(2013) 07 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 9 of 2010

Param Dev		APPELLANT
	Vs	
Central Bureau of Investigation		RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2014) 2 CCR 251 : (2013) CriLJ 4790 : (2013) 3 ShimLC 1645

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : R.L. Sood and Arjun Lal, for the Appellant; Sandeep Sharma, Asstt. Solicitor General and Varun Chandel, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—In this appeal, the appellant has laid challenge to his conviction passed by the learned Special Judge in Sessions Trial No. 9-S/7 of 2003 decided on 4.1.2010, whereby he stands convicted for committing of conspiracy, punishable u/s 120B of the Indian Penal Code, read with Sections 7, 13(2) and under Sec. 12 read with Sections 7, 13(2) of the Prevention of Corruption Act, 1988, hereinafter referred as "the Act" for aiding/abetting co-accused an Army Havaldar Surjeet Kumar a public servant in obtaining and receiving illegal gratification other than legal remuneration of Rs. 25,000/- from PW 2 Khem Singh for getting appointed his son in the Army and sentenced under the various offences as follows:--

All the substantive sentences were ordered to run concurrently. The convict was also held entitled for the benefit of Section 428 of the Code of Criminal Procedure.

Havaldar Surjeet Kumar, the main accused was Clerk in the Army, he being subject under the Army Act, 1950, therefore, vide order dated 3.11.2000, his custody on the request of his Commander was handed over to Lt. Col. Shri MECA Pillay u/s 125 of the Army Act for his trial by the District Court Martial. The learned Additional Solicitor General of India informed that he stood convicted and sentenced.

2. In short, the prosecution story can be stated thus. In the year 2000, Shri Nimender Singh son of PW 2 Khem Singh had participated for recruitment in the Indian Army. It is alleged that he had qualified all the tests including the written test, but his result was not declared.

(ii) On 21.9.2000, appellant Param Dev hereinafter to be referred as "the accused" was residing at Mandi, near the quarter of Havaldar Surjeet Kumar. He went to the village of Khem Singh where he contacted him (PW 2) and informed him that co-accused Havaldar Surjeet Kumar had received a telephonic message from one Ramesh posted in the Army Branch Recruitment Office (BRO), Ambala, who told that his son Nimender Singh having a particular roll number can be recruited in the Army subject to payment of Rs. 40,000/-.

(iii) PW 2 Khem Singh was brought by them to the Branch Recruiting Office, Mandi and introduced him to his co-accused Havaldar Surjeet Kumar at his residence. Havaldar Surjeet Kumar aforesaid told PW 2 Khem Singh that his son had certain shortcomings, therefore he could not be included in the first select list, but however, can be recruited on paying Rs. 40,000/- and he should arrange for money by 9 p.m. on the same day, failing which, he would inform said Ramesh that PW 2 could not arrange the amount.

(iv) PW 2 Khem Singh told Havaldar Surjeet Kumar that he would be able to arrange this much amount. On this, Havaldar Surjeet Kumar settled the deal with him for Rs. 25,000/- provided it is paid same evening and not to tell about it to any one. Khem Singh contacted PW 4 Bharat Kumar of his village accompanied by the accused Param Dev. They visited in Car and arranged money from Sudershan Kumar, father of Bharat Kumar. Khem Singh being an ex-serviceman did not want to pay any bribe, thus, he on reaching Mandi went to Vigilance office with PW 4 aforesaid and made a written complaint Exts. PW 2/A to PW 6 Inspector Sita Ram, Anti Corruption Zone, Mandi. He also informed him that he had borrowed money from Sudershan Kumar resident of Village Padhru, District Mandi and showed the currency notes worth Rs. 25,000/- which were of Rs. 100/- and Rs. 50/- denomination with following serial numbers, which were in three bundles:--

