

(2014) 01 DEL CK 0345
In the Delhi High Court
Case No : Criminal A. No. 236 of 2010

Giri Raj Singh Meena

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 325 428

Prevention of Corruption Act, 1988 — Section 13 13(1)(d) 13(1)(d)(i) 13(2) 20

Citation : (2014) 6 AD 175 : (2014) 2 CCR 105 : (2014) 209 DLT 415

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rashid Hashmi, for the Appellant; Feroz Khan Ghazi, APP., for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—On 16.6.2000, the complainant Jagdish Tokas, came to the office of the Anti Corruption Branch of Delhi Police (for short "ACB") and made a complainant, alleging therein that on 11.2.2000, he had a quarrel with Mr. Jayant Jain and his family members, at the time he was taking his car out of the parking and he had lodged FIR No. 46/2000 against them. He further stated that after 2-3 days he came to know that a cross case has been registered against him vide FIR No. 47/2000 at Police Station Vasant Vihar. He thereupon made a complaint to the Vigilance Cell of Delhi Police against the SHO, Police Station, Vasant Vihar as well as the Investigating Officer and had obtained anticipatory bail. He had also got the investigation of the case transferred to the District Crime Cell, Mayapuri where it was assigned to the appellant, Inspector Giri Raj Meena, for investigation. He also alleged that the appellant started demanding liquor as well as bribe from him and on 15.6.2000 he demanded Rs. 50,000/- from him. He also threatened to register a case u/s 325 IPC against him in case the aforesaid bribe money was not paid. The complainant alleged that when he asked the appellant to reduce the bribe money, he agreed to accept Rs. 15,000/-

for not registering an FIR against him and had called him at Super Market, DDA Flats, Munirka at 8:00 p.m. near a van selling chowmein with Rs. 10,000/- and to pay the balance of Rs. 5,000/- at a later date. After recording the statement of the complainant in the presence of the panch witness Mr. V. Mukanda Rao, LDC in the Education Department of the Government of NCT of Delhi, serial numbers of currency notes, being fourteen (14) currency notes of Rs. 500/- and thirty (30) currency notes of Rs. 100/-, were noted down in a memo, phenolphthalein powder was applied to those currency notes and a demonstration was given to the complainant as well as the panch witness by making them touch the currency notes treated with phenolphthalein powder and then dipping their hands in sodium carbonate solution which on such dipping turned pink. The panch witness was instructed to accompany the complainant, hear the conversation between him and the appellant and give a pre-decided signal after the bribe was paid.

2. The police party as well as the complainant and the panch witness reached the Super Market, DDA Flats, Munirka at about 8:05 p.m. on the same date. At about 8:40 p.m., the panch witness gave the pre-decided signal whereupon the raiding party reached the van selling chowmein and the panch witness took out the currency notes which were earlier treated in phenolphthalein powder in the office of the ACB, from the right side pocket of the pant which the appellant was wearing at that time. The hands of the appellant were washed in the sodium carbonate solution which then turned pink and was duly seized. After putting the same in two bottles, the pant which the appellant was wearing was got removed and wash of the right side pocket of the said pant was taken. On such wash the colour turned into pink and the said wash was also seized after putting the same into two clean bottles.

The appellant was charged under Sections 7 & 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Since he pleaded not guilty to the charge as many as eight (8) witness including the complainant and panch witness were examined by the prosecution. No witness, however, was examined in defence.

3. The complainant, Shri Jagdish Tokas, came in the witness box as PW5. In his examination-in-chief, he inter alia stated that "Inspector Giri Raj never harassed me nor demanded any money or article from me". The complainant thereafter stated that he had gone to the Office of the ACB, made a complaint of demand of bribe by the appellant and had handed over Rs. 10,000/- to the raiding officer, in the presence of the panch witness. He also stated that the raiding officer applied phenolphthalein powder on the currency notes supplied by him, got them touched from the right hand of the witness and on wash of his right hand being taken in a colourless solution of sodium carbonate it turned into pink and the significance of phenolphthalein powder and sodium carbonate was explained to him by the raiding officer. He further stated that the raiding officer handed over the treated notes to him and he kept the same in the pocket of his shirt. According to him at about 8:15-8:30 p.m. he along with the panch witness,

