

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.A. (SB) 186 of 2022

Soumen Kumar Pal

Vs.

Central Bureau of Investigation.

For the Appellant :Mr. Mrityunjoy Chatterjee, Adv.
Mr. Manas Das, Adv.
Mr. Debapriya Majumdar, Adv.

For the CBI :Mr. Amajit De, Special PP, CBI
Mr. Subrata Santra, Adv.

For the de State :Mr. Koushik Kundu, Adv.

Heard on :19.06.2023, 31.07.2023, 09.08.2023,
22.08.2023, 23.08.2023,12.09.2023

Judgment on :September 21, 2023

Bibhas Ranjan De, J.

1. On 12.07.2017 one telephonic complaint was received from Shri Om Prakash Mahato(complainant), Tub Repairing Majdoor, Parbelia Colliery of Eastern Cold Fields Limited (for short ECL), Purulia whereby it was alleged that Soumen Kumar Pal, Colliery Manger, Parbelia ECL, had demanded bribe @ Rs. 1000/- per month for the complainant by threatening that if he did not pay the said bribe, he would be transferred from his assigned job of mechanical fitter to more difficult job like underground mining. That allegation was verified and investigation was conducted along with a 'trap' on 14.07.2017 to apprehend the accused red handed at the time of demanding and accepting bribe. Accordingly, trap team was constituted and accused was caught red handed with bribe from his possession. After completion of investigation charge sheet was submitted against the appellant/accused Soumen Kumar Pal on 22.12.2017 before the Ld. Judge, Special (CBI) Court, Asansole, Paschim Bardhaman under Section 7 & 13 (2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 (for short Act, 1988). Cognizance was taken.

- 2.** Ld. Judge, framed formal charge under aforementioned Sections and after being read over an explained appellant/accused pleaded not guilty and claimed to be tried.
- 3.** To prove the charge prosecution examined as many as sixteen witnesses namely Gopal Singh, Chairman cum Managing Director of ECL as PW1, Wasim Akram Khan, Sub Inspector, CBI, ACB, Kolkata as PW2, Baijyanta Mukhopadhyay, Deputy Director and Scientist 'D' (explosives) at CFSL, Kolkata as PW3, Gopal Sharan, Chief Welfare Inspector, D.R.M Office, Asansol as PW4, Om Prakash Mahato (complainant), Tub Repair Majdoor as PW5, Devanand Kumar, Vigilance Inspector, SAIL, ISP, Burnpur, as PW6, Rabindra Sharma, then Manager of Parbelia Colliery as PW7, Amar Jyoti Prasad, a witness to voice audio clips as PW8, Ashoke Kumar Poddar, a witness to voice audio clips as PW9, Diptarka Moitra, Colliery Engineer of Parbelia Colliery as PW10, Babu Lal Pandey, Assistant Manager (personnel) of Parbelia Colliery as PW11, Arbind Kumar Singh, agent of Parbelia Group of Mines at Sodpur area as PW12, Amitabha Ghosh, the then Inspector CBI, ACB, Kolkata as PW13, Amitabha Das, the then Inspector CBI, ACB, Kolkata as PW14, Doctor Subhrat Kumar

Choudhury, Senior Scientific Officer (HOD) Computer Forensic Division, CFSL, New Delhi as PW 15 and one Mukesh Kumar, Inspector CBI, ACB, Shillong, attached to ACB, Kolkata as PW16.

- 4.** In course of evidence a good number of documents namely FIR, Sketch map, pre-trap memo, post trap memo, and signatures therein, seizure list with signature, transfer order, posting order, release order, regularization order, transcription of audio clip, search memo etc. were admitted in evidence as 1 to 25. That apart, some materials like bottles, trap money, envelope containing, memory card, signature on the envelope etc. were admitted in evidence as MAT exhibit I to MAT VII series.
- 5.** After examination and cross-examination of witnesses appellant/accused was examined under Section 313 of the code of Criminal Procedure and he attributed his false implication in this case.
- 6.** Ld. Trial Judge, heard rival submission of the parties and after evaluation of evidence passed the judgement and order of conviction on 20.12.2022 and sentenced the appellant/accused to suffer simple imprisonment of three

years and to pay fine of Rs. 20,000/-, in default, further imprisonment of three months for commission of offence under Section 7 of the Prevention of Corruption Act, 1988 and also to suffer simple imprisonment for four years and to pay fine of Rs. 10,000/- , in default, to suffer simple imprisonment of three months. Both the punishments were ordered to run concurrently. That appellant/accused was also directed to pay the total fine of amount of Rs. 30,000/- , in default, to suffer simple imprisonment of six months apart from period of imprisonment.

