



2024:DHC:10132



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

% *Reserved on : 27th November 2024*
Pronounced on: 23rd December 2024

+ **CRL. A. 308/2003**

ANSARUL HASAN

....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Pawan Sharma, Adv.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for
State along with Ms. Ridam
Arora, Mr. Mohit Sharma, Mr.
Harsh Kumar Singh, Advocates
with SI Naresh Kumar, PS Anti-
Corruption Branch.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the judgment of conviction dated 28th April 2003 and order on sentence dated 30th April 2003, passed by the Special Judge, in C.C. No. 45/97 and FIR No. 18/96, convicting the appellant for offences punishable under Section 7/13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act"). *Vide* the impugned order on sentence, the appellant was awarded rigorous imprisonment for 18 months and a fine of Rs. 2,500/- for offence under Section 7 of the PC Act, and also, rigorous imprisonment of 18 months with a fine of Rs. 2,500/- for offence under Section 13(1)(d) of the PC Act, in default of

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payment of fine, the appellant was sentenced to undergo further rigorous imprisonment for three months.

2. The sentence awarded to the appellant was suspended *vide* order dated 7th August 2003, passed by this Court.

The Raid

3. On 8th April 1996, the complainant, Prem Pal, reported to the Anti-Corruption Branch (“ACB”), that the appellant, who was a Constable in the Delhi Police and attached to the police post at Gulmohar Park, had demanded Rs. 1,000/- as a bribe, for not taking any action against the appellant.

4. A complaint had been lodged against Prem Pal’s brother-in-law, at the behest of a lady, for eve-teasing, in connection to the same, the appellant had visited the premises of the complainant and threatened to arrest him. On 7th April 1996, the accused visited the premises of the complainant and gave him an ultimatum, that unless the demanded amount is paid to him by 7 P.M. on 8th April 1996, the appellant will arrest the complainant.

5. Complainant produced two currency notes, each for Rs. 500/-, before the ACB, their numbers were noted and the notes were treated with phenolphthalein powder. Subsequently, on 8th April 1996, the complainant, upon the instructions of the officials of the ACB, produced said notes, as bribe to the appellant. The officials and *panch* witnesses rushed to the spot and apprehended the appellant.

The Evidence



6. The relevant evidence as gleaned from the records and relevant to the assessment of facts and circumstances in this matter, is as follows (emphasis has been added):

i. PW-1 Chander Bhan Singh (*Panch Witness*):

"...It is also correct that accused got recovered from inside polythene envelope a complaint against Laxmi Ex. PW 1/G which bears my signatures at point A and of Chowki Incharge at point B which was taken into possession vide memo Ex. PW 1/H which bears my signatures at point A.

It is correct that I could not depose full fact in my examination in chief as stated by me in cross-examination as I have forgotten the same due to lapse of time. Sample seal was also prepares on a paper which is Ex. OW1/J which bears my signatures at point A...

.....

...I along with complainant went to contact the accused Ansarul Hasan present in the court, who was standing there. Other members of the raiding party took their position. Complainant told the accused that he had brought the money which he had demanded from him, and after saying so the complainant gave money to the accused who had accepted the same in his left hand. The complainant had himself kept the money in the left hand of the accused

Signal was given by me by moving my hand over my head and complainant also gave the signal simultaneously.

Official of AC branch who had taken position came there and caught hold of the accused. The accused threw the money on the ground. I can't tell why the accused had thrown the money on the ground ...

.....



...It is correct that the accused had not demanded money at the spot, in my presence. It is correct that my memory is a bit weak. Accused was holding a lathi in his right hand. I was standing at a distance of 3 to 4 feet from him...

.....

...It is correct that complainant has placed the money in the hands of the accused and the GC notes had fallen from the hands of the accused after the raiding party had caught hold of the accused..."

ii. PW-6 Vijay Malik (ACP, Crime Branch)

"...My office is not notified malkhana. I do not maintain any register or that I do not obtain any witness at the time of deposit or exit of the case property. No memo was prepared in the respect of deposit and exit of the case property..."

iii. PW-7 Prem Pal (Complainant):

"...I lodged complaint Ex PW1/A in AC branch in presence of PW Chander Bhan Singh..."

.....

...I gave the money to the accused and he accepted the money in his left hand. Panch witness gave prearranged signal. Raiding party came there and apprehended the accused. Accused dropped the money on the ground as soon as the raiding party came there...

.....

...It is correct that on checking the complaint book and/or register, they told the IO that no complaint or report of Laxmi was recorded in the police post. Laxmi was not called in the police post. My brother-in-law was not called...



.....

... I cannot tell the date or month when the said complaint was made by Laxmi...

.....

...I do not exactly remember when the accused demanded the bribe from me for the first time. However he pressed or harassed me for giving bribe on 7th day before when I lodged the report...

.....

...Two other constables also accompanied the accused when he used to come to me to demand money. They also came alongwith him on 7th. Those two persons who used to accompany the accused were not present at the time of raid...

.....

...No body accompanied to PS AC branch when I went there to lodge the report. However, some person had suggested to lodge report against the accused and gave the address of AC branch. I cannot tell the name of that person now. I had gone to the Duty Room, PS AC Branch. The punch witness was already sitting there...