reached near chowmein van in the parking, Super Market, DDA Flats, Munirka. The appellant was already present there. He gave Rs. 10,000/- to the appellant who took the money in his right hand and kept the same in his right pocket of the pant. He also told the appellant that he would pay the remaining money after arranging it and thereupon the panch witness gave the pre-decided signal. The members of the raiding team immediately reached there, apprehended the appellant and the raiding officer recovered Rs. 10,000/- from his pocket. According to the witness, right hand wash of the appellant was taken and transferred into bottles.

This witness was cross-examined by the learned Chief Prosecutor on the ground that he had not supported the prosecution on all the material facts. During cross-examination he admitted that on 15.6.2000 the appellant had made a telephone call to me on his mobile, demanded Rs. 50,000/- and threatened to register a case against him u/s 325 IPC in case the bribe was not paid. He further admitted that the appellant reduced his demand from Rs. 50,000/- to Rs. 15,000/- when he expressed his inability to pay Rs. 50,000/- to him and he was asked to bring Rs. 10,000/- near chowmein van, Super Market, DDA Flats, Munirka and give Rs. 5,000/- at a later date. He further stated that when they reached near chowmein van, the appellant showed the case file to him and told him that he would not allow the case to be registered against him and also took out a bail order from the file and gave it to a boy at the chowmein van to get a photocopy made. The appellant asked him whether he had brought Rs. 15,000/-, whereupon he told him that he had brought only Rs. 10,000/- and would give Rs. 5,000/- after finalization of the case. In cross-examination he denied the suggestion that he himself offered money to the appellant through a Constable and when the appellant resisted and asked him as to what for money was being given to him, the money was thrown at chowmein counter.

4. PW4, Mr. V. Mukunda Rao, is the panch witness in this case. He stated that on 16.6.2000 he was on duty as a panch witness in ACB where he reached at about 5:00 p.m. and in his presence the complainant came there and made a complaint alleging demand of Rs. 15,000/- by Inspector Giri Raj. He also stated that the complainant had brought Rs. 10,000/- with him. He corroborated the complainant as regards application of phenolphthalein powder to the currency notes, wash of his hands and the currency notes treated with phenolphthalein powder being given to the complainant. According to him, he along with the complainant, went to the chowmein shop where Inspector Giri Raj extended his hand towards the complainant though he could not hear what they were talking. The witness further stated that the complainant took out money from his shirt and extended the same to Giri Raj who took the same in his right hand and kept the same in the front pocket of his pant though he could not say whether it was left or right side pocket. He thereafter gave the pre-decided signal to the raiding party, which caught Inspector Giri Raj. He was taken to ACB where his hands were washed in a solution, which on such wash turned pink.

5. PW-6, S.S. Sandhu, Assistant Commandant, CISF has in his deposition corroborated the statement of the complainant. He has deposed about the complainant coming to the office of the ACB on 16.6.2000 making complaint Ex. PW4/A, producing thirty (30) currency notes of Rs. 100/-, noting down the numbers of those currency notes in a memo, treated the notes with phenolphthalein powder and taking hand wash of the panch witness. He has further deposed that they reached the Super Market, DDA Flats, Munirka at about 8:05 p.m. and the complainant as well as the panch witness were directed to go to Maruti van. On noticing the pre-decided signal given by the panch witness they reached the spot and on his direction the panch witness recovered Rs. 10,000/- from the right side pocket of the pant of the appellant. The numbers of those currency notes were tallied with the numbers given in the pre-raid report and both were found to be same. The right hand wash of the appellant was taken in a clear solution of the sodium carbonate, which on such wash turned into pink. He has also deposed regarding seizing of the wash after transferring the same into bottles. PW8, Shri Amod K. Kanth, who was posted as the Joint Commissioner of Police, Southern Range has proved the sanction as PW8/A.

