(2016) 08 GAU CK 0046

In the Gauhati High Court

Case No : Criminal A. No. 106 of 2007

Md. Abedur Rahman APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 10-08-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, Section 19(3), Section 7

Citation : (2016) CriLJ 5007 : (2017) 2 RCRCriminal 134

Hon'ble Judges : Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : B.M. Choudhary, Advocate, for the Appellant; B.J. Dutta, Addl. P.P, for the Respondent

Final Decision : Dismissed

Judgement

Paran Kumar Phukan, J. (CAV) - This appeal is directed against the judgment and order dated 14.05.2007 passed by the learned Special Judge, Assam, Guwahati in Special Case No. 19(A)/2001 convicting the appellant under Section 7 read with Section 12 of the Prevention of Corruption Act, 1988 and sentencing him to rigorous imprisonment for 1 (one) year and to pay a fine of Rs. 500/-, in default, to imprisonment for 1 (one) month.

2. This is a case of offering bribe to a CBI Inspector by the appellant for showing favour to him in a case which was under investigation by the CBI. According to prosecution on 07.06.1995 the accused appellant, who was at that time, serving as UD Assistant in the District Animal Husbandry and Veterinary Department at Nagaon, on being called by the CBI, in connection with the investigation of a case, came to the camp office of the CBI at Basistha, Beltola road and straightway went to the CBI Inspector, Sri Girish Bharadwaj, and offered him an envelope containing Rs. 5,000/- in 50 rupee denominations bearing the seal of Central Bank of India, Nagaon with a request to protect him from the case under investigation. He was immediately caught by the CBI Inspector and was produced before the Superintendent of Police, CBI who was also camping in the

camp office at that time in connection with the investigation of the case.

3. A written FIR relating to the occurrence was lodged by the Inspector, Girish Bharadwaj with the Superintendent of Police, CBI Camp office, Guwahati, Beltola which was forwarded to the Superintendent of Police, Anti Corruption Branch, Government of Assam subsequently along with the accused for necessary action. Accordingly, a case under Section 12 read with Section 7 of Prevention of Corruption Act (in short, P.C. Act) was registered and investigation was entrusted to Mr. K.M. Das, Inspector Anti Corruption Branch, who on completion of investigation, submitted charge sheet against the accused appellant under Section 12 read with Section 7 of the P.C. Act.

4. In order to prove the charge, the prosecution examined 7 witnesses during the trial which commenced before the learned Special Judge, Assam, Guwahati. The defence plea was that the CBI Inspector demanded money from the appellant to protect him in the case under investigation and on refusal to do so this case has been foisted against him.

5. I have heard Mr. B.M. Choudhury, learned counsel appearing for the appellant and also Mr. B.J. Dutta, learned Additional Public Prosecutor, Assam.

6. Mr. B.M. Choudhury, learned counsel appearing for the appellant, canvassing innocence of the accused appellant, submitted that the ingredients of offence under Section 7 of the P.C. Act have not been proved. He also criticized the prosecution for its failure to produce any documentary evidence to show that the case was pending before the CBI for investigation against the accused appellant which, according to Mr. Choudhury, makes the prosecution case doubtful. It is next contended that the entire trial got vitiated due to improper investigation of the case. It is contended that the Investigating Officer, P.W. 7, who was posted as Deputy Superintendent of Police in the Vigilance and Anti Corruption Department, without conducting any investigation, submitted charge sheet against the accused appellant, on the basis of materials collected by the CBI, who had no jurisdiction to conduct the investigation of the case since the appellant was an employee of the Government of Assam and the occurrence took place at Guwahati and no consent of the Government of Assam was obtained to conduct the investigation as required under Section 6 of the Delhi Special Police Establishment Act, 1946.

