(2017) 02 CAL CK 0038

In the Calcutta High Court

Case No : C.R.A. No. 752 of 2014

Subhas Chandra Paramanik APPELLANT

Vs

Central Bureau of Investigation RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:
Prevention of Corruption Act, 1988 — Section 13(2), Section 7

Citation : (2017) 2 CalLT 179

Hon'ble Judges : Mr. Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Mr. Rabi Sankar Chattopadhyay, Mr. Subhodip Banerjee, Mr. Souvik Dutta and Mr. Imtiaz Ahamed, Advocates, for the Appellant; Mr. Ashraf Ali and Mr. Sankar Banerjee, Advocates, for the CBI

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—The appeal is directed against judgement and order dated 14.11.2014 passed by learned Judge, CBI Court No.4, Bichar Bhavan, Calcutta in Special Case No. 2 of 2012 convicting the appellant for commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act and directing him to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 7 of the Prevention of Corruption Act and to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month for the offence punishable under Section 13(2) of the said Act. Both the sentences would run concurrently.

2. The prosecution case, as alleged against the appellant, is to the effect that one Manti Devi, P.W.3, a safaiwala attached to the Carriage and Wagon Workshop, Liluah, Eastern Railway lodged a complaint against the appellant, Sr. Labour Welfare Inspector, Welfare Section of the said workshop alleging that the appellant had demanded an illegal gratification of Rs.5,000/- only from her by 24.3.2000 in order to save her from initiation of enquiries in respect of

complaints lodged against her. The said Manti Devi was unwilling to pay the bribe and, accordingly, contacted P.W.9 and lodged complaint against the appellant on 23.3.2000. Accordingly, R. C. No. 14(A)/2000-Cal was registered and investigation was commenced.

3. In the course of investigation, Investigating Officer decided to lay a trap and two independent witnesses, namely, P.W.2 and P.W.6 were requisitioned for such purpose. On 24.3.2000 all the aforesaid persons including the complainant assembled at CBI Office, Calcutta and the Investigating Agency gave a demonstration of the trap procedure and the entire exercise was reduced in writing as pre trap memorandum. Thereafter, all of them went to the place of occurrence and in the presence of the independent witnesses, namely, P.W.2 and P.W.6, the appellant demanded and received the bribe money from the complainant. Thereupon, upon the indication of the complaint the appellant was apprehended by the Investigating Officer and upon washing his hands and wearing apparels in water, the water turned into pink as phenolphthalein powder had been applied to the bribe money.

4. In conclusion of investigation, charge-sheet was filed against the appellant and charge under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act was framed and read over and explained to the appellant. He pleaded not guilty and claimed to be tried.

5. In the course of trial, prosecution examined as many as nine witnesses. The appellant, however, did not examine any witness of his own. The defence of the appellant as evident from his statement under Section 313 Cr.P.C. was to the effect that he was innocent and had been falsely implicated in the instant case over trade union rivalry.

6. It was also his specific defence that the CBI officers had thrust the bribe money into his hands and thereafter recovery was effected.

7. In conclusion of trial, the trial court by the impugned judgement and order convicted and sentenced the appellant, as aforesaid.

8. Mr. Chattopadhyay, learned Counsel appearing for the appellant submits that the prosecution has failed to prove its case beyond reasonable doubt. The star witness viz. the complainant, P.W. 3 turned hostile and has not supported the prosecution case. In the absence of her evidence there is nothing on record to establish the demand and acceptance of bribe money by the appellant. The appellant, in fact, during his examination under Section 313 of the Code of Criminal Procedure has given plausible explanation as to the recovery of money from his possession and, therefore, the conviction by the appellant is wholly unmerited. He further submits that independent witness like P.W. 8 has not supported the instant case and that there are defects in the course of investigation as the draft F.I.R. was not exhibited and the raiding party had not offered themselves for search before searching the appellant. He also submits that investigation was conducted by P.W. 9 who received the written complaint in