- 7.** Aggrieved from the impugned judgment of conviction and sentence appellant/convict preferred the instant appeal assailing the judgment of conviction of sentence passed by the Ld. Judge Special (CBI) Court, on the grounds that the impugned judgement is based on wrong appreciation of evidence. The finding of the judge is perverse as the non admissible evidence has been admitted by the court in convicting the appellant. There is no eye witness to the alleged incident of taking bribe by the appellant, having no authority to provide preferable posting to the complainant. Also on the ground that the documents admitted in the case were not in

compliance with the procedure prescribed therefor. Evidence adduced on behalf of the prosecution did not support the allegation leveled against the appellant. Accordingly, prayed to allow the appeal and to set aside the judgment of conviction and sentence passed against the appellant and to acquit the appellant.

Argument Advanced:-

8. Ld. Advocate, Mr. Mrityunjoy Chatterjee, appearing on behalf of the appellant has referred to the contradictions among the witnesses examined on behalf of the prosecution. Mr. Chatterjee further assailed the sanction order for prosecution given by Chairman cum Managing Director (CMD) (PW1) of Coal India Limited, Kolkata at the relevant point of time and has tried to make this Court understand that sanction was not given after application of mind. Mr. Chatterjee further argued that receipt of telephonic information by the Superintendent of Police, anti corruption branch as well as all the movements of trap-team was not recorded in any register.
9. Mr. Chatterjee has further submitted PW 2, Sub Inspector, CBI, ACB Kolkata who verified the complaint did not disclose any threat caused to the complainant regarding underground

posting. Mr. Chatterjee has further submitted that in respect of recording conversation in a micro SD Card has not been substantiated by any certificate under Section 65B of the Indian Evidence Act. Mr. Chatterjee further particularly assailed the evidence of PW 4, (shadow witness) and submitted that he did not support the case of the prosecution case with regard to accepting bribe by the appellant exercising his official power. Mr. Chatterjee also took an effort to convince this Court that de facto complainant (PW5) who testified in his cross examination that appellant did not ask for money for favouring him in any office work.

10. Mr. Chatterjee, before parting with, has contended that prosecution could not obtain any hash value certificate to prevent any kind of tampering of the voice sample. In this regard, Mr. Chatterjee has referred to PW15 (voice expert) and thereby prosecution hopelessly failed to establish the case beyond reasonable doubt.

11. In support of his contention , Mr. Chatterjee has relied on the following cases:-

Mukut Bihari & Anr. Vs. State of Rajasthan reported in ***2012 SCC OnLine SC 461***

Arjun Pandit Rao Khotkar Vs. Kailash Vs. Kushanrao Gorantyal reported in ***(2020) 7 SCC 1***

Soundarjan Vs. State Rep. by the Inspector of Police Vigilance Anticorruption Dindigul reported in ***2023 SCC OnLine SC 424***

12. Ld. Advocate, Mr. Amajit De, Special PP, appearing on behalf of the CBI has relied on the evidence on record together with the documents exhibit in this case and submitted that all procedure according to CBI manual were complied with in respect of receipt of information , verification of information registration case and other procedure till appellant was caught red handed.

13. Mr. De on behalf of the CBI relied on a case of ***Anvar P.V. Vs. P.K. Basheer and other*** reported in ***(2014) 10 SCC 473***

Decisions with reasons:-

14. Before going to the concluding part of the decision, I would like to refer to the evidence recorded in this case.

15. PW2, Sub Inspector CBI, ACB, Kolkata has testified in his examination in chief that on 12.07.2017 one Mr. P.K. Panigrahi the then S.P., ACB, CBI instructed him to visit Parbelia Colliery, Asansol for verification of one complaint of

demanding bribe money of Rs. 1000/- from the complainant (PW5) against Soumen Kumar Pal, the then Colliery Manager of Parbelia Colliery in consideration of giving light duty in the coal mine otherwise he will be given comparatively tougher task like working in the underground of the said mine. Accordingly, he visited Parbelia Colliery and talked with the complainant who handed over a written complaint (exhibit 3) which was faxed to S.P. Officer CBI, ACB, Kolkata on 12.07.2017 at about 6.45 p.m. The said complaint was reduced into writing by his daughter according to his dictation. On receiving that FAX (PW2) he was directed to verify the allegations by SP, CBI, ACB over telephone. Accordingly, he conducted verification by providing a voice recorder to the complainant (PW5) with a blank and new micro SD Card for the purpose of recording conversation between the accused and the complainant. Thereafter, complainant went to the house of accused/appellant at around 7.30 p.m. on 12.07.2017 accompanied by him (PW2) though complainant alone entered into the house of the accused. PW2 switched on the said voice recorder and put it in the left chest of wearing shirt of complainant. After 50 minutes complainant came

