(2013) 07 DEL CK 0544

In the Delhi High Court

Case No : Criminal Appeal 268 of 2004

Kalyan Singh APPELLANT

Vs

State of Delhi RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2), 19(1), 7

Citation : (2013) 5 ILR Delhi 3767

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : K.B. Andley and Mr. M. Shamikh, for the Appellant; Fizani Husain, APP, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J.—Challenge in this appeal is to the judgment dated 29th March, 2004 and order on sentence dated 2nd April, 2004 arising out of CC No. 13/1999 in case FIR 3/94 PS Anti-Corruption Branch whereby the appellant was convicted for offences punishable u/s 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs. 500/-, in default of payment to undergo further rigorous imprisonment for three months on each count for his convictions u/s 7 & 13(1)(d) of Prevention of Corruption Act, 1998. Prosecution case, in brief, is that the appellant was employed in Delhi Electricity Supply Undertaking (DESU) in February 1994 and was posted at DESU Office in Keshav Puram those days. On 3rd February, 1994, at about 10:00 a.m. one Hari Chand went to the Anti-Corruption Branch office and lodged a complaint against the accused, inter alia, alleging that on receipt of excess electricity bill in respect of his residential house in Hansapuri Road, Trinagar, Delhi, he had contacted the accused on 1st February, 1994. The accused had asked him to come on 2nd February, 1994 and on 2nd February, 1994, when he contacted the accused, he demanded Rs. 300/- as bribe for rectifying his electricity bill and also told the complainant that in case he wanted to get his bill rectified, he will have to pay Rs. 300/- otherwise he should deposit the bill amount which, as per the complainant, was Rs. 791/-. At that time, the complainant expressed his readiness to give that much money to the accused. However, he was not willing to pay any bribe to the accused. As such, he requested for taking necessary action against the accused.

2. In view of the allegations of demand of bribe by a public servant made by the complainant in his aforesaid complaint, the officials of Anti-Corruption Branch decided to lay a trap for apprehending the accused red handed while accepting bribe. One government servant was associated for the trap to act as a panch witness. The complainant produced two currency notes of Rs. 100/-. It was explained to the complainant and the panch witness as to how the accused was going to be trapped. The currency notes produced by the complainant were treated with phenolphthalein powder and a solution of sodium carbonate was also prepared. It was explained to them that if anybody touches the phenolphthalein treated notes and then fingers of that person are dipped in colourless solution of sodium carbonate that solution would turn pink. Raid officer then gave practical demonstration also and thereafter that solution was thrown away and those notes were returned back to the complainant for being used as bribe money for the trap. Necessary instructions were imparted to the complainant and the panch witness for being followed by them during the trap. The complainant was told to keep the panch witness close to himself at the time of trap so that panch witness could hear his talks with the accused and also see the transaction of acceptance of bribe money by the accused and the panch witness was directed to give a signal to the raiding party by moving his hand over his head on being satisfied that the accused had accepted the money from the complainant as bribe.

3. Thereafter, the raiding team comprising of complainant, panch witness and some officials of Anti-Corruption Branch office headed by Inspector Ramesh Singh went to the office of accused. Complainant and panch witness were asked to contact the accused for the transaction of handing over of bribe money to the accused by the complainant as per the plan. The accused was found available in his office and he told the complainant that his bill had been rectified and then he took out the corrected bill from the drawer of his table. Thereafter the complainant told the accused that he had brought the amount of Rs. 300/- as demanded by him and then the accused told the complainant to give him the money. The complainant took out the phenolphthalein treated notes and gave the same to the accused who accepted them with his left hand. The panch witness gave the prearranged signals to the members of the raiding party and then members of the raiding party rushed to the spot. They were informed by the complainant that accused had accepted the bribe money and was holding the same in his left hand fist. The raid officer disclosed his identity to the accused and informed him that he had accepted Rs. 300/- as bribe from the complainant for correcting his electricity bill. The accused confessed his guilt and sought

pardon. Thereafter, the raid officer recovered the bribe money from the left hand of the accused. Numbers of those recovered notes tallied with the numbers earlier noted in the pre-raid proceedings. Then the solution of Sodium Carbonate was prepared at the spot in which wash of left hand of the accused was taken and that solution turned pink which confirmed that accused had accepted bribe money from the complainant. The solution was then transferred into two bottles which were sealed and labelled and seized vide memo Ex. PW-5/B. The tainted notes were also seized by the raid officer at the spot vide memo Ex. PW-5/A. Post raid report Ex. PW-6/A was also prepared at the spot by the raid officer. Raid officer then prepared a rukka Ex. PW-8/A and sent the same to Anti-Corruption branch through a constable for registration of an FIR u/s 7/13 of Prevention of Corruption Act, 1988 on the basis of which FIR Ex. PW-8/B was registered.

