

(2001) 08 DEL CK 0029

In the Delhi High Court

Case No : Criminal Appeal No. 250 of 1994

Ram Lal Dogra

APPELLANT

Vs

State (CBI)

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Citation : (2002) 95 DLT 535 : (2002) 61 DRJ 763 : (2001) 4 RCR(Criminal) 335

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : P.R. Thakur, for the Appellant; A.K. Dutt, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—This criminal appeal is directed against the judgment and order dated 19.11.1994 of the Special Judge in Corruption Case No. 51/93 whereby the learned Judge was pleased to hold the appellant guilty under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") and further by his order dated 21.11.1994 sentenced the appellant to undergo R.I. for a period of 22 months with a fine of Rs. 1,500/- u/s 7 of the Act and in default of fine to further undergo R.I. for 4 months, further R.I. for 42 months u/s 13(1)(d) of the Act with a fine of Rs. 1,500/- and in default of payment of fine to further undergo R.I. for 4 months. Both the substantive sentences were directed to run concurrently.

2. Brief facts of the case, as noted by the learned Judge, are that:

"Jitender Kumar s/o late Sh. Chunilal Sethi, r/o 5/13, Ashok Nagar, Delhi is running a travel agency in the name and style of M/s. Sethi Travels (Regd.), 100 Amrit Kaur Market, Paharganj, New Delhi. The MCD assessed the rateable value of the house of Jitender Kumar at Rs. 5,560/- w.e.f. 14.1.1984. During the year 1988 certain additional construction was made at 1st and 2nd floor of the said house. The MCD after taking measurement of the said construction, issued notice u/s 126 of DMC Act to the said assessed proposing rateable value of Rs. 17,000/-

w.e.f. 1.4.1988. The assessed was further called upon to file objections, if any, with regard to the proposed rateable value. It is further alleged that the accused being the Asstt. Assessor & Collector, MCD got served a letter dated 20.11.1992 to the said assessed calling upon to file a copy of the objection if already filed against the said proposed rateable value within a period of 7 days. It is further stated that the complainant in compliance of said letter appeared before the accused on 27.11.1992 in the MCD office, and the accused while recording the statement of the complainant demanded bribe of Rs. 1,600/- as consideration for assessing/reducing the proposed rateable value from Rs. 17,000/- to Rs. 12,000/-. It is further stated that during that meeting the accused had also collected a visiting card of the said travel agency from the complainant and informed him that he would be coming to his shop for collecting the bribe amount on 28.11.1992 after 12 hours. It is further stated that the investigation was carried out a trap party comprising of 2 independent witnesses viz. S/sh. S.C. Agarwal and M. Maheshwaran and other police officers under the leadership of D.M. Sharma Inspector, CBI, ACB, New Delhi was constituted and the said two witnesses were also satisfied about the genuineness of the complaint. It is further stated that the complainant produced GC notes amounting to Rs. 1,600/- which he wanted to pay as bribe to the accused. The said GC notes were treated with phenolphthalein powder and the complainant was instructed to pass over the said amount to the accused on his specific demand of bribe and all the legal and necessary formalities were observed by CBI in the office and were recorded in the handing over memo and the trap party left the CBI office at about 3.30 p.m. and reached near the shop of M/s. Sethi Travels at 4.10 p.m. and took suitable positions. The complainant and witness S.C. Agarwal went into the shop of M/s. Sethi Travels and also took their positions. It is further stated that after sometime the accused came on his scooter No. DDH-7395 and entered the shop M/s. Sethi Travels and sat on the bench where the witness S.C. Agarwal was already sitting. After initial talks between the complainant and the accused, the accused demanded the bribe money to which the complainant requested that rateable value may be reduced. It is further stated that the accused informed the complainant that there should not be further bargaining and insisted for payment of the bribe. The complainant paid the bribe amount of Rs. 1,600/- to the accused who accepted the same by his left hand and with his right hand checked/counted and said that the amount was OK and that the work would be done and he thereafter kept the bribe amount in his shirt pocket. It is further stated that at about 4.30 p.m. the witness S.C. Agarwal gave the pre-appointed signal to the CBI raiding party and immediately thereafter Sh. D.M. Sharma along with other members of the trap party reached in the shop of M/s. Sethi Travels and overpowered the accused and the bribe amount was recovered in the presence of the independent witnesses and the numbers of GC notes so recovered tallied with the numbers mentioned in the handing over memo. The visiting card of M/s. Sethi Travels was also recovered from the accused. The right hand, left hand and pocket washes of the accused were taken separately in sodium carbonate solution and all turned into pink colours. These washes were separately

preserved in three different bottles duly sealed with the CBI seal and the cloth wrappers. The cloth wrappers and the paper chits pasted on the bottles were signed by the independent witnesses. The CBI seal after use was given to witness Sh. N. Maheshwaran for safe custody.

Accordingly, the accused has been charge-sheeted for offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of PC Act, 1988."

3. The prosecution, in support of its case, examined PW 1, P.V. Jayakrishnan, Commissioner of MCD, who accorded sanction for prosecution, PW 2, Jitender Kumar Sethi, the complainant, PW 3, Subhash Chand Aggarwal, the shadow witness, PW 4, Vijay Pal, a Chowkidar in the office where the accused was working and from where files were seized vide Memo Ex. PW 4/A, besides other witnesses.

