of bribe was made on 22nd August, 2007 while in his written information, date of alleged demand was 21st August, 2007.

6. It is further adverted by Mr. Mukherjee, the company was unwilling to face the audit on 21st August, 2007 as such, and P.W. 1 made futile attempt to defer the same and ultimately decided to implicate the members of the audit team in a criminal proceeding. My attention is drawn to the cross-examination of P.W. 1. During cross-examination he stated that on 7th August, 2007, Commissioner of Central Excise sent a letter indicating that Superintendent and Inspector would visit the side on 21st August, 2007 for audit. On 20th August, 2007 he requested the Superintendent to postpone the audit for some days. He admitted further that by writing letter dated 21st

August, 2007, they undertook to give their opinion as to the reversal of Cenvat credit taken on capital goods amounting to Rs. 2,98,272/-.

7. It is further contended that had there been any such intention on the part of the appellant to receive money he would not have left the car, leaving the envelope behind. No money was recovered from the possession of the appellant.

8. It is further contended by Mr. Mukherjee, drawing my attention to the testimony of P.W. 1, P.W. 2, P.W. 10, P.W. 14 and P.W. 15, that during post trap proceeding, the envelope containing the money, allegedly given by the appellant to P.W. 1, was washed with sodium bi-carbonate and envelope was turned pink. But hand of P.W. 1 was not washed. It indicates that envelope was treated with phenolphthalein powder. It was never given by the appellant as claimed by P.W. 1 and P.W. 2 which is why P.W. 1 stated that envelope was given to him by the appellant sitting inside the car and shadow witness and P.W. 2 stated it was given before getting into the car. Since the envelope was planted in the car, hand of the accused was also not washed during post trap proceeding.

Arrest

9. P.W. 1 stated that after delivery of money, having found signal from Mr. H. Nag Choudhury, CBI officers encircled the car and 'had done all the formalities at that place'. During cross-examination P.W. 1 stated after taking money when Partha Partim Ghosh was trying to go, CBI officials caught him. According to P.W. 2 when he rubbed his face having found the transaction was done, officers of CBI arrived

there and caught hold of Partha Pratim Ghosh. The evidence of P.W. 15 Anup Kumar Banerjee, however, narrates a different story. According to P.W. 15, after getting the signal from shadow witness and TLO the trap members rushed to the stationed Wagon R. Partha Pratim Ghosh by that time came out of the vehicle and started running towards Vidyasagar Setu. He was intercepted and identity of the trap team members was disclosed to him. According to Mr. Mukherjee, the discrepancies appearing in the evidence of the three witnesses, P.W. 1 who claimed to have given bribe being demanded by the appellant, P.W. 2, the shadow witness and P.W. 15 strike at the root of the prosecution case. P.W. 10, the driver of the Wagon R car in his testimony during evidence-in-chief stated that he heard the accused person asking one man sitting in the car to keep the money into the envelope, then the said person put the money inside the envelope and asked Mr. Ghosh to count. Mr. Ghosh replied that he had faith in him and did not count the money. But the presence of the driver inside the car was ruled out by P.W. 2 who stated that when Mr. T.R. Ghosh and Partha Pratim Ghosh were sitting in the vehicle, driver was not there. Thus testimony of P.W. 10, the driver becomes doubtful.

10. According to Mr. Mukherjee, the prosecution has not been able to prove that the accused person ever demanded any bribe at one point of time. P.W. 1 is stating that such demand was made on 22nd August, 2007 and again he stated that such demand was made on 21st August, 2007. No money was recovered from the possession of

the accused persons as it appears from the testimony of P.W. 1, P.W. 2 and P.W. 15. Therefore, it cannot be said that the accused persons took the bribe by corrupt or illegal means for himself or for any other person. Thus, learned Trial Court had no reason to record the order of conviction.

11. Per contra, Mr. Kallol Basu, learned Counsel representing the CBI submits that the evidence of prosecution witnesses particularly the Superintendent of Customs Ranju Kumar Chakroborty, who as P.W. 7 stated that on 21st August, 2007 the audit group left the Head Quarter to visit M/s K.E. Technical Textiles Pvt. Ltd. and on 22nd August, 2007 the said team audited the documents of Safe Express. Thus, the discrepancy pointed out by learned Counsel for the appellant as to the date of demand is nothing but minor discrepancy. The demand was made on 21st August, 2007 as stated in the written information and at one place in his oral testimony P.W. 1 also mentioned that demand was made on 21st August, 2007. This minor discrepancy should not weigh with the mind of the Court. It is further contended that the convict-appellant Partha Pratim Ghosh admittedly is a public servant. He was conscious that he could be trapped. So he asked the P.W. 1 to keep the money in the envelope and it was complied with. Thereafter, he received the envelope and kept the same on the seat of the car by which he came. Thus there is every reason to presume that from his possession money was recovered. He failed to rebut the presumption of Section 20 of the P.C. Act. Therefore,

learned Trial Court was absolutely justified in recording the order of conviction.