outside of the house of the accused and PW2 took out the voice recorded from his pocket and turned it off. Next morning on 13.07.2017 he left for SP office and reported the matter in writing (exhibit 5) wherein he recommended for initiation of proceeding under Section 7 of the Prevention of Corruption Act, against the accused/appellant. The case was started under RC No. 0102017A0019 dated 13.07.2017 under Section 7 of the Prevention of Corruption Act, 1988 and formal FIR was prepared. Mukesh Kumar Inspector CBI, ACB, Kolkata was entrusted with investigation of the case.

16. Thereafter, Micro SD Card was inserted in the office desktop and saved the transcript in the computer and took out a print out (exhibit 4) of the conversation between complainant (PW5) and accused/ appellant.

17. A trap team was constituted by the eight members namely Amitava Das, Inspector CBI, ACB (TLO) PW14, Wasim Akram Khan SI of CBI, ACB, Kolkata, PW2, Gopal Sharan, (independent witness) Retired chief welfare DRM officer Asansol PW4, Shadow witness, Complainant Om Prakash Mahato, PW5, Devanand Kumar (independent witness) Vigilance Inspector, SAIL, ISP, Burnpur, PW6 and Amitava

Ghosh the then Inspector CBI, ACB, Kolkata PW13, Inspector K. K. Ghosh and Inspector Arup Kumar Paul.

- 18.** On 14.07.2017 all the team members met at River Bank Guest House. The TLO briefed the matter to all including reading out the complaint before the pre-trap proceeding. Inspector Arup Kumar Pal typed the pre-trap proceedings on a laptop on the dictation of the TLO Amitava Das (PW14). The de facto complainant was asked to take out the bribe money of Rs. 1000/- (10 pieces of Rs. 100 notes) only after demand by the accused/appellant. The number of the notes were recorded in writing and thereafter those were smeared in phenolphthalein powder by Wasim Akram Khan (PW2) under instruction of the TLO. Thereafter, both of his hands were doused in solution of sodium carbonate and water which turned pink and subsequently destroyed. The notes were again treated with phenolphthalein powder and kept in the back side right trouser pocket of the de facto complainant, being so told by the de facto complainant. TLO directed Gopal Sharan(PW4) to act as shadow witness and a pre-trap memorandum was prepared and also signed.

19. From the evidence of the witnesses it appears that aforesaid trap team members went to the official quarter of accused/appellant and complainant (PW5) and shadow witness (PW4) were instructed to enter into the official residence of accused/appellant and other team members also stayed scattered outside the official residence of accused/appellant. The de facto complainant after going to the bed room of the accused/appellant, handed him over the 10 GC notes of hundred denomination which he kept in his drawer by own hands. After 10 to 12 minutes the shadow witness on initiation of the complainant came out and as per prior instruction he gave a signal by scratching his head. Immediately, afterwards the TLO along with the other team members rushed inside the house of the accused appellant and caught the accused/appellant red handed with tainted money. The TLO then ordered Arup Kumar Pal to switch off the recording device kept with the complainant. The 10 GC notes of hundred denomination which were received by the accused person who kept it in his drawer by own hands were seized and subsequently both the hands of the accused/appellant were treated in separately prepared sodium

carbonate and water solution which turned pink in both the cases which clearly indicated the acceptance of the tainted money. The solutions were bottled, sealed and labelled (marked as A & B). The other independent witness was instructed to bring out the phenolphthalein tainted GC notes which were tallied with the numbers of GC notes recorded during the pre trap proceeding. The mat on which the notes were kept inside the drawer was also tested and turned positive. The SD memory card (MAT exhibit V) from the voice recording device was taken out in presence of the witnesses and the contents of the same was copied by the TLO in the laptop they were carrying. A search list was prepared by the TLO on spot which was signed by all the witnesses and the accused person was arrested.