6. In his statement u/s 313 of Cr.P.C. the appellant admitted that on 16.6.2000 he was posted as an Inspector in Delhi Police in DIU, South West. He, however, denied demanding bribe from the complainant and threatening to register a case u/s 325 IPC against him in case the bribe was not paid. He denied having accepted the bribe money of Rs. 10,000/- from the complainant and recovery of the said money from the pocket of the pant he was wearing at that time. According to him he was called by the complainant at the spot after making a telephone call and the complainant had tried to thrust money in his pocket, in order to trap him.

7. It is not in dispute that the investigation into dispute of the complainant with his neighbours was entrusted to the appellant. This is also not in dispute that the appellant had met the complainant Jagdish Tokas on 16.06.2000 near chowmein shop, Super Market, DDA Flats, Munirka at about 8.00 PM. The case of the appellant is that it was the complainant who had called him to the aforesaid place by making a telephone call, whereas the allegation of the complainant was that the appellant had called him there with the bribe money. The appellant has not produced his call details to satisfy the Court that the complainant had called him up on the aforesaid date. The case of the appellant, as suggested to the complainant in his cross-examination, is that he (the complainant) had offered money to him near the chowmein van through a Constable. However, the aforesaid Constable has not been produced by him to substantiate the plea taken by him. During cross-examination of the complainant, it was suggested to him by the appellant that on the fateful day, statement of the boys at chowmein van was to be recorded by the appellant in connection with the case registered against him (the complainant). No evidence has been produced by the appellant to show that he had actually recorded the statement of any boy working at the chowmein

van on that day or even thereafter, in the case registered against him.

8. It was pointed out by the learned counsel for the appellant that in his examination-in-chief, the complainant stated, "Inspector Giri Raj never harassed me nor demanded any money or any article from me". I, however, find that in the remaining part of his deposition, the complainant fully supported the case of the prosecution. He deposed with respect to the appellant making a telephone call to him on 15.06.2000, demanding Rs. 50,000/- and threatening to frame him in a case u/s 325 of IPC, in case the money was not paid. He also stated that on expressing his inability to pay Rs. 15,000/-, the appellant reduced the demand and asked him to bring Rs. 10,000/- near chowmein van on 16.06.2000. He supported the case of the prosecution with respect to the appellant accepting Rs. 10,000/- from him, keeping the same in his pocket and recovery of Rs. 10,000/- from his pocket by the panch witness on the request of the raiding officer. No one asked the complainant as to what he meant by saying, "Inspector Giri Raj never harassed me nor demanded any money or any article from me" when he had expressly deposed regarding demand of money from him, payment of bribe money to the appellant and recovery of the same money from the pocket of the appellant. In these circumstances, nothing really turns on the aforesaid part of the deposition of the appellant. Presumably, he was referring to conduct of the appellant during the period prior to 15.06.2000 when he demanded Rs. 50,000/- from him on telephone. In any case, on taking a holistic view of the entire deposition of the complainant, I have no doubt that according to him, the appellant had demanded bribe from him and accepted Rs. 10,000/- near chowmein van on 16.06.2000.

9. The panch witness Mr. V. Mukanda Rao is a public servant who was present in the office of ACB on that day in discharge of his official duties. He has no reason to depose falsely against the appellant and even the appellant does not attribute any motive to this witness to depose falsely against him. This witness has corroborated the complainant on the material aspects of the case such as an Inspector taking to the complainant, extending his hand towards him, the complainant taking out tainted money from his pocket and extending it towards the police officer, who took the same in his right hand and kept the same in the pocket of his pant. Though he could not hear the conversation between the complainant and the Inspector, he certainly witnessed the transfer of money from the complainant to the Inspector. Though he could not identify the appellant on account of brain surgery he had undergone, that would be immaterial, considering the presence of the appellant near the chowmein van on the aforesaid date and time is not in dispute.

