(2023) 05 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Criminal Appeal No. 6 Of 2011

Bharat Bhushan (Dead) Through His Wife Sheela Devi — APPELLANT

Vs

State Of J&K — RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Jammu And Kashmir Prevention Of Corruption Act, 1949 — Section 4, 5(1)(d), 5(2)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 161
Code Of Criminal Procedure, 1989 — Section 342
Indian Penal Code, 1860 — Section 161

Citation : (2023) 05 J&K CK 0031

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Kuldip Singh Parihar, Monika Kohli

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1 This appeal is directed against judgment dated 21.02.2011 passed by the learned Special Judge, Anti Corruption, Jammu (hereinafter referred to as the 'trial Court') whereby the appellant has been convicted of offences under Section 5(2) read with Section 5(1)(d) of J&K Prevention of Corruption Act and Section 161 of RPC. Vide the impugned judgment, the appellant has been sentenced to undergo imprisonment for a period of two years and to pay a fine of Rs.5000/-for offences under Sections 5(2) read with 5(1)(d) of PC Act. For offence under Section 161 RPC, the appellant has been sentenced to imprisonment for a period of two years and to pay a fine of Rs.5000. In default of payment of fine, the appellant has been directed to undergo a further imprisonment of one month. Both the sentences have been directed to run concurrently.

2 The facts giving rise to filing of the instant appeal are that the complainant PW Kulwant Singh approached Vigilance Organization Jammu with a written complaint alleging therein that he has been falsely implicated in a criminal case

bearing FIR No. 56/2006 registered with Police Station, Bus Stand Jammu and on 14.11.2006, when he got the bail order from the learned CJM Jammu, he handed over the same to the appellant/accused who was posted as Assistant Sub Inspector of Police at Police Station Bus Stand, Jammu at the relevant time. It was further alleged in the complaint that the appellant/accused was annoyed on going through the bail order and he demanded an illegal gratification of Rs.5000/- from the complainant. It was also alleged that, on 19.11.2006, he was again called by the complainant to the Police Station and the demand of illegal gratification of Rs.5000/- was repeated. The complainant is stated to have settled the amount of bribe at Rs.5000 with the appellant/accused, whereafter, he lodged a complaint EXP-KS before SSP Vigilance Organization Jammu on 20.11.2006. On the basis of the aforesaid complaint, FIR No. 27/2006 came to be registered by the Police Station Vigilance Organization, Jammu, whereafer, on the same day, a trap was laid by the sleuths of Vigilance Organization who were accompanied by independent witnesses and the complainant. As per case of the prosecution, the appellant/accused was caught read handed while demanding and accepting an illegal gratification of Rs.5000 from the complainant. The tainted money is stated to have been recovered from the possession of the appellant/accused. After investigation of the case, the aforesaid offences were found established against the appellant/accused and charge-sheet was laid before the trial Court.

3 The charges for the aforesaid offences were framed against the appellant/ accused and his plea was recorded. The appellant/accused pleaded not guilty and claimed to be tried. Accordingly, the prosecution was directed to examine witnesses in support of the charges. The prosecution examined as many as 15 witnesses in support of its case. Afer completion of prosecution evidence, incriminating circumstances appearing in the prosecution evidence were put to the appellant/accused and his statement under Section 342 of J&K Cr.PC was recorded. The appellant/accused entered upon his defence and examined as many as 11 witnesses in defence. The learned trial Court, after hearing the prosecution and the defence, came to the conclusion that charges against the appellant/accused are established and, accordingly, the impugned judgment/ order of conviction and sentence came to be passed.

4 It is pertinent to mention here that, during pendency of the appeal, the appellant passed away and in his place, wife of the appellant Sheela Devi filed an application seeking permission to prosecute the appeal. The application was allowed by this Court in terms of order dated 31.01.2019 and the applicant Sheela Devi was permitted to prosecute the appeal.

5 The appellant has challenged the impugned judgment/order of conviction and sentence on the ground that while passing the said judgment, the learned trial Court has not properly appreciated the evidence on record. It has been contended that the initial demand of bribe has not been proved by the prosecution and this aspect of the matter has not been appreciated by the trial

Court. It has been further submitted that PW Pardeep Kumar Sharma had, in his statement, confirmed the fact that the complainant had not cooperated with the Investigating Agency and that there was no demand of bribe made by the appellant/accused from the complainant. It has been also contended that the learned trial Court has fallen into error by relying upon the statement of the complainant who was a history sheeter. It has been contended that the demand at the time of trap has not been proved by the prosecution as there are material contradictions in the statements of complainant, the shadow witness and the independent witnesses which have been overlooked by the trial Court.

6 I have heard learned counsel for the parties and perused the impugned judgment, the grounds of appeal and the record of the trial Court.