.....

...It is correct that I was instructed to give money to the accused on his specific demand...

.....

...The GC notes were lying on the ground when the raiding party came there..."

- iv. PW-8 Balaji Srivastav DCP, Special Branch (Sanctioning Authority)



“...It is correct that sanction order PW8/A does not bear the date however the same may be read from my forwarding letter vide which the sanction order was sent to the office of ACB. It is correct that at mark A and mark B on Ex. PW8/A there is fluid and thereafter the word was typed...”

v. PW-10 Laxmi

“Kumari Kusum is my daughter, On 17.3.96 at 3 p.m. one Chander Pal had teased my daughter and on my protest threatened me and as such I went to P.P. Gulmohar Park on 18.3.96 to lodge report. My report was written but I cannot say who was that constable. I do not know the accused present in the court.”

vi. PW-11 Ramesh Singh (Inspector, BDS, Crime Branch)

“...I went to ACB and I told the facts to the ACP Vijay Malik. Thereafter I deposited bottle marked LHW-I and one sample seal of SKB in the almirah of ACP Vijay Malik and almirah was locked and sealed with seal of RS...”

.....

“...It is correct that office of ACP is not a notified malkhana...”

vii. PW-12 Inspector SK Banta (Raid Officer)

“...At about 7.05 p.m. I received signal from panch witness and on the receipt of the singal I along with members of raiding party rushed to the spot and disclosed my identity to the accused and challenged him (accused) at the instance of complainant and panch witness that he has accepted the money as bribe from the complainant. Accused on seeing the raiding party threw the money from his left hand on ground...”

.....



... I did not verify the veracity about the complaint made against the brother in law of the complainant. It was not verified by me if the said complaint was marked to the accused or not. Volunteer I accepted the statement of complainant as it is in this regard..”

Submissions on behalf of the Petitioner

7. Senior Counsel for the petitioner made the following submissions in support of his prayer:

- i. PW-7 Prem Pal (*Complainant*) admitted that he does not remember when the accused demanded the bribe for the first time. He stated that he recalls being harassed by the appellant on the 7th day before lodging of the report. Hence, allegation of ‘prior demand’ must be approached with circumspection. He also stated that the IO was told basis the register, that no complaint lodged by Laxmi was recorded in the register.
- ii. The appellant was accompanied with 2 other constables when he visited the complainants house in relation to the complaint made by Laxmi. However, it was only the appellant who was prosecuted, highlighting the *mala fides* in the prosecution’s case.
- iii. Investigation is tainted as the said two other constables have not been examined.
- iv. Certain aspects emerge from the statements made by PW-1 Chander Bhan Singh (*panch* witness), PW-7 Prem Pal (*complainant*) and PW-12 Inspector SK Banta (*raid officer*); ***firstly***, no money was demanded by the appellant; ***secondly***, money was simply placed on the left hand of the complainant in absence of demand; ***thirdly***, the money remained in the left hand of the appellant until just before the arrival of raiding party;



fourthly, when the raiding party reached the spot, the money was lying on the ground. Thus, in said scheme of things, it cannot be concluded that the appellant received the money, let alone the fact that it was received with knowledge that it is a bribe.

- v. The Trial Court in the impugned judgement noted that the complainant's initial allegations of demand being vague, will not render his testimony regarding the demand and acceptance on 8th April 1996, doubtful. Meanwhile, the fact remains that there was no demand made on 8th April 1996, basis the testimony of the *panch* witness.
- vi. The money was not thrown merely because the appellant saw the raiding party coming in, reliance in this regard is placed on the statement of PW-1 Chander Bhan Singh (*panch* witness).
- vii. The narrative that the alleged crime was triggered from the registration of the complaint at the behest of Laxmi, against the brother-in-law of the complainant, cannot be believed, as the complaint against complainant's brother-in-law and the trap were both set up on 8th April 1996.
- viii. The prosecution case proceeds on basis that the Laxmi submitted a complaint against the brother-in-law of the complainant. Laxmi in her statement dated 11.12.2001 stated that a complaint was made by her on 18th March 1996, however, the complainant, in his statement dated 16th August 2001, stated that the complaint was lodged against his brother-in-law on 8th April 1996. It is pertinent to note that both Laxmi and the complainant's brother-in-law, have not been produced by the prosecution.



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- ix. The impugned judgment records that Laxmi's complaint against the brother-in-law of the complainant was recorded by the appellant, such observation is made basis the statement of PW-11 Laxmi. However, Laxmi herself stated that the complaint was not made to appellant, and some other constable. Further, the IO himself deposed that he recovered Laxmi's complaint in the present of in-charge, Police Post, Gulmohar Park.
- x. PW-12 Inspector SK Banta (*Raid Officer*) stated that he did not verify the factum of Laxmi's complaint and proceeded basis the mere statement of the complainant.
- xi. PW-6 Vijay Malik (*ACP, Crime Branch*) and PW-11 Ramesh Singh (*Inspector, BDS, Crime Branch*) stated that certain case property was deposited in the almirah of the ACP which admittedly is not a notified *malkhana*, and no records are maintained for evidence deposited therein.
- xii. The sanction order does not bear a date and carries overwriting.