the instant case from P.W. 3 and hence such investigation was vitiated. He relied on various authorities in support of his arguments, namely, Banarsi Dass v. State of Haryana (2010)2 C.Cr.LR (SC) 1; State of Punjab v. Madan Mohan Lal Verma (2013) 14 SCC 153; B. Jayaraj v. State of A.P. (2014) 13 SCC 55; Subash Parbat Sonvane v. State of Gujarat 2002 C.Cr.LR (SC) 785 and Narendra Champaklal Trivedi v. State of Gujarat with Harjibhai Devjibhai Chauhan v. State of Gujarat (2012) 7 SCC 80.

9. Mr. Ali, learned Counsel appearing for the Central Bureau of Investigation, has argued that although P.W. 3 had turned hostile, demand and acceptance of bribe money had been proved beyond reasonable doubt by the evidence of other witnesses particularly P.W. 2. He submits that the defence version was not probabilised either by leading defence evidence or through cross-examination. He submitted that only during examination under Section 313 of the Code of Criminal Procedure, the appellant raised a desperate plea that CBI officers had thrust bribe money into his hands which, however, is not at all supported by the attending facts and circumstances of this case. In view of the clear evidence of P.W.2 establishing the factum of demand and acceptance of money by the appellant, statutory presumption under section 20 of the Prevention of Corruption Act is attracted and the prosecution case cannot be disbelieved.

10. Issue which, therefore, falls for decision is whether the prosecution case in the face of the complainant Manti Devi, turning hostile, has been proved beyond reasonable doubt or not.

11. P.W. 1 is a sanctioning authority in the instant case. He proved the sanction against the appellant.

12. P.W. 2 and 6 were the independent persons requisitioned by the Central Bureau of Investigation for setting up a trap on the appellant on the basis of the complaint of Manti Devi, P.W. 3.

13. P.W. 2 deposed that he worked for UBI, Vigilance Department. On 24.3.2000 he had come to Nizam Palace as directed by his superior. He was introduced to Deputy Superintendent of Police, CBI. Complainant, Manti Devi, was also present there. Another person viz. Krishnapad Biswas, an employee of Bank of India, was also present there. One letter of the complainant written in Hindi was shown to them. He can read but cannot write Hindi. The Bengali transcription was made in his presence. In that complaint it was mentioned that one Subhas Pramanick, Welfare Officer of Eastern Railway had demanded some money. They were taken in the room of D.S.P. A demonstration was made in that room. He along with Krishnapad Biswas was asked to count 20 pieces of 100 rupee notes. The numbers of the said notes were duly noted and they counted the said notes. A list was prepared in which number of the notes were mentioned and they signed over the same. One container was brought and some clean water was also brought. He was asked to wash his hands in the said liquid. After he washed his hands he was asked to keep watch whether the colour of the said liquid changed