10. The following observations made by me in Madan Lal Vs. The State of NCT of Delhi 2010 (9) AD Del 685 are apt for this case as well:

23. ...The courts need to appreciate that the citizens in our country are most of the times reluctant even to lodge a complaint of demand of illegal gratification from them. Most of them pay the illegal gratification either with a view to get

done something to which they are otherwise not entitled under the Rules or in order to get their matter expedited or with a view not to antagonize the public servant dealing with their matter, lest he puts obstacle in their way by taking a view or recording a note unfavourable to them. When a person takes the step of going to the Anti Corruption Branch, making a complaint, and getting a trap organized, he knows it very well that it was going to cost him a lot of inconvenience and harassment. Firstly, he has to visit the office of Anti Corruption Branch and pay the bribe money from his pocket. He has to complete a number of formalities in the office of Anti Corruption Branch and then accompany the officials constituting the raiding party to the place of the accused. He then has to visit the office of the Anti Corruption Branch in connection with the investigation of the case and thereafter he has to attend the court on a number of occasions. While doing all this, the complainant has to necessarily remain away from the work or business in which he is engaged and thereby he sacrifices a lot of his precious time and possibly also the money which he could be earning utilizing that time. He has to withstand a grilling cross-examination at the hands of the defence counsel and also face the animosity of not only the public servant got trapped by him but also of his colleagues, who will be antagonized with him, on account of his getting a colleague of theirs trapped for accepting bribe. A person making complaint against a public servant knows it very well that in the department of the accused, no one may like to deal with him in future and in fact the colleagues of the accused are only likely to put obstacles in the work which he may have in the department. Therefore, most of the time, a person, from whom bribe is demanded, either pays up the money or he simply withdraws, instead of reporting the matter to the Anti Corruption Branch and going to the extent of being member of a raiding party. It is only in extreme cases where a citizen has a strong feeling of having been wronged or where he is so much conscious of his rights that instead of keeping silent or paying money, he wants a bribe seeker to be punished that he goes to the Anti Corruption Branch, make a complaint and then follows that complaint to its logical conclusion. Ordinarily the testimony of the complainant need to be believed unless there are strong and compelling reasons creating serious doubt on the truthfulness of his testimony.

Had the appellant not demanded bribe from the complainant, there would be no reason for him to take the trouble of going to the office of Anti Corruption Branch, shelling out Rs. 10,000/- and then accompany the police team to the place where the bribe was paid and later recovered from the possession of the appellant.

11. The recovery of currency notes treated with phenolphthalein powder also finds corroboration from the deposition of PW-6 Inspector S.S. Sandhu in whose presence and on whose direction the panch witness recovered Rs. 10,000/- from the right side pocket of the appellant. The number of currency notes recovered from the right side pocket of the appellant tallied with the numbers recorded in the pre-raid report. The right hand wash of the appellant was taken by him in

clear solution of sodium carbonate which turned into pink. This clearly shows that the appellant had come into contact with the currency notes which the Investigating Officer had earlier treated with phenolphthalein powder. That could not have been possible without the appellant accepting the currency notes from the complainant. I, therefore, have no hesitation in holding that the appellant demanded and accepted bribe money of Rs. 10,000/- from the complainant and the said money was recovered by the ACB officials from his possession on 16.06.2000.

12. In *M. Narsinga Rao Vs. State of Andhra Pradesh*, the Deputy Superintendent of Police told the court that on the complainant approaching him, he smeared the currency notes with Phenolphthalein Powder. The case of the prosecution was that the appellant before the Supreme Court had accepted those currency notes from the complainant. During trial, neither the complainant nor the Panch Witness supported the prosecution. The Deputy Superintendent of Police who conducted the raid told the court that when the appellant was caught red handed with those currency notes, he never demurred to him that those notes were received by him. The defence taken by the appellant during trial was that the currency notes were stuffed into his pocket. The Supreme Court in these circumstance felt that the story of stuffing of currency notes into the pocket of the appellant had been concocted by him after a period of four years when he faced trial in the court. In the present case also there is no evidence that when the currency notes were taken out from the pocket of the coat of the appellant he claimed that these currency notes had been kept by someone in his pocket.

Section 20 of the Prevention of Corruption Act, 1988, to the extent it is relevant provides that where in a trial of an offence punishable u/s 7 or sub-section (1) of Section 13, it is proved that the accused person had accepted or obtained or had agreed to accept or attempted to obtain any gratification (other than legal remuneration), it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain that gratification as a motive or reward as is mentioned in Section 7 or as the case may be without consideration or for a consideration which he knows to be inadequate.