- 20.** Mr. Chatterjee has contended that shadow witness (PW4) being a member of the trap team did not support the demand for gratification as he did not witness or hear the demand and acceptance of bribe by the accused/ appellant but from the evidence of PW 4 it appears that accused/appellant segregated the shadow witness from the de facto complainant by taking the de facto complainant to his bed room for accepting alleged

transaction. Mr. Chatterjee further assailed that the PW 4, who was the shadow witness testified that he saw the written complaint in Hindi language. But, here in this case PW2 received the written complaint from the complainant which was written in English language by the daughter of the complainant. Therefore, evidence of PW4 in this regard does not make any difference to the prosecution case.

21. Mr. Chatterjee also highlighted the contradiction in statement of PW5, 4 and 13 regarding the actual positioning and sitting arrangement of the persons involved during the alleged transaction. By this minor contradiction the evidence of segregation cannot be tainted as the deposition of the shadow witness clearly proves the meeting between the accused/appellant and the de facto complainant where the alleged transaction took place. Subsequently the accused/appellant was caught red handed.

22. Mr. Chatterjee contended that PW6 Devanand Kumar (independent witness) in his deposition stated that he was not able to re-call whether any incriminating material was recovered after search and that he put his signature on the search list at the instance of the CBI official but mere inability

to recall something doesn't mean he denied the occurrence of the alleged transaction.

23. The TLO PW13 has mentioned that no member of the trap team could over hear the conversation between the complainant and accused.

24. Mr. Chatterjee has contended that PW1, Gopal Singh, Chairman cum Managing Director, Coal India Limited, Kolkata who was the competent authority to remove the appellant/accused without proper knowledge so as to the factual position of the incident signed the sanction order without application of proper mind. He further contended in his cross examination that he is unable to furnish under which section the sanction was accorded.

25. Now after thorough analysis of the specific evidence adduced by PW1 It cannot be said that no application of mind was there at the time of giving sanction.

26. Now coming to the deposition of the then manager Parbelia Colliery Rabindra Sharma, PW7 he stated that the persons working for the installation, maintenance and safe working of the machinery are under the control of the engineer directly. The Tub Repairing Mazdoor (designation of the de

facto complainant) is directly under the control of the engineer but he admitted the fact that over all control of the colliery was vested on the manager.

27. Amarjyoti Prasad and Ashoke Kumar Poddar, (witnesses to voice audio clip) PW8 & 9 respectively stated that they had no clear knowledge about the transcribe audio clip and they have put their signature to the identification of the recorded voice at the instance of CBI. PW9 has further stated that his complete statement to the Court was at the instance of CBI.

28. Diptarka Moitra, Colliery Manager of Parbelia Colliery and Arbind Kumar Singh, agent of Parbelia Group of mines at Sodpur area, PW10 & PW 12 respectively, have identified the voice sample of the accused and de facto complainant. PW10 has contended in his deposition that he did not endorse the fact that Colliery manger has power in transfer re-designation of a Tub Repairing Mazdoor in Colliery. PW12 in his deposition further highlighted the argument of the appellant by stating that in his tenure he has not received any complaint about the accused/appellant.

29. Babu Lal Pandey, Assistant Manager (personnel) of Parbelia Colliery, PW11, he clearly stated that as per

nomenclature of the documents mentioned, that Tub Repair Mazdoor is under control of electrical and mechanical engineer.

- 30.** Baijayanta Mukhopadhyay, Deputy Director and Scientist 'D' (explosives) at CFSL Kolkata, PW3 clearly has stated that the report of the results show detection of phenolphthalein, Sodium carbonate and water in the contents of the three sealed glass bottles.
- 31.** Subhrat Kumar Chowdhury, Senior Scientific Officer, (HOD) Computer Forensic Division CFSL New Delhi, PW15 in his cross examination mentioned absence of hash value certificate of the voice recording which were tested. But, in his report he has clearly stated that Micro SD Card was original.
- 32.** After delving into all the facts, circumstances, evidences adduced the following points of contentions are to be analyzed in order to secure the ends of justice.
- 33.** The argument of the appellant regarding the doubtful verification of the complaint by the investigating officer is absurd as all the processes prescribed were properly complied with the relevant provisions of the CBI manual.