after two minutes. They watched it for more than two minutes but the colour of the liquid did not change. Subsequently, the 100 rupee notes were mixed up with some powder, however, the name of the said powder was not known to him. Both of them were again asked to count the said notes by using their own hands and accordingly they did the same. They were asked to wash their hands in the liquid and accordingly they did so. After sometime the colour of the liquid turned pink. They were searched and were asked to keep all their articles excepting their identity cards in the office and accordingly they did so. The said notes were kept in a packet and handed over to the complainant who kept the same in her purse. They were told by D.S.P. that all of them would move to Liluah Workshop. They were told to follow the lady complainant in the office. The complainant was asked to speak with the accused loudly so that they could over-hear the conversation. The defacto-complainant was asked to put her left hand over her head after the transaction was over. The entire demonstration was reduced into writing and they put their signatures thereon. He proved his signature on the pre-trap memorandum (Ext. 2/1 and 2/2). In the pre-trap memorandum the numbers of the 20 notes have been mentioned. They were taken to Liluah Workshop of Eastern Railway at Liluah. They reached there at about 1.10 to 1.20P.M. The complainant entered inside the office and stood in front of a table where appellant was sitting in the chair. The complainant took her seat in front of the appellant. He could over-hear the appellant saying "there is some complaint against you and there is hardly any scope to get rid of the same". He further uttered that "in case of payment of the amount she would be saved." The de facto-complainant thereupon handed over the money to the appellant who took it with his right hand. The appellant counted the notes by placing the same beneath the table. Thereafter he stood up for a while and kept the money in his left pocket. Probably he got scent of their presence and brought out the money from his pocket and kept the same in the drawer of the steel table. At that time the defacto-complainant gave the signal by putting her left hand over her head and the signal was visible through the glass panel to the CBI officers who were sitting outside. He identified the appellant. The CBI officers apprehended the appellant. The appellant became puzzled at that time. Pursuant to direction of CBI he searched the money which was kept in a polythene bag. The appellant pleaded for mercy before the D.S.P. A container was collected and water was brought. The appellant was asked to wash his both hands in the said water which kept in the container and the appellant accordingly did it. After sometime the liquid turned pink. The liquid was kept in a bottle which was duly sealed and labelled. One trouser was purchased from outside and the accused was asked to change the trouser. The wearing trouser of the appellant and one handkerchief was washed in clean water and the colour also changed into pink. The said liquid was also kept in a container which was also sealed and labelled. He signed over the same. The numbers of the notes were verified with the number as mentioned in the pre-trap memorandum. All the articles thereafter were kept in a big packet over which they also signed. He proved his signatures on the posttrap memorandum (Ext. 3/1 to 3/4). The attachee belonging to the accused was also searched and some documents were seized by the CBI. The notes were seized by the CBI under a seizure list and he proved his signatures thereon (Ext. 4/1 and 4/2, 4/3 and 4/4). He proved the cover in which the seized notes were kept and his signatures thereon (Mat. Ext.?II/1 and II/2). The seal of the packet was broken in Court and he identified the said 20 notes of 100 rupees denomination which were mentioned in the seizurelist, pre-trap and post-trap memoranda (Mat Ext. II collectively). He identified the coloured liquid i.e. the hand wash liquid in the pre-trap demonstration (Mat Ext. III). He also identified the container containing the hand wash liquid of the accused (Mat. Ext. IV). He identified the liquid in which the trouser and handkerchief the appellant was washed (Mat. Ext.V) and his signature on the label (Mat Ext.V/1). He identified the cover in which the trouser of the appellant was kept and his signature thereon (Mat Ext. VI/1). He proved the trouser which was seized (Mat. Exit.VI/3) and his signature on the trouser and the handkerchief (Mat. Exit.VI/4). In cross-examination, he deposed that the room in question was 30 by 20 feet. There were 15 heads working in the room. He deposed that he was not searched at Nizam Palace. He stated that he was standing at a distance of 6/7 feet at the relevant time. No one asked why he was standing there. Seizure list was prepared in the room of the appellant.

14. P.W. 6, Krishnapada Biswas, is the other witness of the trap. He deposed that he is an officer of the Bank of India and had come to the office of the CBI at Nizam Palace on 24.03.2000. The complainant, P.W. 3, was in the office. He was present at the pre-trap demonstration. Pre-trap memorandum was read out to him and he signed. Then the CBI officers took him to Liluah workshop in a vehicle. The lady was standing there. He was standing outside the outer window in the varandah. The C.B.I. officer told him that the moment the lady would give money to the gentleman, he should come inside the room. The lady entered into the room, approached the gentleman, gave money and had some talk with him. The gentleman received the money and kept the money in his table drawer. The lady gave indication whereupon the CBI officers apprehend the gentleman. The gentleman was taken out of the room. The gentleman was made to put his finger in the solution which turned into pink. The solution was then sealed and packed and then he signed. In cross-examination, he stated that prior to preparation of post trap memorandum none of them was searched.