In *M. Narsinga Rao (supra)*, the Supreme Court held that it is obligatory for the Court to draw the statutory presumption u/s 20 of Prevention of Corruption Act and, therefore, if it is proved that the accused had accepted or agreed to accept any gratification, the Court must presume that the money was accepted as a motive or reward for doing or bearing to do any official act, etc. Though the presumption u/s 20 of Prevention of Corruption Act is rebuttable, the appellant has not made any such attempt. He does not claim that the currency notes were accepted by him not as a motive or reward, but in some other connection. His claim is that the currency notes were, in fact, never accepted by him and were secretly stuffed by someone in his pocket. The decision in the case of *M. Narsinga Rao (supra)* was followed by the Supreme Court in *B. Noha Vs. State of Kerala and Another*,

In *Raghubir Singh Vs. State of Haryana*, the appellant, an Assistant Station Master, was found in possession of marked currency notes given to him by a passenger, whose bedding has been detained by them. It was held by the Supreme Court his being caught red-handed was a case of *res ipsa loquitur* as the very things speaks for itself in such circumstances.

In the present case, even if the aforesaid statutory presumption is not drawn, the direct deposition of the complainant, corroborated by the panch witness and the raiding officer leaves no reasonable doubt about the guilt attributed to him.

13. The appellant committed offence punishable u/s 7 of Prevention of Corruption Act, 1988 since being a public servant he accepted from the complainant gratification other than legal remuneration as a motive or reward for refraining from registering a case u/s 325 IPC against him.

14. Section 13(1)(d) of the PC Act to the extent it is relevant for the present case, provides that a person is said to commit criminal misconduct, inter alia, if he (i) by corrupt or illegal means or (ii) by abusing his position as a public servant obtains himself any pecuniary advantage.

The expression "corrupt or illegal means" has not been defined in the Act. Illegal would obviously mean something which the law prohibits. The definition of the expression "corrupt" in the Shorter Oxford Dictionary includes something influenced by bribery. This expression would also include something which is morally unsound, dishonest, depraved or pervert. Therefore, accepting money as bribe would certainly amount to use of corrupt means. Since taking or attempting to take bribe is prohibited by law, such an act would also amount to use of illegal means. The appellant, therefore, is guilty of criminal misconduct u/s 13(1)(d)(i) of the Act since he took Rs. 10,000/- from the complainant by corrupt and illegal means.

As observed by the Hon"ble Supreme Court in *M. Narayanan Nambiar Vs. State of Kerala*, abuse means misuse i.e. using one's position for valuable things, for which it is not intended. The abuse of official position by a public servant may not necessarily be by use of corrupt or illegal means. If a public servant obtains valuable things or pecuniary advantage by use of corrupt or illegal mean without abusing his position as public servant, that would amount to criminal misconduct in terms of sub clause (i), whereas if he obtain valuable things or pecuniary advantage by abusing his position, that would constitute an offence under sub clause (ii) irrespective of whether he employs corrupt or illegal means to obtain such a valuable thing or advantage or not.

The appellant abused his position as a public servant by demanding and accepting Rs. 10,000/- from the complainant on the assurance that if the aforesaid amount was paid to him, he shall not register a case u/s 325 IPC against him. Had the appellant not been holding the position of a public officer, it would not have been possible for him to extend such a demand. He, therefore, has rightly been convicted u/s 13(1)(d) of the Prevention of Corruption act read

with Section 13(2) thereof.

For the reasons stated hereinabove, I find no ground to interfere with the conviction of the appellant. However, considering all the facts and circumstances of the case, including that the case was registered about 14 years ago, the sentence awarded to the appellant on both the counts is reduced from three years to two years. Both the sentences shall run concurrently and the appellant will be entitled to the benefit of Section 428 of IPC. The fine, unless already deposited, will be deposited within two weeks. The appellant shall surrender forthwith before the Trial Court. If he does not surrender, the Trial Court shall take steps to procure his presence and committing him to prison to undergo the remaining sentence.

The appeal stands disposed of.

The Trial Court record be sent back immediately along with copy of this judgment.