7. Controverting the submission, Mr. B.J. Dutta, learned Additional Public Prosecutor contended that it is a case of a public servant attempting to offer bribe to another public servant (CBI Inspector) for showing favour in a case which was pending for investigation. Although the CBI Inspector refused to accept the bribe money, that would not absolve the accused appellant of the offence under Section 7 read with Section 12 of the P.C. Act. All the essential ingredients of Section 7 as well as Section 12 of the P.C. Act have been established against the accused appellant. It is next contended that the although the prosecution has not produced any documentary evidence regarding the

pendency of the case under investigation of the CBI in which the accused appellant was also suspected to be involved, but the same has not been denied during the trial of the case and non-production of any documentary evidence in this regard would not affect the core of the prosecution.

8. Advancing further, Mr. B.J. Dutta submitted that the case was initially registered by CBI but when it subsequently came to the notice of the CBI that the investigation should be handed over to the Vigilance and Anti Corruption Department of the Government of Assam, since the accused appellant was an employee of the Government of Assam and the occurrence took place at Guwahati, the investigation file was handed over to the Vigilance and Anti Corruption Department and there is nothing to show that any objection was raised during the trial of the case in this regard and no prejudice is shown to have been caused to the accused appellant and consequently, the plea is not sustainable in law.

9. Before adverting to the submissions of the learned counsels, it is essential to have an overview of the evidence of the prosecution witnesses. P.W. 1, Girish Bharadwaj is the CBI Inspector to whom the bribe was allegedly offered by the accused appellant with a request to save him from the case which was pending against him for investigation by the CBI. His positive evidence is that on 07.06.1995, the accused appellant came to the CBI camp office at Beltola and offered him an envelope requesting him to save him from the case. On opening the envelope a bundle of notes of 50 rupee denominations amounting to Rs. 5,000/-was found inside the envelope. He immediately caught the accused appellant and took him to the S.P., CBI, who was also camping in the office at that time in connection with the case under investigation. P.W. 1 immediately lodged an FIR which has been tendered in evidence as Ext. 1 and he has proved the same and also proved the forwarding note of the S.P., CBI vide Ext. 1 (2). He also proved the seizures Ext. 2 by which the notes were seized. The bundle of 50 rupee notes were also produced during the trial containing the bank seal of the Central Bank of India, Nagaon Branch, vide M.Ext. 1. In cross-examination, defence could not elicit anything of importance from him and it was only suggested that he demanded illegal gratification from the accused appellant and on his refusal to do so, a false case has been foisted against him, which P.W. 1 vehemently denied.

10. The other witness examined by the prosecution is P.W. 2, Hardeep Singh, another CBI Inspector who was present at that time in the camp office in connection with the investigation of the case and he claims to have seen the accused appellant offering the brown envelope to P.W. 1 and he was present when P.W. 1 opened the envelope and found the 50 rupee notes. In cross-examination, also he reaffirmed that the accused appellant came to the office and immediately offered the envelope containing the money. P.W. 2 is an eye witness to the occurrence and he had seen the accused appellant offering the money to P.W. 1. Close on the heels of P.W. 1 and P.W. 2, P.W. 3, Vinod Kumar a

constable of CBI, who was sitting in the office with P.W.1 at the relevant time, saw the accused appellant coming to the office and handing over the envelope containing notes to P.W. 1. His evidence is that the money was offered to the CBI Inspector by the accused appellant to drop his name from the case under investigation. It was he who took the accused appellant to the Anti Corruption Branch at Noonmati accompanied by P.W. 1 and A.S.I. Pratap Singh and police constable Jairaj. The evidence of P.W. 1 to P.W. 3 is partly corroborated by P.W. 4, Sri Jayraj, a constable in the CBI, who was present in the camp office at that time. Although he had not seen the accused offering the envelope to P.W. 1, his evidence reveals that the bundle of notes were seized in his presence and he proved his signature in Ext. 3 and he also claims to have accompanied the accused appellant to the office of the Anti Corruption Branch at Noonmati.