(v) PW 6 Inspector Sita Ram on the basis of the complaint, registered FDR Ext. PW 6/A u/s 13(2) of the Act and took over the investigation of the case. To lay a trap, a raiding party consisting of PW 4 Bharat Kumar, LHC Chet Ram, LHC Inder Singh and HC Kishan Singh was formed. In their presence, he gave demo. He took out phenolphthalein powder and sodium carbonate from his investigation kit, arranged for two glasses of water, put both powders in different glasses but its colour did not change. Thereafter, he mixed the water of both the glasses, which turned light pink. The members of the raiding party were made aware of the chemical reaction of the said solution and how it worked. The light pink solution aforesaid was put into a nip Ext. PW 2/A and sealed with seal impression

''H'' and a slip was also affixed on the nip, which was signed by PW 4 Bharat Kumar and LHC Chet Ram. He also took sample of sodium carbonate in a match box Ext. PW 2/B and also of phenolphthalein powder in another match box Ext. PW 2/C. These matchboxes were sealed with the same seal. The nip as well as two packets of powder aforesaid were taken into possession vide memo Ext. PW 4/A.

(vi) Thereafter, the serial numbers of currency notes of Rs. 25,000/- which were produced by PW 2 Khem Singh were taken into possession vide memo Ext. PW 1/9. These three bundles are Exts. PW 1/5 to 7. These currency notes were treated with phenolphthalein powder and were put into the right pocket of PW 2 Khem Singh with the instructions that neither he should touch it nor shake hands with anybody, but however, on demand, to hand over to co-accused Havaldar Surjeet Kumar Bhomik. To this effect, a memo Ext. PW 9/A was prepared. PW 4 Bharat Kumar was directed to act as a shadow witness to accompany PW 2 Khem Singh and hear the conversation of the accused with the complainant and to give a signal by waving his hands when the currency notes are handed over to the accused persons.

(vii) The hands of the members of the raiding party were got washed with fresh water. PW 6 Inspector Sita Ram had also washed his hands. Thereafter all the members of the raiding party proceeded on foot to the quarter of the accused Param Dev, where the complainant was directed to meet.

(viii) PW 6 Inspector Sita Ram along with other officials of the raiding party stood at a distance, whereas, PW 2 Khem Singh and PW 4 Bharat Kumar were ahead to the residential quarter of Param Dev accused. After sometime, PW 4 Bharat Kumar gave a signal. On this, Inspector Sita Ram along with raiding party rushed to the spot. On reaching there, they found accused Param Dev and Surjeet Kumar along with PW 4 Bharat Kumar present. A constable was sent to call PW 1 Jagmohan Singh, a Bank officer from the vicinity to visit the spot. He reached there. PW 2 Khem Singh disclosed to Inspector Sita Ram that on demand he had handed over the currency notes to accused Surjeet Kumar Bhomik, to which he further handed it over to accused Param Dev and he kept it in the locker of his Godrej Almirah.

(ix) PW 6 Inspector Sita Ram called for a tub and a jug of water from PW 1 Jagmohan Singh. Tub was washed with clean water. Inspector Sita Ram prepared the mixture of Sodium Carbonate and put it in the water, but its colour remained unchanged. With this solution, he got washed the hands of accused Surjeet Kumar, which turned light pink. Said solution was put into a nip Ext. PW 1/8. It was sealed with seal impression ''H''. Thereafter the tub was washed with fresh water and again the solution of sodium carbonate was prepared in the tub, but its colour remains unchanged. The accused Param Dev was told to wash his hands in the said solution, it also turned into light pink colour. This nip was also taken into possession vide memo Ext. PW 1/2.

(x) Inspector Sita Ram asked accused Surjeet Kumar as to where he had kept the currency notes. He disclosed that it is in the almirah of accused Param Dev. Param Dev opened the said almirah and took out the tainted currency notes, handed it over to Inspector Sita Ram. Its serial numbers matched with memo Ext. PW 1/9. These were made into a parcel Ext. PW 1/4 and sealed with seal impression ''H''.

(xi) Inspector Sita Ram (PW 6) again after washing the tub prepared the solution of sodium carbonate and washed the locker in which currency notes were put, the colour of such water also became light pink and was taken into possession in nip which was also sealed with seal ''H'' vide memo Ext. PW 6/A.

