



2024:DHC:8451



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

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Date of Decision: 16th August, 2024+ **CRL.L.P. 551/2019**

STATE (NCT OF DELHI)

.....Petitioner

Through: Mr.Naresh Kumar Chahar,
APP for the State with Mr.
Sagar Dhingra, Mr.
Pushpendra Veer Pratap
Singh, Mr. Hammad Khan,
Mr. Shubham Lakra and
Mr. Shikhar Bhardwaj,
Advs. with SI Naresh
Kumar, PS Anti-
Corruption Branch.

versus

RAJINDER SINGH @ RAJINDER SINGH
MADAN

.....Respondent

Through: Mr. Ravi K. Mirg, Adv.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. By the present petition, the prosecution seeks leave to appeal against the judgment dated 31.05.2019 (hereafter '**impugned judgment**'), passed by the learned Special Judge (PC Act Cases) ACB-01, Central District, Rouse Avenue Court Complex, New Delhi in CC No. 14/19 [FIR No. 24/09 under Sections 7/13 of the Prevention of Corruption Act, 1988 (**PC Act**)].

2. The learned Special Judge, by impugned judgment,

Signature Not Verified

Signed By: HARMINDER KAUR **CRL.L.P. 551/2019**

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acquitted the respondent for offences under Sections 7 & 13(1)(d) of the PC Act.

BRIEF FACTS

3. The complainant 'Jagdish Chand' produced a complaint on 02.09.2009 before the Anti-Corruption Branch (ACB), Delhi Police, stating that he is a practising Advocate who provides the services of registration of documents to his clients and that the Sub-Registrar, Kashmere Gate (respondent) is demanding bribe to register the documents, that is, Will and Sale Deed.

4. He alleged that he met the respondent / accused who demanded a sum of ₹2,000/- and ₹8,000/- for registration of Will and Sale Deed respectively. The complaint was given on 02.09.2009 and the ACB officials advised him to record the conversation with the respondent.

5. It is alleged that the conversation was recorded in a hidden device and the respondent asked the complainant to bring the bribe amount on 03.09.2009.

6. The recording device was allegedly handed over to Head Constable Rajender Prasad.

7. On 03.09.2009, a raiding team was constituted and a bribe amount of ₹6,000/- after applying phenolphthalein powder was given to the complainant, which he kept in the left pocket of his shirt. The complainant was briefed to keep the panch witness along with him so that he could hear the conversation between the respondent and the complainant.



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8. The complainant reached the office of the Sub-Registrar, Kashmere Gate along with the panch witness. It is alleged that the respondent refused to talk to the complainant in front of panch witness and told him by indication to hand over the bribe money to the co-accused 'Yashpal', after which the complainant met Yashpal. However, Yashpal got suspicious and tried to run away and was apprehended by the petitioner department.

9. Charges were framed against the respondent for offences punishable under Sections 7/13(1)(d),13(2) of the PC Act by the order dated 29.04.2016.

10. The acquittal by the impugned judgment led to filing of the present petition.

ANALYSIS

11. The prosecution examined 24 witnesses. It is an admitted case that the respondent was not apprehended with the alleged bribe amount.

12. The case of the prosecution, thus, depended essentially on the alleged audio-video recording of the conversation which was allegedly held between the respondent and the complainant on 02.09.2009 and the allegation that on 03.09.2009, the respondent by indication asked the complainant to hand over the bribe money to the co-accused Yashpal.

13. In regard to the audio-video recording, PW-13, Assistant Director, FSL Rohini, had deposed that he had examined the video file in the CD and on examination it was found that there was no indication of alteration. The voice in the recording is also



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stated to be of the respondent.

14. In terms of Section 79(A) of the Information Technology Act, 2000 (**IT Act**), the Central Government is empowered to notify the Examiner of Electronic Evidence.

15. Section 45(A) of the Indian Evidence Act, 1872 provides that in order to form an opinion in any matter relating to information transmitted or in any electronic or digital form, the Court may consider the opinion of Examiner of Electronic Evidence, as referred in Section 79(A) of the IT Act, as a relevant evidence.

16. It was admitted by PW-13 that FSL Rohini is not notified under Section 79(A) of the IT Act.

17. The learned Special Judge, thus, rightly noted that the opinion of FSL Rohini, in such circumstances, is not admissible in evidence.

18. The learned Trial Court also rightly observed that PW-13, during his cross-examination, had stated that the recording device was not examined before giving a report.

19. This Court, thus, finds no infirmity in the finding of the learned Trial Court in that regard.

20. In regard to the demand and acceptance of the bribe amount, the evidence disclosed that the complainant had initially alleged that he had sent his clerk to obtain document which was submitted with the office of the Sub-Registrar, Kashmere Gate and it was his clerk who told that the complainant that the Sub-Registrar was demanding money.



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21. It is relevant to note that the clerk of the complainant was never examined as a prosecution witness in the present case and any allegation that the money was demanded by the respondent on 02.09.2009 would only be hearsay. No acceptance of money took place on 03.09.2009. Even as per the case of the prosecution, it was the complainant who had indicated to the respondent that he has brought the money and on seeing that, the respondent allegedly asked the complainant to meet the co-accused Yashpal.

22. It is also relevant to note that the co-accused Yashpal had expired during the course of trial.

23. The learned Trial Court noticed the contradictions in the allegations. The complainant, in his complaint, had stated that he had gone to the Sub-Registrar office and met the respondent, who demanded the bribe for registration of Will and Sale Deed, however, during his cross-examination, he deposed that the respondent had demanded bribe from his clerk who had gone to collect the documents.

24. Thus, as noted above, the demand of bribe in the absence of the clerk of the complainant, being examined as a prosecution witness, is clearly hearsay evidence which does not prove the demand of bribe beyond reasonable doubt.

25. The learned Trial Court further noted the contradictions in regard to sequence of events that occurred on 03.09.2009.

26. PW-10, who is the panch witness, did not depose about any demand being made by the respondent in his presence. He



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deposed that the accused went out of his room and the complainant followed him asking him to do his work and then the complainant went to the co-accused Yashpal who also admittedly had not taken any bribe amount, but was apprehended on allegedly trying to leave after seeing the raiding team.

27. The entire version of the prosecution, thus as rightly held, is doubtful.

28. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar: (2008) 9 SCC 475*** held as under:

"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of



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acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

29. In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State’s request to grant leave to appeal in the present case.

30. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 16, 2024

‘KD’