15. In contrast to the aforesaid evidence of the independent witnesses of the trap, P.W. 3, the complainant, did not support the prosecution case and she was declared hostile. She, however, admitted her signatures on the written complaint as well as in the pre-trap and post-trap memoranda. It is also apposite to note that she deposed that she did not know the name of the appellant. In cross-examination, she deposed that after washing of hand by the appellant, the CBI officer prepared the memorandum and she had signed on the same. She also admitted her signature on the bottle of water and the trouser which was seized by the investigating agency. She, however, on cross-examination by the appellant, stated that she signed those documents upon the direction of the

accused persons.

16. P.W. 4, is the stenographer attached to the CBI Anti-corruption Branch, Nizam Palace, at the material point of time. He deposed that on 23.03.2000, Manti Devi, lodged a complaint against one Subhas Pramanick. As Manti Devi was an illiterate lady and could not read Hindi, he took Manti Devi to his chamber and recorded her statement in Hindi. He wrote down the complaint. He read over the complaint of Manti Devi. Being satisfied, she signed on the same. He proved the complaint which was written by him as per direction of the Manti Devi marked as exhibit 5/2. In cross-examination, he deposed that he first heard the statement and recorded it. He initially prepared a draft and thereafter the original was prepared.

17. P.W.8 was Chief Labour Welfare Inspector, Eastern Railway. He was a witness to the seizure of the service book of the appellant as well as the attendance register marked as exhibit 12 which shows that the appellant had attended the office on that date. He also proved the appointment letter of Manti Devi to the said office on compassionate ground marked as exhibit 15. He was also a signatory to the post-trap memorandum.

18. P.W. 7 and 9 are the officers attached to CBI who played a vital role in laying the trap and investigating the case. P.W. 7 deposed that he was posted as Additional S.P. at CBI Special Unit, Kolkata at the material point of time. He gave the pre-trap demonstration to the witnesses including the complainant of the case registered by Sri J.N. Rana, in the office of CBI. He proved his signatures on the pre-trap memorandum as well as on the document and that articles prepared at that material point of time. Thereafter the team went to the welfare office where the appellant was present. At the time of the offering of money, P.W.2 was standing 10 feet away from the chair of the appellant. The complainant P.W. 3 and the appellant had some conversation and then the appellant stretched out his right hand and the complainant gave the tainted currency notes to the appellant who accepted the same and counted it. Thereafter the appellant kept money in his left-side pocket of his trouser. The appellant brought out the currency notes from his pocket and kept it at the left-side of the table drawer. At this stage, the complainant gave signal and he along with other CBI officers rushed to the table of the appellant. He disclosed his identity. At that time the appellant became nervous. A bottle of water was brought and sodium carbonate was added to the liquid. The colour of the solution was remained unchanged. On the request of the CBI officers, the appellant put his hands in the liquid which turned pink. Thereafter being queried the appellant pointed out the lower side of his left side table drawer. P.W. 2 brought out the polythene bag from the drawer where the money had been kept. A trouser was purchased and the appellant was requested to wear the new trouser. The appellant complied with such request. His trouser was thereafter dipped in the water and the solution was turned pink. The trouser as well as the water were seized and sealed. The post-trap memorandum was prepared and signed by the witnesses. Currency notes were

also seized.