11. Turning to the evidence of P.W. 5, Sri Krishna Mangal Das, I have found that he was on deputation to CBI from Arunachal Pradesh. According to him, on 23.10.1996 the Guwahati Branch office has seized one document from him in connection with ACB Case No. 2/96 corresponding to CBI Case No. RC 13(A)95-SHG. P.W. 5 appears to have conducted the initial part of the investigation. According to him, he seized the amount of Rs. 5,000/-, one brown envelope from P.W. 1, Girish Bharadwaj vide seizure Ext. 2. on 07.06.1995 and it was later on handed over to Mr. K.N. Deka, P.W. 7 who conducted further investigation after the case was handed over to Anti Corruption Branch, Government of Assam.

12. P.W. 6, Dr. Harendra Nath Kakoti was the sanctioning authority of the accused appellant and was functioning as a Director of Animal Husbandry & Veterinary Department. His evidence is that after due application of mind, he accorded the sanction of the accused appellant for prosecution and he proved the sanction as Ext. 5. P.W. 7, Sri Khagendra Nath Deka was the Investigating Officer and his evidence reveals that on 08.07.1996 he was entrusted by the then Officer-In-Charge to complete the investigation of the case and accordingly he took up the investigation and recorded the statement of the informant, P.W. 1. His evidence also reveals that on 23.10.1996 he seized three items from Sri K.M. Das, inspector, CBI, P.W. 5 who was the previous Investigating Officer vide Ext. 4 and all these documents have been proved by him and it was he who submitted the charge sheet against the accused appellant. In his cross-examination, he admitted that he did not examine any witness and his evidence clearly reveals that the initial part of the investigation was done by P.W. 5, Inspector, CBI.

13. On an overall assessment of the entire evidence on record, it emerges that the accused appellant was working in the District Animal Husbandry and Veterinary Department and posted at Nagaon. He came to the CBI camp office at Beltola in connection with a case under investigation by the CBI in which he was suspected to be involved and immediately on arrival he offered an envelope containing Rs. 5,000/- to the CBI Inspector, P.W. 1, Girish Bharadwaj. He was immediately caught and taken him to the S.P., CBI. The FIR was lodged and the accused appellant was forwarded to the Anti Corruption Branch of the

Government of Assam at Noonmati. Investigation was initially entrusted to P.W. 5 by the S.P., CBI but subsequently it was handed over to Vigilance and Anti Corruption Branch of the Govt. of Assam for investigation and accordingly investigation was conducted by Deputy Superintendent of Police, P.W. 7 and he submitted the charge sheet.

14. It is an admitted fact that the CBI handed over the case to the Anti Corruption Branch at a later stage and initially the investigation was entrusted to P.W.5. When subsequently it was found that CBI has no jurisdiction to investigate the case and as the accused appellant was an employee of the Government of Assam, and no consent was obtained from the State Government, it was handed over to the Anti Corruption Branch. Now the pertinent question is whether initial investigation of the case by the CBI would vitiate the entire investigation of the case. In my considered view even if one part of the investigation has been carried out by P.W. 5 it cannot be said to be illegal. There is nothing on record to show that any objection had been raised by the defence in this regard and there is also nothing in the record to show that any prejudice has been caused to the accused appellant by the investigation carried out by P.W. 7. He recorded the statement of the informant but admitted that he could not interrogate the other witnesses due to their non-availability in the office when he visited the office.

15. Even if I take into consideration the evidence of P.W. 1, Girish Bharadwaj who is the informant and the main witness of the case then also it is established that the accused appellant committed the crime. It is established beyond doubt that he went to the office and offered Rs. 5,000/- to P.W. 1 and he was immediately caught and handed over to police. The defence plea that P.W. 1 demanded money and on refusal by the accused appellant to do so a false case has been foisted against him, is not found to be acceptable. While taking note of the findings recorded by the learned trial court, I am fully in agreement that the prosecution has proved the charges made against the accused appellant.

16. In the facts and circumstances of the case, I do not find any infirmity in the judgment of the learned trial court and resultantly, the same stands affirmed. The appeal is dismissed.

17. The accused appellant is directed to surrender before the learned trial court within a period of 1 (one) month from today to serve out the sentence.

18. Send down the LCR along with a copy of this judgment to the learned trial court for information and necessary action.