- 34.** The claim of Mr. Chatterjee that there was no mentioning of any kind of threat to the de facto complainant is in stern contradiction with that of the written complaint as there has been clear mentioning of the accused threatening the de facto complainant in case of non compliance with his monetary claims.
- 35.** Another point made by Mr. Chatterjee that accused/appellant lent Rs. 5000/- to the de facto complainant is not substantiated by any of his hypothesis or evidence adduced.
- 36.** Now coming to the next point of contention raised by Mr. Chatterjee is that the electronic evidence relied on was not duly certified under Section 65 B of the Evidence Act but after going through all the relevant facts and evidences adduced I can come to an authentic conclusion that, in the present matter we are not dealing with any secondary copy of the original piece of evidence as the original Micro SD Card (exhibit Mat VI) is the primary document and it has been duly identified and authenticated by sufficient supporting evidence and report by the competent authority (Forensic Expert, CFSL New Delhi) (PW15). Now, if I take cognizance of the Judgements

of the Hon'ble Apex Court in matters of similar nomenclature the Apex Court has clarified that if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions prescribed in the Section 65B of the Indian Evidence Act.

37. In furtherance Mr. Chatterjee has claimed that there is absence of any direct evidence of demand on part of the accused also fails to hold any substantive ground as the mere reliance on the deposition of the shadow witness (PW4) that he did not directly witness or hear the exchange of pecuniary advantage does not induce the innocence of the accused/appellant. In sharp contrast it indicates the intentional segregation of the de facto complainant from the shadow witness in order to accept the bribe money in isolation. The subsequent recovery of the phenolphthalein tainted notes from his drawer and his hand wash yielding positive result clearly indicates the wrongful intention of the accused/appellant which leads to raise the presumption of fact that there has been demand immediately before acceptance on part of the accused which is admissible evidence in view of Section 6,7,&

8 of the Indian Evidence Act. The report of the expert of CFSL, Kolkata (PW3) shows detection of phenolphthalein sodium carbonate and water in the contents of the sealed glass bottles and serial wise detection of the tainted currency notes clearly points out the acceptance of the bribe money.

38. Now coming to another important aspect of the case in hand regarding 'demand for illegal gratification' on part of the accused. After detailed analysis it is a proven case that the accused/appellant had a dominant authoritarian power over the de facto complainant. He tried to frighten the complainant that in case of non compliance with his demand he will make his official work more arduous which leads to criminal abuse of official position as a public servant on part of the accused/appellant under Section 13 of the Prevention of Corruption Act, 1988.

39. In ***Mukut Bihari*** (supra) Hon'ble Apex Court dealt with a case of illegal demand by the accused/appellants for issuance of discharge ticket to the complainant in Shadat Hospital, Tonk for treatment of urinary infection of father of the complainant. In that case, the apex Court clearly laid down the principle that mere demand of illegal gratification cannot

be said to have been proved only by mere recovery of tainted money but in that scenario the burden rested on the accused only to displace the statutory presumption raised under Section 20 of the Prevention of Corruption Act, to bring on record evidence to establish with reasonable probability that the money accepted by him was other than a motive or reward as referred to in Section 7 of the Prevention of Corruption of Act, 1988.

40. In this case, appellant /accused took a plea of loan given to the de facto complainant and demand was made for repayment of loan. But unfortunately nothing was brought on record at the instance of accused/appellant to substantiate his claim.

41. ***Soundarjan (supra)*** dealt with a case of demand of gratification of Rs. 500/- from the de facto complainant for handing over the registered sale deed by a Sub Registrar of Kannivadi, Dindigul District Tamil Nadu. Hon'ble Apex Court came across evidence of the complainant himself who did not support the prosecution case and was declared as hostile. Not only that shadow witness was also present at the time of alleged transaction unlike our case, but, he also did not

support the contention of any illegal gratification within the meaning of the **act**.

42. In *Arjun Pandit Rao Khotkar (supra) & Anwar P.V.*

(supra) It was held that the nature and manner of admission of electronic record was an important aspect of analyzing Genuineness, Veracity or Reliability of the evidence adduced in both the cases it has been clarified that if an electronic record as such is used as primary evidence under Section 62 of the Indian Evidence Act, the same is admissible in evidence without compliance of the conditions prescribed in Section 65B of the Indian Evidence Act.

43. But, in the present case, I am not dealing with any secondary copy of the original piece of evidence as the original Micro SD Card (Mat exhibit 5) has been duly adduced and identified as the primary document.

44. In the aforesaid view for the matter I am unable to interfere with the judgement and order of conviction dated 20.12.2022 passed by Ld. Judge, Special Court, CBI Asansol,

45. As a sequel, appeal being no. CRA SB No. 186 of 2022 stands dismissed. Trial Court Record be sent back immediately.

- 46.** Trial Court shall secure the accused and committing him to undergo the remaining period of sentence.
- 47.** Case diary be returned.
- 48.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 49.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]