(xii) Both the accused persons were arrested. The accused as well as the case property was brought to the Police Station. The case property consisting of currency notes and nips aforesaid were deposited with MHC Kishan Chand of Police Station Anti Corruption Zone, Mandi, to keep safe in Malkhana.

(xiii) Thereafter, as per the orders of S.P. (Vigilance), Shimla, Inspector Sita Ram handed over the case file for further investigation to the Superintendent of Police, C.B.I. Chandigarh, because of the involvement of Army Havaldar Surjeet Kumar Bhomik, who further referred it to Dy. S.P. (CBI) PW 7 B.R. Prabhakar.

(xiv) PW 7 Dy. S.P., B.R. Prabhakar during investigation collected the result-sheet Ext. PW 5/B and the abstract of Log Book Ext. PW 7/2. On 21.11.2000, he sent nips of the hand wash of the accused persons as well as of the locker of almirah wash along with two match boxes containing the aforesaid power to C.B.I. Forensic Science Laboratory, Delhi for analysis. Report of the Forensic Science Laboratory Ext. PW 7/4 was received on 16.1.2001. The case file was handed over to PW 8 R. Upasak, Dy. S.P. C.B.I., Shimla Unit through Inspector Subhash Sain.

(xv) The custody of accused Havaldar Surjeet Kumar Bhomik was handed over to the Army on the request of Commanding Officer. He stood convicted and sentenced by the court-martial and the C.B.I. was accordingly informed about his conviction, whereas accused Param Dev stood sent for trial to the Special Judge, Shimla, for the offence of commission of conspiracy.

3. After perusing the challan and documents appended thereto, the accused Param Dev was accordingly charge-sheeted for the conspiracy hatched with his co-accused for the offences aforesaid, to which he pleaded not guilty and claimed trial.

4. To prove its case, C.B.I. produced its witnesses. The accused was also examined u/s 313 of the Code of Criminal Procedure. The circumstances, which were found attendant upon him were put to him, to which he denied. Further, he alleged false implication in this case. The accused when called upon to enter into his defence, did not lead any evidence in defence.

5. At the end of trial, the accused Param Dev was convicted and sentenced as

aforesaid, which has been challenged in this appeal.

6. Shri R.L. Sood, learned Senior Advocate duly assisted by Shri Arjun Lal, Advocate vehemently argued that the case against the accused stands not proved. He took pains to lead me through the evidence of the prosecution witnesses in detail and tried to pinpoint the contradictions appearing in the statements of the prosecution witnesses to which according to him were material, throwing a doubt on their veracity. Learned counsel vehemently argued the accused Param Dev had never raised any demand nor the prosecution witnesses substantiated this fact, even he remained with the complainant throughout till they reached the Vigilance office which shatters the prosecution case. Further that the ingredients of the offences charged are not met. It is further pointed out that the Investigating Officer accompanied by other official witnesses did not render themselves to personal search when entered the room of the accused. PW 2 Khem Singh also admitted that the hands of Param Dev were caught by the police and forcibly dipped into the solution and further the testimony of PW 4 Bharat Kumar is an improved version of his statement recorded before the Army Court. It is also argued that it has come in the statement of PW 6 that an amount of Rs. 10,000/- was also recovered in another case of Zalam Singh from Havaldar Surjeet Kumar Bhomik, but mere is no mention as to what had happened to it. In nutshell, learned counsel submitted that the learned Special Judge has totally misread and mis-appreciated the testimony of the prosecution witnesses, which has caused prejudice to the accused. Learned counsel put his reliance on the judgment rendered by this Court in State of Himachal Pradesh Vs. Inder Mohan, wherein the judgments of the Apex Court C.K. Damodaran Nair Vs. Govt of India, Babu Lal Bajpai Vs. State of U.P., , Smt. Meena Hemke Vs. The State of Maharashtra, and Ram Prakash Arora Vs. State of Punjab, were relied upon.