4. Further investigation was handed over to Inspector Sobhan Singh who prepared site plan Ex. PW-9/A of the place of acceptance of bribe by the accused. He also recovered the bill Ex. PW5/D of the complainant from the table drawer of the accused and seized it vide memo Ex. PW5/E. Inspector Sobhan Singh deposited the case property in the Malkhana. During the course of investigation, the same were sent to CFSL for chemical analysis and later on CFSL report Ex. PW4/A was obtained. As per the report, the contents of the bottle gave positive test for the presence of phenolphthalein and the sodium carbonate.

5. On completion of investigation, a charge sheet was submitted against the accused on 22nd January, 1999 u/s 7 and 13(1)(d) of Prevention of Corruption Act. Charges under the aforesaid Sections were framed against the accused to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined 14 witnesses. Statement of the accused was recorded u/s 313 Cr.P.C. wherein he denied the case of prosecution, claimed innocence and pleaded false implication in the case. He did not prefer to lead any defence evidence. After hearing learned counsels for the parties, impugned order was passed which is the subject matter of present appeal. The impugned judgment has been basically challenged by the learned counsel for the appellant on following counts:-

(i) No sanction was obtained prior to launching the prosecution against the appellant. It was submitted that the appellant was suspended from government service after his apprehension in the present trap and he continued to remain under suspension till the age of his superannuation and his suspension was never revoked. That being so, he continued to be in service and could not have been retired. Under the circumstance, the Court could not have taken cognizance against him without there being a sanction for his prosecution from the competent authority as provided u/s 19(1) of the Act. Reliance was placed on a judgment of Madras High Court, T.S. Ramaswamy Vs. State of Tamil Nadu, .

(ii) The appellant was posted in Keshav Puram area. He was not dealing with the electricity bill matters of the area of Trinagar where the complainant resided. As such, he was not in a position to get the amount of bill in question corrected/ rectified. It is the case of complainant himself that on receipt of excessive bill, he contacted AFO, who in turn referred him to the concerned officer. Since the appellant had no authority to rectify the bills pertaining to Trinagar area, therefore, there was no question of that concerned officer to refer the complainant to him or thereafter his demanding any bribe from the complainant. The complainant did not make any complaint to the department regarding demand of any bribe by the appellant. Merely because the bill was recovered from the drawer of the appellant does not mean that he was the concerned clerk for dealing with that bill. No evidence has been led by prosecution to prove that he was the dealing clerk and the burden to prove this fact was squarely upon the prosecution. Reference was also made to the personal search memo of the appellant to show that nothing incriminating was recovered from the same. As such, it was submitted that the impugned order deserves to be set aside.

7. Per contra, it was submitted by learned Public Prosecutor for the State that there was no need for obtaining sanction for prosecution of the appellant, inasmuch as, admittedly the appellant had retired on 28th February, 1991 and charge sheet was filed on 22nd January, 1999. Since on the date of filing of the charge sheet and when cognizance of the offence was taken, the appellant was not a public servant, therefore, there was no need to obtain any sanction for his prosecution. The retirement was never challenged by the appellant at any point of time on the ground that due to his suspension on account of this criminal prosecution he continued to remain in service. The authority relied upon by the learned counsel for the appellant was sought to be distinguished by submitting that no such rules have been shown by the appellant unlike that case for substantiating his submission that unless the suspension order was revoked or modified, the appellant could not have been retired.

8. As regards the submission that the appellant was not the dealing clerk pertaining to the area of Trinagar, reference was made to the testimony of PW-7 and PW-12 who had deposed that the appellant was doing the job of rectifying the bills or rectifying the mistake in the electricity bills issued to the consumers and no suggestion was given to those witnesses that appellant was not competent to deal with the electricity bill in question. As such, it was submitted that this plea has no legs to stand.

9. It was further submitted that the incriminating articles were seized vide separate memo and the same was not required to be shown in the personal search of the appellant. All the prosecution witnesses proved the case of prosecution beyond reasonable doubt and therefore, the appellant was rightly convicted of the offence alleged against him. The impugned order does not suffer from any infirmity which calls for any interference. As such, the appeal is liable to be dismissed.

10. It is undisputed case of the parties that the charge sheet was filed in the Court on 22nd January, 1999 while the date of superannuation of the appellant

was 18th February, 1998, meaning thereby, on the date when the charge sheet was submitted in the Court, the appellant ceased to be a public servant and, therefore, in view of the settled principle enunciated in various authorities viz. Parkash Singh Badal and Another Vs. State of Punjab and Others, ; Abhay Singh Chautala Vs. C.B.I., and. R.S. Nayak Vs. A.R. Antulay, , no sanction was required.

11. However, learned counsel for the appellant has tried to take a plea that since the appellant was suspended and on the date of his superannuation, the order of suspension was neither revoked or modified, the appellant continued to be in service and, therefore, before launching prosecution against him, sanction was pre-requisite.