7 Before coming to the grounds of challenge urged by the learned counsel appearing for the appellant, it would be apt to notice the legal position as regards the ingredients which are necessary to be established for proving an offence under Sections 5(1)(d) read with Section 5(2) of the PC Act and Section 161 of RPC. In order to bring home the guilt of the accused in such cases, the prosecution has to establish, with cogent and convincing evidence, the following ingredients:

(i) Initial demand of illegal gratification by accused from the complainant;

(ii) Demand and voluntary acceptance of tainted money/bribe by the accused from the complainant at the time of trap proceedings.

(iii) Recovery of tainted money from the accused;

8 When the aforesaid three ingredients are established against an accused, a legal presumption in terms of Section 4 of the J&K PC Act arises that the accused has obtained tainted money as a motive or reward for doing or forbearing to do an official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor, and the burden shifts upon the accused to rebut this presumption.

9 The Supreme Court in the case of Banarsi Dass v. State of Haryana, (2010) 4 SCC 450, has held that to constitute an offence under Section 161 IPC, it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. It has been further held that in terms of Section 5(1)(d) of the PC Act, the demand and acceptance of money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused. The demand and acceptance of the illegal gratification by the accused has to be proved and established by substantive evidence. These principles have been reiterated by this Court in the case of Mohammad Ashraf Wani v. State of J&K (Criminal Appeal No.09/2017 decided on 22.03.2018).

10 In the light of foregoing legal position, let us now test the merits of the grounds urged by the appellant on the touchstone of the evidence led by the prosecution in the instant case.

11 So far as the initial demand of illegal gratification by the appellant from the complainant is concerned, it has been contended by the appellant that there are contradictions in the evidence on record on this aspect of the matter, particularly regarding the date of initial demand. Regarding this aspect of the matter, the learned counsel appearing for the appellant/accused has not brought to the notice of this Court any material contradiction in the statements of the complainant and other witnesses. In the grounds of appeal, it has been submitted that PW Pardeep Kumar Sharma, SHO Police Station Bus Stand time has stated that the appellant did not demand any bribe from the complainant. The appellant has relied upon this assertion of the witness to show that the initial demand of bribe has not been proved.

12 As per the prosecution case, PW Pardeep Kumar Sharma is not a witness to the initial demand. The witness was heading the Police Station where the appellant was posted and he had entrusted the investigation of the case against the complainant to the appellant. It is but natural that the witness PW Pardeep Kumar Sharma would be reluctant to depose about the demand of bribe by his subordinate police officer. In any case, the demand of bribe is generally made secretly and not in view and presence of others, therefore, if the demand of bribe has not been made by the appellant from the complainant in presence of PW Pardeep Kumar Sharma, who was his superior officer, it does not mean that initial demand of bribe has not been proved, particularly when the complainant has, in his statement, sufficiently proved the said fact. There may have been minor contradictions with regard to the dates on which the initial demand of bribe was made by the appellant, but the same are not of such a nature as would discredit the statement of the complainant in this regard. The learned trial Court has rightly brushed aside these minor contradictions in the evidence led by the prosecution.

13 The other aspect of the matter which the prosecution was obliged to prove beyond reasonable doubt is the demand of bribe by the appellant from the complainant during the trap proceedings. On this aspect of the matter, the learned counsel appearing for the appellant has laid much stress on the fact that the shadow witness PW Karanjit Singh has in his statement deposed that he did not hear the appellant demanding bribe from the complainant.

14 If we have a look at the statement of shadow witness PW Karnjit Singh, it is true that he has stated that, at the time of trap proceedings, he did not hear the appellant demanding bribe from the complainant, but he has, at the same time, stated that, though he was with the complainant, but the appellant along with the complainant proceeded to another chair that was about 10/12 yards away from him and he could see the complainant taking out tainted money from his pocket and handing over the same to the appellant who kept it on a file. The witness denied the suggestion that the complainant forcibly handed over the tainted money to the appellant and he further denied the suggestion that the tainted money fell on the ground. He explained that the appellant kept the

tainted money in his pocket. Because the witness was present at some distance away from the complainant and the appellant, as such, he could not have been in a position to hear the conversation between the two.

15 The complainant PW Kulwant Singh has given vivid details about the manner in which he handed over the tainted money to the appellant. He has stated that the appellant demanded a sum of Rs.5000 from him at the time of the trap proceedings and when he tried to bargain with the appellant, the appellant did not relent, whereafter he took out the tainted money of Rs.5000 from his pocket and the appellant, after counting the same, kept it in the right pocket of his pent. In his cross examination, he denied the suggestion that the appellant threw away the tainted money. PW Ravel Singh, a member of the trap team has, during his cross examination, denied that the appellant had thrown away the tainted money on floor. Similar denials have been made by the complainant and the shadow witness PW Karanjit Singh. PW Ashok Kumar has also denied that the appellant had thrown away the tainted money on floor.