Submissions on behalf of the State

8. APP for the State, submitted in support of the impugned judgment that, the reliance of the appellant on the contradictions in the statements made by the various prosecution witnesses, cannot be the sole basis for setting aside the judgment of conviction, as the statements of various witnesses are substantially coherent and suffer from only minor contradictions which may be attributed to the fact that the same were recorded 5 years after the raid was conducted.



Analysis

9. Pursuant to a detailed analysis of the evidence on record and the contentions of the parties, this Court is of the considered view that the prosecution has been unable to prove the guilt of the appellant beyond reasonable doubt for *inter alia* the following reasons:

Absence of demand

- i. PW-7 Prem Pal (*Complainant*) stated that he was to hand over the money to the appellant, only once demand was made by him. Further, PW-1 Chander Bhan Singh (*Panch Witness*) stated that no demand had been made by the appellant and that the money had been placed by PW-7 Prem Pal (*Complainant*) in the left hand of the appellant, he further stated that he could not say why the appellant threw the money on the ground. PW-7 also stated that the money was lying on the ground when the raiding party arrived. The said material reflects that no demand was made by the accused. The money was lying on the ground when the raiding party arrived, and the money was not thrown on the ground by the appellant merely upon spotting the raiding party. The prosecution's case as regards the contended factum of demand, therefore, may be tenuous at best.
- ii. Demand is also clouded by then statement made by PW-7 Prem Pal (*Complainant*) that he does not remember the first instance of the alleged demand of bribe by the appellant.
- iii. The impugned order states that the appellant throwing the money on the ground, upon seeing the raiding party, is a circumstance showing the guilt of the accused. However, in the present case, the



money was on the ground before the raiding party arrived, and the same was not made to fall merely upon seeing the raiding party approach.

Sanctity of records

- iv. Statement of PW-6 Vijay Malik (*ACP, Crime Branch*) read with the statement of PW-11 Ramesh Singh (*Inspector, BDS, Crime Branch*) reflects that a bottle marked LHW-I and one sample seal of SKB was deposited in the almirah of ACP Vijay Malik. And that the office of the ACB is not a notified *malkhana*, and no documentation/ records exist as regards evidence deposited with the ACP.

Veracity of the complaint made by Laxmi

- v. Even the details of the alleged motive of the crime are not reflected in the statement of PW-7 Prem Pal (*Complainant*) as he admits that he does not recall the details of the complaint made by Laxmi against his brother-in-law and that he could not state the date and month of the complaint made by her. He also stated that upon checking the register, no complaint was recorded in the police post. And the same was conveyed to the IO. PW-7 admitted that both Laxmi and his brother-in-law were not called to the police station.
- vi. PW-12 Inspector SK Banta (*Raid Officer*) stated that he did not verify the complaint made by Laxmi and that he believed the narrative that a complaint was registered against PW-7's brother-



in-law, basis his mere assertion. He also stated that he did not verify whether the complaint was marked to the appellant.

- vii. PW-7 (*Complainant*) stated that the complaint against his brother-in-law, was made by Laxmi on 8th April 1996. However, PW-10 Laxmi stated that she lodged the complaint on 18th March 1996.

Non-examination of vital witnesses

- viii. The impugned judgment states that because the accused has not been charged with demands made prior to 8th April 1996, i.e. the day of the raid, the non-examination of the other two constables is immaterial. However, it is pertinent to note that on 8th April 1996, there had been no demand, however, the PW-7 complainant himself submits that he had been allegedly harassed by the appellant, 7 days prior to him lodging the complaint with the ACB. Thus, the non-examination of the two constables may be fatal to the prosecution's case.
- ix. The impugned order also records that the non-examination of Chander Pal is of no consequence, as the bribe was not demanded from him. However, since the complaint against the alleged actions of Chander Pal is purportedly what allowed the appellant to extract the alleged bribe, the details as regards the same may be relevant. Thus, non-examination of Chander Pal creates a shadow of doubt over the prosecution's case.

Conclusion

10. Conviction must be based on proof beyond reasonable doubt, a fundamental principle of criminal jurisprudence that ensures no



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person is convicted unless the prosecution proves the accused's guilt with certainty, leaving no room for reasonable doubt. This safeguard protects against wrongful convictions and ensures fairness in the criminal justice system. Courts consistently emphasize that the prosecution bears the burden of proof, and any uncertainty in the evidence benefits the accused, thus upholding their rights and maintaining the integrity of the judicial process.

11. In light of the above discussion and analysis, this Court finds that the guilt of the appellant has not been proven beyond reasonable doubt and the testimonies of the various prosecution witnesses suffer from material contradictions and are fatal to the prosecution case. Consequently, the impugned judgment of conviction dated 28th April 2003 and order on sentence dated 30th April 2003, passed by the Special Judge, in C.C. No. 45/97, is set aside.

12. Appeal is allowed and disposed of, accordingly.

13. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

DECEMBER 23, 2024/RK/kp

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