7. On the other hand, Shri Sandeep Sharma, Assistant Solicitor General of India, duly assisted by Shri Varun Chandel, Advocate to counter the aforesaid arguments submitted that there is no illegality in the impugned judgment of conviction and sentence. Learned trial Court has rightly appreciated the prosecution evidence qua the conspiracy of the accused to the extent of his role. The tainted money was recovered from his Godrej almirah at his residence, but he failed to render any plausible explanation to that effect. The minor contradictions in the statements of the witnesses are bound to occur owing to the time gap taken between the alleged incident and their examination in the Court. It is further argued that the recovery of Rs. 10,000/- in another case from accused Surjeet Kumar has no relevance in the present case. The link evidence is complete and there is no fault in the impugned judgment, as such, the appeal deserves dismissal.

8. I have given my thoughtful consideration to the rival contentions of the parties and have closely, cautiously and carefully reappraised and scanned the evidence on record.

9. As already stated above, the accused Param Dev was tried, charge-sheeted, convicted and sentenced for hatching a conspiracy with main accused Army Havaldar Surjeet Kumar for receiving bribe money.

10. Criminal conspiracy u/s 120B of the Indian Penal Code, in short "the Code", postulates an agreement between two or more persons to do or cause to be done some illegal or legal act by illegal means. A mere agreement is offence, even if no step is taken to carry out the agreement.

11. The main focus of the arguments advanced by the learned counsel for the accused is that the accused Param Dev did not raise any demand, therefore, he did not commit any offence. But, the conspiracy to commit a crime and the crime itself are two different offences. Conspiracy precedes the commission of crime and is complete before the crime is attempted or completed. It is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is continuing offence till it is executed or rescinded or frustrated by choice of necessity. A crime is definitely complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design.

12. To prove its case against accused Param Dev for the offences charged under the Prevention of Corruption Act, C.B.I. has examined various witnesses for that besides examining the complainant PW 2 Khem Singh. The explicit reliance has also been placed on the statement of PW 1 Jagmohan Singh, Assistant Manager of the Bank of India Branch, Mandi, PW 4 Bharat Kumar, a shadow witness and other official witness.

13. PW 2 Khem Singh testified that in the year 2000, his son Nimender Singh had appeared in the Army recruitment test. He was contacted by accused Param Dev to whom he identified during the trial to be the same person on 21.9.2000 at about 8 a.m. and informed that he (PW 2) was called in the office of B.R.O. Mandi by his co-accused Havaldar Surjeet Kumar Bhomik an Army man, as he had received a telephonic call from Ambala from the driver of one Colonel, whereby he told that his son had given a test for recruitment in Army and he wanted to speak regarding that test. He also stated that thereafter, he along with accused Param Dev proceeded to Mandi and went to the house of Bhomik. He was sitting in his uniform and Mr. Bhomik told him that his son is lacking some marks in the tests as per the information received from Ambala, but could be selected in case PW 2 aforesaid pay an amount of Rs. 40,000/- Since this was a high amount and beyond his reach, the bargain was stuck to Rs. 25,000/- to which he insisted upon him to pay positively by 9 p.m., failing which he would inform the person at Ambala not to include the name of his son in the select list. Thereafter, he connected his friend PW 4 Bharat Kumar and took Rs. 25,000/- from his father Ex-Capt. Sudershan Kumar. By that time, it was evening and he directly went to the office of Vigilance and made a complaint Ext. PW 2/1 under