19. P.W. 9 was the investigating officer of the case. He proved the written complaint (Exhibit-5). He drew up formal FIR (Exhibit-16). He corroborated the evidence of P.W.7 with regard to the pre-trap demonstration and preparation of pre-trap memorandum. He along with other CBI officers, de facto complainant and two independent witnesses went to Liluah Workshop, Eastern Railways at about 1.10 p.m. He stated that the complainant entered the room where the appellant was sitting. She was followed by P.W.2 who stood at the distance of 10 feet away from the appellant. There was a brief conversation for two minutes between the complainant and the appellant then the complainant opened her purse and handed over the tainted money to the appellant. The appellant accepted the tainted money and counted it. Thereafter, the appellant kept those tainted money inside the left pocket of his trouser. Immediately thereafter he took out the tainted money from his trouser pocket and kept it in the left side drawer of his table. The complainant gave signal to them. They entered the room and challenged the appellant. The appellant became nervous and admitted his guilt. A solution of sodium carbonate and water was prepared in a bowl in which the appellant was made to wash his fingers which turned pink. Thereafter, the said solution was kept in a clean bottle which was duly corked, sealed and labelled. He signed on the label. The tainted currency notes were recovered from a polythene bag and were kept inside an envelope. He signed on the envelope. The appellant was asked to change his trouser. Then the left pocket of his trouser which he was wearing along with his handkerchief were dipped in the solution which also turned pink. The said solution was kept in another bottle which was sealed and identified in Court. He also identified the trouser and handkerchief. During investigation he seized various articles and prepared seizure list at the spot (Exhibit-4). The appellant put his signature on the seizure list. He prepared a sketch map. Post trap memorandum was prepared by P.W.7 (Exhibit-3). He put his signature thereon. He seized documents from P.W.8 under seizure lists (Exhibit-17 and 18). He produced the appellant in Court. He also seized the liquid bottles and sent them to forensic laboratory for examination. He collected the report. He recorded the statements of the complainant, the independent witnesses and the CBI officers under section 161 Cr.P.C. He received one letter dated 3.4.2000 sent by S.P. Mahato through post. On completion of examination he submitted the charge-sheet.

20. From the aforesaid evidence on record it appears that on 24.03.2000 the appellant was found in possession of 200 pieces currency notes of Rs.100/- denomination which were seized from the left-side drawer of his table. The hands of the appellant had turned pink being dipped into the water with sodium carbonate. The left pocket of the trouser of the appellant and his handkerchief when dipped into the water also turned the solution pink. These facts are proved by the oral version of the prosecution witnesses as well as the contemporaneous documents like seizure lists and other material exhibits produced during trial. Even the hostile witness viz. P.W. 3 has admitted her signature in the post-trap

memorandum as well as the seizure list and had deposed that the water solution turned pink when the hand and the trouser of the appellant were dipped in water. She, however, did not support the other aspects of the prosecution case. P.W.2, on the other hand, is an independent witness who deposed that he was standing near the seat of the appellant when the complainant approached him and upon being so approached the appellant demanded the money and thereupon the payment was made. It has been argued that such evidence is untrustworthy as the same was not corroborated by P.W.3, the complainant. It was also argued that there is discrepancy as to the exact place where the P.W.2 was standing when the alleged transaction was taken place. It is the evidence that P.W.2 was standing around 6/7 feet away while P.W.7 deposed that he was standing 10 feet away from the spot. It is also submitted that the position of P.W.2 at the time of the alleged incident, is not noted in the sketch map prepared by the investigating officer.

