

(2011) 03 DEL CK 0532

In the Delhi High Court

Case No : Criminal M.B. No. 410 of 2011 in Criminal A. No. 312 of 2011

Braham Pal

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 389

Penal Code, 1860 (IPC) — Section 120B

Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2011) 03 DEL CK 0532

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : S.C. Sagar, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J

1. This application is filed by the Appellant u/s 389 of the Code of Criminal Procedure praying inter alia for suspension of sentence during the pendency of the accompanying appeal. By the impugned judgment dated 14.02.2011, the Appellant was found guilty and convicted by the learned Special Judge, Anti Corruption Branch, of the offences u/s 120B IPC read with Section 7 and 13(1) (d) of the Prevention of Corruption Act (hereinafter referred to as "the Act") as also u/s 7 of the Act as well as Section 13(1)(d) read with 13(2) of the Act. As per the order on sentence dated 17.02.2011, the Appellant was awarded a sentence of rigorous imprisonment for a period of two years and a fine of Rs. 4,000/-, in default whereof, simple imprisonment for a period of six months for the offence u/s 120B IPC read with Section 7 and 13(1)(d) of the Act and further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs. 4,000/-, in default whereof, simple imprisonment for a period of six months for the offence u/s 7 of the Act and further sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs. 4,000/-, in

default whereof, simple imprisonment for a period of six months for the offence u/s 13(2) of the Act. All sentences were directed to run concurrently.

2. The brief facts of the case are that the Appellant was employed as a Beldar with the MCD and as per the prosecution, he alongwith his co-accused, Gulam Haider Zilani, who was employed as a Junior Engineer with MCD, had asked for a bribe of Rs. 50,000/- from the complainant (PW4) for allowing him to continue to carry out construction of the first floor in his house, failing which they would have demolished the said construction. After the complainant expressed his inability to pay the sum, the Appellant and his co-accused reduced their demand to Rs. 10,000/-. The complainant lodged a complaint with the Anti Corruption Branch against both the Appellant and the co-accused, for demanding a bribe from him. On receiving such information, a trap was laid for the Appellant and his co-accused and on 8.03.2007, a raiding party, including the Raid Officer (PW11), the Panch Witness (PW6) and other members, apprehended the Appellant and his co-accused, Gulam Haider Zilani, from the first floor of the house, accepting the aforesaid GC notes from the complainant as bribe money. When the hands and the pocket of Braham Pal were washed with water, the same turned pink, indicating that the aforesaid GC notes had been handled by him.

3. Charges were framed against the Appellant and his co-accused, who pleaded not guilty and claimed trial. In the trial, 13 prosecution witnesses including the complainant (PW4), Raid Officer (PW11), and the Panch Witness (PW6) were examined. Statements of the Appellant and his co-accused were recorded u/s 313 CrPC, however neither of them led any defense evidence. On an examination of the evidence which came on record, the trial court arrived at the conclusion that the prosecution had placed sufficient evidence on record to hold that the Appellant and his co-accused, both public servants, were guilty of conspiring to accept illegal gratification, from the complainant, thereby committing offences under 120B IPC and Section 7, 13(1)(d) read with Section 13(2) of the Act.

4. The learned Counsel for the Appellant urges the court below failed to consider the fact that the Panch Witness (PW6), had turned hostile in his testimony before the Court, hence his testimony should have been disregarded by the trial court. He further places reliance on the decision of the Supreme Court in the case of Sudhir Kumar Jain v. State of Delhi reported as 2008 [1] JCC 564 to submit that where the sentence is below three years, the High Court should suspend the sentence of the Appellant during the pendency of the appeal. Counsel for the Appellant has also urged before this Court that the Appellant was on bail during the period of trial and did not misuse the liberty granted to him at that time. He has also pressed this Court to consider the fact that the Appellant is the sole bread earner of his family which consists of aged parents and three small children, who are entirely dependent on him. He, therefore, submits that there are sufficient grounds taken in the appeal to entitle the Appellant to suspension of sentence during the pendency of the appeal.

5. The learned APP for the State on the other hand vehemently opposes the

application for grant of suspension of sentence on the ground that acceptance of illegal gratification by a public servant is a grave offence. He also urges that a perusal of the impugned judgment reveals that the trial court has sifted through the evidence on the record and after examining the same, rightly arrived at the conclusion that the Appellant and the co-accused had accepted bribe from the complainant. He further submits that if an actual date for hearing the appeal is fixed, then there is no reason to grant suspension of sentence.

6. This Court has heard the counsels for both the parties and has perused the impugned judgment of conviction as well as the order on sentence passed by the learned Special Judge, Anti Corruption Branch. On the point that the Panch Witness (PW-6) had turned hostile and hence his testimony ought to have been disregarded, the trial court observed that the said witness had turned hostile only to the extent that he had stated that Gulam Haider Zilani, the co-accused was not present on the first floor of the house where the bribe was being accepted. However, he did not deny the fact that the Appellant herein was present on the first floor of the house and he had been caught accepting the bribe from the complainant. It was held in the impugned judgment that even if a witness is declared hostile, his entire testimony need not be disregarded and that part of his testimony which stands corroborated by other evidence and witnesses, should be accepted. In the present case, the testimony of the Panch Witness (PW6) qua the Appellant was corroborated by the testimonies of the complainant (PW-4) and the Raid Officer (PW-11), as also by the fact that when the Appellant's right hand and trouser pocket were washed with water, they turned pink clearly indicating that the treated GC-notes were handled by him. In this background, the trial court concluded that acceptance of the bribe stood proved against the Appellant.

7. The second argument of the counsel for the Appellant was that as per the Supreme Court decision in the case of Sudhir Kumar Jain (*supra*), where the sentence is below three years, suspension of sentence should be granted during the pendency of the appeal. A perusal of the aforesaid decision shows that the view taken therein was in cases where it was felt that the appeals against orders of conviction were not being disposed off expeditiously by the Appellate Court. However, in the present case the appeal has been fixed for hearing on an actual date, hence the principle laid down in the aforesaid decision would have no application here.

8. The counsel for the Appellant has further urged that this Court should show some leniency towards the Appellant as he is the sole bread earner of his family which is dependent on him. These submissions were made before the learned Special Judge at the time of sentencing and were duly considered in the order of sentence.

9. At the stage of suspension of sentence, this Court cannot conduct a roving enquiry into the evidence on record, rather it is required to see if in its *prima facie* opinion, there is such patent illegality, arbitrariness or perversity in the

impugned judgment as to warrant grant of suspension of sentence. In the present case, on a prima facie assessment of the facts and evidence on record as analyzed in the impugned judgment, this Court does not find any such patent illegality or perversity, which would warrant suspension of sentence.

10. The application is therefore dismissed as being devoid of merits.

11. Needless to state that the aforesaid prima facie view is expressed only for the purpose of disposing the present application and is not a conclusive view of the court, which shall be arrived at only after hearing the appeal on merits.

12. The Appellant is directed to surrender before the Jail authorities on or before 21.03.2011.