16 From the foregoing evidence on record, it is clear that the prosecution has, with cogent and convincing evidence, proved that during trap proceedings, the appellant demanded illegal gratification from the complainant pursuant whereto the complainant handed over the tainted currency notes to him. Merely because the shadow witness could not hear the conversation regarding demand of bribe money between the complainant and the appellant in view of the fact that he was about 10/12 yards away from him at the relevant time, it cannot be stated that there was no demand made by the appellant particularly when the statement of the complainant in this regard has not been shaken during his cross examination. The defence put forward by the appellant in his statement under Section 342 of J&K Cr.PC by stating that the money was thrust in his pocket and that he threw away the said money, has not been proved from the evidence on record. Instead, the prosecution witnesses have been consistent in their statements that the appellant did accept the tainted money from the complainant and put it in the right pocket of his pent. Therefore, the prosecution has been able to prove beyond reasonable doubt that, during the trap proceedings pursuant to the demand made by the appellant from the complainant, he accepted the tainted money from the complainant.

17 That takes us to the aspect of recovery of the tainted money. The witness to the recovery is PW Yash Pal, the independent witness. He has in his statement deposed that he was instructed by the Dy.SP to conduct search of the appellant. He has further stated that he conducted the search of right pocket of the pent of the appellant and recovered the tainted currency notes and he tallied their numbers with the numbers which they had noted on slips during the pre-trap proceedings. In his cross examination, he has stated that no other article was found in the pocket of the appellant except the bribe money. The other members of the trap team have also stated that the tainted money was recovered from the right side pocket of pent of the appellant during the trap proceedings. The

complainant and the shadow witness have also corroborated this aspect of the matter. Thus, the prosecution has been able to prove the recovery of tainted money from the possession of the appellant in terms of the recovery memo EXP-RS.

18 Learned counsel appearing for the appellant has strenuously argued that, as per the evidence on record, particularly the statement of the complainant PW Kulwant Singh, the appellant before accepting the tainted money counted the same, but, according to the contents of seizure memo EXP-KJS, the left hand wash of the appellant did not turn pink, meaning thereby that tainted notes had not come into contact with left hand of the appellant. The learned counsel has contended that it is not possible to count money with one hand and if the prosecution evidence is to be believed, then the tainted money must have come in contact with the left hand of the appellant, but, because the evidence on record suggests otherwise, as such, the statements of prosecution witnesses in this regard get falsified. Learned counsel for the appellant has submitted that the defence of the appellant that once money was thrust into his pocket by the complainant, he immediately threw it out with his right hand without counting it, appears to be plausible, as such, the defence of the appellant needs to be accepted.

19 The argument of learned counsel for the appellants appears to be attractive at first blush, but the same when analyzed in the light of the facts proved on record, does not appear to have any force. It is true that the complainant has in his statement deposed that the appellant did count the tainted money which he handed over to him, but then, it is not impossible or improbable to count the currency notes with one hand without using the other hand. There is overwhelming evidence on record in the shape of statement of the complainant and the shadow witness to show that the appellant did accept the tainted money without any resistance from him. The suggestions put by learned defence counsel during trial of the case, to the prosecution witnesses, to the contrary, have been denied by them and in fact the members of the trap team have clearly denied the suggestion that the appellant threw the tainted money on ground. In the face of this evidence on record, the explanation tendered by the learned counsel for the appellant that the fact that the left hand of the appellant did not come into contact with the tainted money, shows that he did not accept the money from the complainant, cannot be accepted. The argument is, therefore, bound to be rejected.

20 From the foregoing analysis of evidence on record, it is clear that prosecution has been able to prove the initial demand of illegal gratification by the appellant from the complaint, the demand and voluntary acceptance of tainted money/ bribe by the appellant from the complainant at the time of trap proceedings as also the recovery of tainted money from the appellant. Once these ingredients are established against the appellant, a legal presumption in terms of section 4 of the J&K PC Act arises that the appellant has obtained tainted money as a

motive or reward for doing or forbearing to do an official act or for showing or for forbearing to show, in the exercise of his official functions, favour or disfavor. Thus, the burden shifts upon the appellant to rebut this presumption.

21 It has been proved from the evidence on record that the appellant was investigating the case registered against the complainant and, as such, he had opportunity and occasion to demand bribe or illegal gratification from him for extending favour to him or forbear from showing disfavor to him. It has alsoo come in the evidence on record that the appellant had threatened the complainant that in case he would not meet his illegal demand, he would be initiating steps for cancellation of his bail. Therefore, it was for the appellant to rebut the presumption that had arisen against him in terms of section 4 of the J&K PC Act. There is nothing in the evidence led by the appellant in defence that would rebut this presumption. The defence projected by the appellant in his statement recorded under section 342 Cr.PC has not been established from the evidence on record. Therefore, the prosecution has succeeded in establishing the charges against the appellant beyond any reasonable doubt.

22 In view of what has been discussed hereinbefore, there is hardly any ground to interfere with the well reasoned and lucid judgment passed by the learned trial Court. The same does not call for interference by this Court. The appeal, therefore, fails and is dismissed accordingly.

Record of the trial Court along with a copy of this judgment be sent back.