12. According to Mr. Basu, when oral evidence is projected through human agency, some kind of discrepancy may creep in. But such discrepancy since does not strike at the root of the case, may be ignored.

13. Section 7 of the P.C. Act says:-

> *"7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting 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 which shall be not less than six months but which may extend to five years and shall also be liable to fine.*
>
> *(Explanations) —(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*
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> *(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.*
>
> *(c) "Legal remuneration". The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is*

permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

14. Section 20 of the P.C. Act speaks of presumption where government servant accepts gratification other than legal remuneration. Section 20 of the P.C. Act says:-

"20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause

(a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted

to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

15. Presumption permissible to be drawn under Section 20 of the Act can only be in respect of offence under Section 7 of the P.C. Act and not under Section 13(1)(d)(i) and (ii) of the Act. It is only on truth of acceptance of illegal gratification such presumption can be drawn under Section 20 of the Act that such gratification was received for doing or for forbearing to do any official act.

16. Here in this case demand cannot be said to have been proved. Evidence, it is settled principle of law, is to be considered from the point of view of human probability. According to P.W. 1, the accused persons demanded a sum of Rs. 35,000/- as bribe but did not give any instruction as to the place where the money would be given or taken. The witness P.W. 1 along with CBI officers after pre-trap proceedings came to Kharagpur Railway Station and made a phone call to Mr. Paritosh Saha. The call was received by Mr. D. Ghosh, who advised the caller to make a call after an hour. Till then no intimation was given as to the place where P.W. 1 was supposed to hand over the money but P.W. 1 and the members of the raiding team boarded a train from Kharagpur Railway Station for Howrah and made a phone call to Paritosh Saha which was again received by Mr. D. Ghosh and

D. Ghosh asked him to come to Santragachi with further instruction to call him before reaching Santragachi.

17. How could P.W. 1 or members of the raiding team foresee that the transaction would be taking place in between Kharagpur and Howrah? What prompted them to board the train for Howrah without waiting for an hour, as instructed by P. Ghosh to avoid delay? There is no explanation.

18. The money, as stated by P.W. 15, was not recovered from the possession of the accused persons. So far recovery of money is concerned P.W. 1 stated that when Partha Pratim Ghosh was trying to go away at that time CBI officials caught hold of him. According to P.W. 2, white colour envelope was recovered from the rear seat of the car and according to P.W. 15, Partha Pratim Ghosh was arrested while he was running towards Vidyasagar Setu. Money was recovered not from his possession but from the rear seat of the car.

19. Even for the sake argument if it is accepted that Partha Pratim Ghosh instructed P.W. 1 to keep the money inside the envelope, the envelope got smeared with phenolphthalein powder and the envelope was washed by the CBI officers during post-trap proceeding. There is no explanation as to why hand of P.W. 1 was not washed who brought out the money and kept it inside the envelope. No attempt was made to find out the finger print impression of the accused person from the envelope itself. This would have emboldened the claim of the P.W. 1 and P.W. 2 as well as P.W. 10 that money was received by Partha Pratim Ghosh sitting inside the car. P.W. 10, the

driver, according to P.W. 2 the shadow witness, was not inside the car when the alleged transaction took place. P.W. 20 also stated that Munna Das did not state that he had been inside the car in driver seat.

20. P.W. 14, Swapan Banerjee stated that he put phenolphthalein powder and gave the demonstration during pre-trap proceeding and he wrapped the currency notes in a paper but he did not go to the spot. This statement of P.W. 14 belies the claim of P.W. 16 as well as other witnesses that Swapan Banerjee after treating those government currency notes with phenolphthalein powder put the currency notes in the left side chest pocket shirt of the complainant.

21. Under such facts and circumstances of the case, the discrepancies as discussed hereinabove, cannot be considered to be minor in nature, pebbles in shapes, rather they appear to be boulders and Court should not jump over it. Of course, I am in agreement with Mr. Basu that discrepancy as to the date of demand stated by P.W. 1 should be considered as minor one.

Thus, I am of the view that prosecution has not been able to prove the charges under Section 7 and Section 13 (1)(d)(i) and (ii) of the P.C. Act against the accused person beyond reasonable doubt.

22. In my humble opinion, the impugned judgement suffers from infirmity and should not be allowed to remain in force. The impugned judgement is thus set aside. Consequently, the accused person is found to be not guilty to the charges under Section 7 and 13 (1)(d)(i)

and (ii) of the P.C. Act. He be set at liberty and be released from bail bond, subject to furnishing a bond under Section 437A of the Cr.P.C. for six months.

23. Let a copy of this judgement be sent down along with lower Court record to the learned Trial Court for information and necessary compliance.

24. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)