his signatures to PW 6 Inspector Sita Ram. He furnished three bundles of currency notes of Rs. 25,000/- in the denomination of Rs. 100 and Rs. 50/-. Its numbers were got noted down and thereafter the demonstration procedure was conducted in their presence as aforesaid. The tainted money was put in his right pocket by Inspector Sita Ram with the instructions as aforesaid. PW 4 Bharat Kumar was a shadow witness. He went to the room of accused Param Dev and found co-accused Havaldar Bhomik sitting there who asked him whether he had arranged for money, lest his son would not be selected. He demanded money. On this, PW 2 Khem Singh asked whether his son would be selected and thereafter he took the money and handed over it to Mr. Bhomik and he deposited the money in the upper portion of the almirah, however, he did not know who was in occupation of the room. When Bharat Kumar passed on signal, residence of the accused was raided. One more person was called by police in the room, solution was prepared, hands of Bhomik and the accused were washed, it turned pinkish, which was preserved in separate nips, which were sealed in the presence of PW 1. Precisely, the tainted money was recovered from the Godrej-Almirah. He identified the bundles of currency notes Exts. PW 1/5 to 7 which correspond to the serial numbers which were noted earlier. Since he did not render the other details, he was also cross-examined by the learned Public Prosecutor on getting permission from the Court and then he admitted that Param Dev accused had contacted him and informed about the telephonic call from one Ramesh. The accused aforesaid took him to BRO, Office, Mandi and got him introduced with Havaldar Surjeet Kumar whose residence was besides the office of BRO. He also admitted that when bribed money was handed over to Surjeet Kumar, he further handed it over to accused Param Dev for keeping in his almirah in safe custody to which Param Dev kept the currency notes in locker of his Godrej almirah. After the recovery of the currency notes from the almirah, the almirah wash was also taken by mixing the solution which turned pink and was taken into possession in a nip which was sealed. He further stated that he did not remember the details because the matter was more than 8 years old. A fatal suggestion has been put to him in affirmative, which was admitted by him to be correct to the effect that the bribed money was demanded by Havaldar Bhomik and paid to him and no one else, but it has not been disputed that it was not the room of the accused Param Dev. His admission that Param Dev''s hands were dipped by the police forcibly into the solution, is of no consequence. Though, he admitted that Param Dev accused had remained with him and Bharat Kumar right from the morning onwards and accompanied him and Bharat Kumar in their vehicle even when they went to the office of Vigilance, but did not remember whether he was with them to Chail Chowk, but quite possibly he had accompanied them, but again stated that he did not remember whether he was with them or not.

14. The complainant is an ex-serviceman. The incident in question had taken place in the year 2000 and his statement was recorded before the Court in the year 2008, but he categorically stated about having been contacted by accused Param Dev at his residence and conveyed the message of accused Havaldar

Surjeet Kumar Bhomik. It is also evident that he remained with the complainant till he arranged for money. He also introduced him to Havaldar Surjeet Kumar, he was in the room of accused Param Dev, where the money was handed over and it was allegedly recovered from the Godrej almirah of Param Dev. This fact has categorically been stated and corroborated by PW 4 Bharat Kumar without mincing any word. PW 4 aforesaid stated that accused Param Dev had taken to his quarter in Palace Colony, Mandi located below the office of BRO. He also stated about the deal. He further stated that he arranged this money from his father who was also an ex-serviceman working in Chail Chowk. It was handed over to Havaldar Surjeet Kumar, which he further handed over to accused Param Dev with a direction to keep the currency notes in the almirah to which Param Dev kept. He stated that it was Surjeet Kumar Bhomik who demanded money and not Param Dev accused. He also stated that from the village Bagi to Mandi, accused Param Dev was with them in his car and went to the house of accused Param Dev. He further admitted that he was a witness in the court-martial proceedings against Surjeet Kumar Bhomik, but however when confronted with his statement Ext. D-2 he did not state that Havaldar Bhomik had handed over the money to Param Dev to keep it in the almirah, but self stated that he had stated before the court-martial which might not have been recorded. He further stated that an amount of Rs. 10,000/- was also recovered from Surjeet Kumar Bhomik which was a bribe money in some other case. He categorically stated that the almirah was existing in the quarter of accused Param Dev and he knew that the same belonged to him. Even in his statement, the presence of Param Dev and the episode having taken place in his residential quarter has not been disputed.

15. Further, PW 6 Inspector Sita Ram while corroborating the case of the prosecution stated about the complaint and having been made to him by Khem Singh in writing and produced currency notes of Rs. 25,000/- consisting three bundles and its recovery from the almirah of Param Dev from his residence as aforesaid in the presence of PW 1 Jagmohan Singh, Bank Manager as independent witness. He also stated that the locker from where the money was recovered was washed with the sodium carbonate solution and its wash also turned pink, which was taken into possession in a nip. It was sealed with seal impression ''H''. Accused Param Dev as well as his co-accused Surjeet Kumar Bhomik was arrested.

