



2024:DHC:6582



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

% Reserved on : 23.08.2024
Pronounced on : 29.08.2024

+ **CRL. A. 653/2002**

RAM SINGH.

..... Appellant

Through: Mr. Manjit Singh Chauhan, Advocate

Versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Prashant Varma, SPP of CBI.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 07.08.2002 and order on sentence dated 08.08.2002 passed by learned Special Judge, New Delhi in Criminal Case No. 141/1993 and RC No. 49A/93-DLI/CBI/ACB/N.Delhi.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Sections 120B IPC and Sections 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred as P.C. Act) and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of one year along with fine of Rs. 500/- on each count, in default whereof, he was directed to undergo further rigorous imprisonment for a period of three months. The said sentences were directed to run concurrently.



2. The facts, in a nutshell, are that the Complainant *Pratap Singh* (PW2) and the appellant were Constables in Delhi Home Guards and *Sat Narain*, who has also been convicted alongwith the Appellant, was their Platoon Commander. On 15.08.1993, the Platoon Commander- i.e., *Sat Narain* made a demand from the complainant to pay a monthly bribe for a sum of Rs.100/- else he would not be allowed to come on duty. The complainant reported the matter to the S.P., C.B.I, on 16.08.1993 who, in turn, directed Inspector R.S. Tokas/PW9 to verify and register the case, and lay a trap, pursuant to which the present FIR was registered at 4.30 PM on 16.08.1993. The Trap Laying Officer (TLO), arranged the presence of two independent witnesses namely, *Sukhvinder Singh Lal* (PW3) and *CP Johar* (PW5). The complainant arranged Rs.100/- in cash in the form of two currency notes in the denomination of Rs.50/- each which were treated with Phenolphthalein Powder. In the pre-trap proceedings, serial numbers of currency notes were noted down and thereafter they handed over to the complainant with the instructions to hand over the tainted money on specific demand by *Sat Narain*. PW5 was deputed to remain with the complainant as a shadow witness, so as to overhear the conversation and see the transaction that was expected to occur between the complainant and his Platoon Commander *Sat Narain*. The trap party left the CBI office and reached the New Delhi Railway Station sometime around 08:15 pm., at which stage the complainant and shadow witness PW5 proceeded to the place where the Platoon Commander was taking roll call of the Constables, Home Guards, who had reported for duty. When the complainant reported for duty, and was being marked present by getting his signatures on the acquittance roll, PW5 was introduced as his regular employer for whom he worked in the mornings.



The Platoon Commander *Sat Narain* brought up the subject of "monthly payment", at which the complainant took out and handed over the tainted currency notes to the Platoon Commander *Sat Narain* who received the same in his right hand and then passed them on to the appellant, also a Constable in Delhi Home Guards. PW5 gave the pre-decided signal by scratching his head following which both the Platoon Commander and the appellant were apprehended at the spot.

3. It is duly informed that the co-convict *Sat Narain i.e. the Platoon Commander* had also moved an Appeal bearing no. CRL.A.653/2002 against his conviction, which stands abated vide order dated 25.07.2005 as *Sat Narain* had expired.

4. In the present trial, a total of 9 witnesses were cited by the prosecution to prove its case. The complainant from whom the Platoon Commander had made a demand of bribe was examined as PW2. PW3 and PW5 were the two shadow/panch witnesses arranged by the TLO, who was examined as PW9. Besides above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the accused, in his statement recorded under Section 313 Cr.P.C., claimed that he was innocent and that he had been falsely implicated in the case.

5. On behalf of the appellant, the impugned judgment has been assailed on the ground that the testimonies of the witnesses do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. It is contended that the only allegation against the present appellant is of keeping the Rs.100/- handed to him by the Platoon Commander in his pocket. It is added that



there is no evidence to suggest that the appellant had ever demanded any illegal gratification or had conspired to do the same in connivance with the Platoon Commander. Learned counsel further submits that as far as the present appellant is concerned, the trap organized against him by PW9 was illegitimate as the trap was in fact organized solely to nab the Platoon Commander against whom the allegations of demand of bribe were made by the complainant.

6. I have heard the learned counsels for the parties and gone through the material placed on record. A perusal of the testimony of the complainant, examined as PW2, would show that the complainant has only made an allegation against the co-convict/Platoon Commander of the demand of bribe of Rs.100/- and the same finds no mention of the present appellant. For reference, the testimony of the complainant has been produced below:-

“2. I was a daily wager and I absented from duty on several occasions in 1993. In the months of July and August , 1993 accused Sat Narain told me that I was irregular in duty and therefore I should pay Rs 100/- per month to him, otherwise, I would not be permitted to come on duty.

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.....It is correct that on the demand of Sat Narain I gave aforesaid Rs 100/- to him. Sat Narain accepted the tainted money in his right hand and gave it to Ram Singh. Ram Singh took the money in his right hand and kept the same in the right side pocket of his pant....”

To a similar extent is the testimony of the shadow witness PW5 who has also categorically stated that during the pre-raid proceedings, the complainant was directed to hand over the tainted notes to the accused i.e. *Sat Narain* only on specific demand. He deposed that the Platoon Commander *Sat Narain* asked the complainant “*ke main saab ko kya jawab*



doonga. Monthly de ke jana” subsequent to which he accepted the tainted Rs 100/-. Again, no role was assigned to the present appellant of demanding or accepting the money from the complainant. PW9 i.e. the TLO, has also deposed to the extent that it was the co-convict *Sat Narain* who accepted the tainted money from the complainant and then passed it onto the appellant. In none of the testimonies of the witnesses has it been said that it was the appellant who had made the demand for the illegal gratification.

7. At this stage, it is deemed apposite to refer to the case of B. Jayaraj v. State of Andhra Pradesh reported as (2014) 13 SCC 55, where the Apex Court has categorically observed that :-

“ 8..... Mere possession and recovery of the 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) and (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.”

The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta v. State (Govt of NCT of Delhi) reported as (2023) 4 SCC 731 and held that :-

“88. What emerges from the aforesaid discussion is summarised as under:

88.1 (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

88.2 (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification



and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3 (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4 (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.”

8. As discernible from the records available and the testimonies of



the witnesses, the appellant was naturally present at the time of incident alongwith others as a roll call was being taken by the Platoon Commander of the constables and the home guards who had reported for duty. The mere fact that *Sat Narain* passed on the money accepted by him to the appellant without there being any allegation of any specific demand for illegal gratification, is not sufficient to constitute an offence under the afore-noted Sections. No evidence has been led of any prior meeting of mind with *Sat Narain* against the appellant.

9. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellant under Sections 120B IPC and Sections 7/13(1)(d)/13(2) of PC Act are not conclusively proved. Consequently, the appeal succeeds and the appellant's conviction under the aforesaid sections is set aside. The bail bonds are discharged.

10. The appeal is disposed of in the above terms.

11. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 29, 2024/js