21. I have considered the evidence of P.W.2 in the light of the attending facts and circumstances of the case. P.W.2 is an independent person attached to a different organisation and did not have any relationship with the appellant. He had been called to the CBI office and he attended their office as per instruction of his superior. He attended the pre-trap demonstration and thereafter accompanied the CBI party to the office of the appellant on the next date along with the appellant. He was asked to enter into the room where the appellant was sitting and he claimed to be standing near the spot when the complainant approached the appellant. There is some discrepancy as to the distance between the appellant and the spot. Even if the evidence of P.W.7 in this regard is accepted, the distance between the appellant and the appellant was not more than 10 feet ? a distance which does not improbabilise his version that he heard the conversation between the appellant and P.W.3. There is corroborative evidence coming from the mouth of P.W.s 3, 7 and 9 that P.W.3 was talking with the appellant. Therefore, the version of P.W.3 that he had overheard the conversation between the appellant and the complainant is probabilised by other evidence on record. The version of P.W.2 as to the manner and course of the incident is further corroborated by the seizure of tainted currency notes from the possession of the appellant as well as the fact that the hands and the left pocket of the trouser of the appellant turned the water solution pink in the instant case. When this version as transpiring from the mouth of the P.W. 2 is tested against the defence of the appellant that he was suddenly accosted in his office by CBI officers who thrust the tainted currency notes in his hands, I find that the version of P.W. 2 is probabilised by the evidence on record while the defence version is rendered implausible. If the tainted money had been suddenly thrust into the hand of the appellant, as claimed by him, then the left pocket of his trouser would not have turned the water solution pink. On the other hand, this aspect of the prosecution case lends credence to the version of P.W.2 who stated that after receiving the bribe money the appellant put it in the left pocket of his trouser before putting it in his left side drawer. The falsity of the defence version exposes

the hollowness of the rebuttal on the part of the defence to the statutory prosecution attracted under section 20 of the Prevention of Corruption Act which is attracted on the proof of demand and acceptance of bribe money by the appellant in the light of the evidence of the independent trap witnesses, P.W.2 and P.W.3 and the official witnesses P.W.7 and P.W.9 notwithstanding the lack of support by P.W.3 to the prosecution case. That apart, the hostile witness P.W. 3 has wholly discredited herself as an untrustworthy witness. While resitting from the prosecution case she, however, admitted her signatures in complaint as well as in the pre-trap and post-trap memoranda as well as on the seizure lists and various articles seized in the course of the trap. Most strangely in her desperate effort to shield the appellant from legal punishment, she even declined to disclose his name although it is an admitted fact that she was an employee working under the appellant in the self-same office. On the contrary, the evidence of P.W. 2 and other prosecution witnesses are convincing and have remained unshaken in cross-examination. They have clearly established the factum of demand and acceptance of the bribe money seized from the appellant in the instant case. With regard to the submissions relating to defects in investigation, I find that the letter of complaint was exhibited in the instant case and no prejudice has been caused by not exhibiting its draft or in the manner of conducting of investigation by P.W. 9 who was supervised by another police officer viz. P.W. 7 in the instant case.

22. The convincing evidence of P.W.2 as to his presence near the place of occurrence as corroborated by the version of other witnesses of P.W.s 6, 7 and 9 cannot be brushed aside merely because his presence is not noted in the sketch map. It is pertinent to note that shetch map is not admissible evidence and is merely a step in aid of investigation. The authorities relied upon by the learned Counsel appearing for the appellant in support of his contention that in the absence of proof of demand the prosecution case ought to fail is inapplicable in the facts of the instant case. I am convinced that the demand and acceptance of the bribe money has been proved in the instance case through the evidence of P.W. 2 and other witnesses, namely, P.W.s 6, 7 and 9 although the complainant (P.W.3) had turned hostile in order to screen the appellant. Hence, the authorities relied upon on behalf of the appellant are factually distinguishable inasmuch in those reports there was no credible evidence as to proof of demand and acceptance of bribe money by the accused person. On the other hand, ratio in M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691, is clearly applicable to the factual matrix and in view of the hollowness of the rebuttal advanced by the appellant, the evidence on record unerringly points to the guilt of the appellant.

23. For the aforesaid reasons, I am of the opinion that the prosecution has been able to prove his case beyond reasonable doubt. Accordingly, the conviction and sentence upon the appellant is upheld. The appeal is dismissed.

24. Bail bond of the appellant is cancelled. He is forthwith directed to surrender before the Trial Court and serve out the sentence in accordance with law, failing

which the Trial Court shall take necessary step for execution of the sentence against the appellant in accordance with law.

25. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of 428 of the Code of Criminal Procedure.

Urgent photostat certified copy of the order, if applied for, be given to the parties on priority basis.