16. PW 1 Jagmohan Singh, Assistant Manager of the Bank lent corroboration to the prosecution case and also identified nip Ext. PW 1/2 in which hand wash of accused Param Dev was sealed, which bore his signatures. He also witnessed the recovery of tainted currency notes recovered from the almirah of accused Param Dev and stated about tallying its serial numbers with the memo Ext. PW 1/3 prepared by the police earlier. According to him, the locker wash was taken into possession in a nip Ext. PW 1/8. It was sealed and identified his signatures at Point ''A''. In his cross-examination, he denied that the hands of accused Param Dev were forcefully put into the solution by police. His statement was also

recorded by the general court-martial against Havaldar Surjeet Kumar. He stated that he had disclosed whatever was asked from him. He admitted Ext. D-1 his statement having been correctly made before court-martial, but categorically stated that the currency notes were recovered from the almirah of the accused but did not know as to who had taken them out. He has also stated that at that time his memory was fresh, but now he had forgotten the incident.

17. On critical examination of the above evidence, the prosecution witnesses could not be shaken on the very material points, which establish the offence of conspiracy against the accused.

(i) It was the accused Param Dev who had contacted PW 2 Khem Singh and conveyed the message of his co-accused Havaldar Surjeet Kumar Bhomik about the telephonic call having been received from Ambala regarding the selection of his son with particulars of his roll number.

(ii) He had introduced Havaldar Surjeet Kumar to PW 2 Khem Singh and he was present when the deal was stuck for Rs. 25,000/- in his residential quarter.

(iii) Param Dev accused remained in constant touch with Khem Singh throughout, right from arranging money, accompanied him and also PW 4 Bharat Kumar in the car from village Bagi to Chail Chowk and also up to the Vigilance office, but there is nothing on record to show that Param Dev was taken by them to Vigilance office.

(iv) Accused Surjeet Kumar was present in the quarter of accused Param Dev at the time of recovery.

(v) The money was recovered from Godrej almirah of accused Param Dev.

18. Thus, the active role played by accused Param Dev and the presence of accused Havaldar Surjeet Kumar in his house and the recovery of the tainted money in Godrej almirah, proved the charge of conspiracy to commit the offence by the accused.

19. The combined effect of all the proved facts establishes conspiracy. The slight contradictions in the statements of the complainant are owing to the time gap of 8 years from the date of incident when complainant was examined in the trial Court as a prosecution witness, which are not material.

20. The learned trial Court aptly observed that accused Param Dev owed explanation, why he had developed sympathy with complainant when he was not earlier known to him. It also stands established that he was residing besides the office of BRO Palace Colony, Mandi in the vicinity of Havaldar Surjeet Kumar. The accused was not aware of the fact that the son of PW 2 Khem Singh had participated in the recruitment but it is established that this fact only was known to Surjeet Kumar Bhomik, Clerk in BRO office, Mandi who planned to take bribe and both of them hatched conspiracy for illegal purpose and Param Dev accused contacted PW 2 Khem Singh, introduced him to his co-accused, took and kept

money in his almirah which was entrusted by Havaldar Surjeet Kumar. The judgments relied upon by the learned counsel for the accused referred above are of no avail to him as none of them deal with the identical proposition or situation.

21. On the reappraisal of the evidence and for the reasons aforesaid and in absence of the cogent explanation by the accused-appellant Param Dev to which he owed, I do not find any error in the impugned judgment of conviction and sentence of accused, hence the appeal merits dismissal and is accordingly dismissed.

22. The appellant-accused Param Dev is on bail, he is hereby directed to surrender before the learned trial Court on 30.8.2013 at 10 a.m. to serve out the remaining sentence. In case, he failed to surrender, the learned trial Court shall take coercive steps for taking the accused into custody and commit him to jail. The appeal stands dismissed and disposed of. Send down the records.