12. In the judgment cited by the learned counsel for the appellant, the concerned accused, who was a public servant was a railway employee. He was placed under suspension w.e.f. 8th December, 1984 on the basis of criminal offence alleged against him and charge sheet was filed in Court on 30.4.1985, without a sanction for his prosecution as required u/s 6 of the Prevention of Corruption Act, 1947. Railway Discipline Rules were referred to on behalf of the convict before the High Court wherein it was provided that a suspension order shall continue to remain in force until is modified or revoked by the competent authority. Since in that case it was found that the suspension of the convict/ appellant was never revoked, it was held that he continued to be in service even though he had reached the age of superannuation and, therefore, sanction was necessary. Things are entirely different in the instant case, inasmuch as, the appellant has neither taken a plea either during the cross-examination of PW-12 Sh. Ganpat Shakarwal, who deposed that the appellant had retired on 28th February, 1998 nor during his own statement u/s 313 Cr.P.C. that he had not retired because of the suspension order and that he continued to be in service. In fact, he has never challenged factum of his retirement in the absence of revocation of suspension order. He has not also filed any service rules applicable to him which may provide that an employee under suspension would not retire if his suspension is not revoked as was the rule in the case before Madras High Court. As such, this judgment does not help the appellant. Since the appellant was no longer a public servant when the charge sheet was submitted and cognizance was taken by the Court, as such, no sanction for his prosecution was required to be obtained from any authority.

13. As regards the submission that the appellant was not dealing with the electricity bill of the area of the premises No. 4210, Hansapuri Road, Trinagar where the complainant resided, same is without any substance, inasmuch as, PW-7 Sh. S.K. Saroha who was posted as Assistant Financial Officer, Delhi Vidyut Board, Keshav Puram on 13th October, 1998 deposed that appellant was functioning and employed as senior clerk in billing section during that period in the said office. He was doing the job of rectifying the bills/rectifying the mistakes in the electricity bills issued to the consumers. In the cross-examination, he deposed that there were 7-8 bill clerks functioning in the office at Keshav Puram,

DESU office during the year 1998. Complaint regarding rectification of mistake and defect in the bill was marked by AFO to his immediate junior. No suggestion was given to this witness that the appellant was not competent to rectify the bills or mistakes in the electricity bills pertaining to the area where complainant resided. PW-12 Sh. Ganpat Shakarwal was posted as APOB-IV at DVB, Keshav Puram in the year 1999 and has deposed that Kalyan Singh was working in AFO, Keshav Puram, DVB as Senior Clerk. To him also, no suggestion was given to the effect that the area allotted to the appellant was confined to Keshav Puram and he was not competent to deal with the bill in question. It was also not put to the complainant that at the time of trap, the appellant had not shown him the corrected bill Ex. PW-5/D as claimed by him. Investigating Officer has also deposed that he had seized this bill vide memo Ex. PW5/E which reflects that the corrected bill was recovered from the table drawer of the accused. Under the circumstances, it is proved that the appellant was the concerned clerk who was referred by AFO for correction in the bill otherwise the bill would not have been with him and so demand of bribe by him cannot be said to be improbable. The statement recorded u/s 313 Cr.P.C. of the appellant goes to show that one is of denial simplicitor and even in this statement, no plea was taken by the appellant that the area of Trinagar was not within his jurisdiction and, therefore, he was not competent to deal with electricity bill in question. Under the circumstances, this plea taken by the appellant in the grounds of appeal is not even substantiated by the record.

14. The complainant has substantiated his complaint with Anti-Corruption Branch, laying of trap and the subsequent recovery of bribe and the bill from the appellant. Despite cross-examination, his testimony could not be assailed. He has no axe to grind against the accused so as to falsely implicate him. His evidence is fully trustworthy, reliable and inspires full confidence. In fact as observed by the Supreme Court in State of U.P. Vs. Dr. G.K. Ghosh, : by and large a citizen is reluctant to complain the vigilance department and to have a trap arranged even if illegal gratification is demanded by a government servant. It is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance that he adopts the course of approaching the vigilance department for laying a trap. His evidence cannot, therefore, be easily or lightly brushed aside.

15. Moreover, evidence of complainant is fully corroborated by the panch witness. Panch witness has also deposed that when the accused was apprehended and challenged by the raid officer he became perplexed and also tendered apology, which part of his testimony goes unchallenged as no cross-examination was effected on this point. This conduct of accused is also another incriminating piece of evidence against him. From the evidence of the complainant, panch witness and the raid officer, prosecution was able to establish its case beyond any reasonable doubt and the appellant was rightly convicted by the learned Special Judge, Delhi and sentenced accordingly. Neither the order of conviction nor of sentence suffers from any infirmity which calls for interference.

As such there is no merit in the appeal. Same is accordingly dismissed.