4. Learned Counsel for the appellant has not challenged the recovery of currency notes, but argued that these notes were thrust upon the appellant and recovered from his possession. It was submitted by learned Counsel that the case appears to have been fabricated at the instance of the complainant who had connections with the officers in the CBI. He submitted that the FIR, Ex. PW 7/B, recorded on 28.11.1992, shows time of its recording as 10.30 a.m. while the complainant puts the time of his reaching the office of the CBI at 12.15 p.m. Therefore, according to learned Counsel for the appellant, the FIR was already in existence before the raid was conducted. Further, he pointed out that the recovery Memo, PW 4/A, shows that the files were collected from the office at 7.10 a.m. on 28.11.1992 which means that even before the FIR was recorded, the files were taken into possession. According to the learned Counsel, PW 4, Vijay Pal, categorically states that the contents of the memo were read over to him and he signed them as being correct. It was in this memo that the time shown is 7.10 a.m. Regarding the actual recovery of money from the accused, learned Counsel submitted that, according to the prosecution, the money was recovered by Maheshwaran, who was not examined. This has been deposed to by PW 2, Jitender Kumar Sethi. Learned Counsel for the State argued that PW 8, D.M. Sharma, Inspector, CBI, categorically states that he was called at 10.00 a.m. and, Therefore, the FIR had been correctly recorded at 10.30 a.m. He further submitted that in Ex. PW 4/A it has inadvertently been mentioned as 7.10 a.m. instead of 7.10 p.m. He submitted that this is a typographical error and does not cause any dent to the prosecution case. He submitted that minor contradictions in the statement of prosecution witnesses are bound to occur, but unless they go to the root of the matter, the same should have no bearing on the prosecution's case. Since the factum of raid and receiving money has been admitted, there is hardly any need for me to go into the question of the raid having been successfully conducted.

5. From the evidence of PW 2, it has been elicited that upon demand by the accused money was paid to the accused who took the money in his left hand and (SIC) asked whether it was the full amount on which he counted the same and

kept (SIC) notes in his shirt pocket. The accused thereafter told this witness that he will get the order on Money evening. PW 3, Subhash Chand Aggarwal, gave the (SIC) appointed signal and thereafter 6-7 persons of the CBI and the raiding party reached there. The other persons who had accompanied Subhash Chand Aggarwal, (SIC) also there. Officials of the CBI caught hold of both the wrists of the accused. (SIC) hand-wash being taken of the left hand and the right hand of the accused, (SIC) turned pink. Thereafter the accused was asked to remove his shirt. Before taking (SIC) the shirt, Aggarwal took out the currency notes were tallied with the handing over (SIC) Memo, Ex. PW 2/D. The pocket-wash of the shirt also turned pink. This statement (SIC) of PW 2, Jitender Kumar Sethi, is corroborated by PW 3, Subhash Chand Aggarwal (SIC) in all material particulars.

6. The question that needs to be addressed is whether the money was thrust (SIC) into the hands of the accused or it was a voluntary act on the part of the accused to (SIC) have accepted the money? From the established facts, namely, that the money (SIC) passed from the left hand to the right hand of the accused when it was counted and (SIC) placed by him into his pocket, it is clear that it was not an act of thrusting money but (SIC) a voluntary act of receiving money. The accused being a public servant went to the office of the complainant and received money from the complainant is sufficient to bring home the guilt of the accused. Inspire of minor contradictions here and there, I am satisfied that the prosecution has been able to bring home the guilt of the accused.

7. It was been argued by learned Counsel for the appellant that he FIR appears to have been ante time since PW 2, Jitender Kumar Sethi, talks of going to the office of the CBI at 12.00 but the FIR records the time of its preparation at 10.30. This, to my mind, is answered by PW 2 himself who, in his examination-in-chief, says that he went to the office of the CBI in the morning but in cross-examination he puts the time at 12.00. This discrepancy in the timing is not sufficient to knock off the prosecution's case when PW 8, D.M. Sharma, specifically says that on 28.11.1992 at about 10.00 a.m. or 10.30 a.m. he was called by the Superintendent of Police to his office when the complainant was present there. Therefore, to my mind, the FIR correctly records the time as 10.30 a.m. even though PW 2, in his cross-examination has stated to the contrary. Further, the challenge of the learned Counsel to the recovery memo, Ex. PW 4/A, is, to my mind, a typographical error and, Therefore, is not sufficient to dislodge the prosecution's case.

8. Having given my careful consideration to the material on record, I am satisfied that the judgment of conviction under challenge suffers from no infirmity. However, it was argued on the question of sentence that the appellant is 64 years old, has retired from service, spent 10 days in jail, lost all retiral benefits and is in frail health suffering from heart problem requiring constant medical attention, it would be in the interest of justice if the imprisonment is reduced to that already undergone. Learned Counsel for the State raised no objection to the reduction of sentence to that already undergone

9. Having heard learned Counsel, in the facts and circumstances of the case while upholding the judgment of conviction, I modify the sentence to that already undergone.

With the above modification, CrI. Article 250 of 1994 is dismissed.

10. Appeal dismissed with modification in sentence.