

(2014) 03 DEL CK 0012
In the Delhi High Court
Case No : Criminal Appeal No. 248 of 2008

Vishal Narula

APPELLANT

Vs

State of N.C.T. of Delhi

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1)(d) 13(2) 20 7

Citation : (2014) 3 AD 580 : (2014) 142 DRJ 114

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjeev Kumar Kakkar, for the Appellant; Isha Khanna, APP, for the Respondent

Final Decision : Disposed Off

Judgement

S. Muralidhar, J.—This appeal is directed against the judgment dated 1st March 2008 passed by the Special Judge, Delhi in Complaint Case No. 23/03 convicting the Appellant of the offences under Sections 7 and 13(1)(d) punishable u/s 13(2) of Prevention of Corruption Act, 1988 ("PC Act") and the order on sentence dated 3rd March 2008 sentencing him to rigorous imprisonment ("RI") for two years and fine of Rs. 5,000 and in default to undergo simple imprisonment ("SI") for two months for the offence u/s 7 of PC Act and to undergo RI for two years and fine of Rs. 5,000 and in default to undergo SI for two months for the offence u/s 13(2) PC Act. Both sentences were directed to run concurrently. The Appellant was appointed as Programme Assistant at the Pusa Polytechnic Institute, New Delhi ("PPI"). The Complainant was admitted to the post diploma course in computer application in 2000. In the complaint (Ex. PW-6/A) given by him to the Anti Corruption Branch ("ACB"), it was stated that PW-6 had obtained 30 out of 75 marks in the practical examination of the DBMS course and decided to appear for improvement. He deposited Rs. 30 at the PPI on 16th October 2002 and when he sought to ascertain the date of the said examination, he met the Appellant who demanded a bribe of Rs. 300 from the Complainant for helping the

latter get good marks in the practical examination. It was alleged that the Appellant had accepted a bribe amount of Rs. 200 from the Complainant on 16th October 2002 itself and asked him to pay the balance on 22nd October 2002. Since the Complainant was against giving of the bribe, he went to the ACB and gave the complaint (Ex. PW-6/A) to Inspector R.S. Khatri, Raid Officer (PW-11) in the presence of Mr. B.S. Chaudhary (PW-10), a panch witness.

2. PW-6 produced one government currency ("GC") note of Rs. 100 before PW-11 who recorded its serial number in the pre-raid report (Ex. PW-6/E) after getting it checked by PW-10. PW-11 then applied phenolphthalein powder to the said GC note and gave a demonstration to PW-10 and PW-6 by touching the hand of PW-10 with the treated GC note. The hand wash of PW-10 in the solution of sodium carbonate, turned pink. Thereafter, the hands of PW-10 were washed with soap. The treated GC note was given to PW-6 which he kept in the upper left side pocket of his shirt. PW-11 then instructed PW-10 to remain close to PW-6. to overhear the conversation and once the bribe amount was paid PW-10 was to give a signal by raising both his hands over his head. PW-6 was instructed to remain close to PW-10 to enable PW-10 to see the transaction and hear the conversation.

3. At around 2 pm on 22nd October 2002, PW-6 along with PWs-10 and 11, Inspector O.P. Arora (PW-8) and Constable/Driver Ranvir Singh left the ACB for PPI in a government vehicle and reached there at around 2.45 pm. The government vehicle was left outside PPI. PW-8 and Ranvir Singh remained in the vehicle. PWs-6 and 10 were reminded about the instructions. They entered PPI at around 2.55 pm. The members of the raiding team took suitable positions inside PPI.

4. PWs-6 and 10 enquired about the Appellant. They were informed that he was on invigilation duty in Room No. 203. PW-6 then called the Appellant out through gestures. The Appellant enquired about PW-10 and was informed by PW-6 that he was a friend. Thereafter PW-6, on the demand of the Appellant, handed over the treated GC note of Rs. 100 to the Appellant. The Appellant accepted the said GC note in a handkerchief in his right hand and kept it in the pocket of his pant. At around 3.10 pm, PW-11 received the pre-determined signal from PW-10. Thereupon, he and the raiding team rushed behind PW-10. PW-6 also met them on the way. When they went to Room No. 203 at around 3.15 pm, the Appellant was not present. One Sandeep Saxena (PW-3) informed them that the Appellant had gone to Room No. 212.

5. The raiding team then went to Room No. 212 and the Appellant was apprehended at the instance of PWs-6 and 10. PW-11 challenged the Appellant about taking a bribe of Rs. 100 from PW-6. After the Appellant denied accepting any bribe, he was searched by PW-10 and one handkerchief was found in the right side pocket of his pant. However, it did not contain the currency note. PW-11 took the right hand wash of the Appellant in the solution of sodium carbonate which turned pink. The handkerchief recovered from the right side

pant pocket was dipped in a separate solution which also turned pink. The washes were transferred into empty bottles and labelled. The handkerchief and the pant were converted into two pulandas with the help of the same seal used to seal the samples.

6. The Appellant was interrogated and his disclosure statement (Ex. PW-6/C) was recorded in which he admitted that he had accepted the GC note of Rs. 100 from PW-6 in Room No. 203; thereafter he came to Room No. 212 and on getting suspicious, threw away the said GC note from 2nd floor veranda towards the dustbin on the ground floor. Thereafter, the Appellant led the raiding team to the spot where he had thrown the GC note and got it recovered from near the garbage. The said GC note was recovered in a multi-fold condition. The serial number of that GC note was tallied with the serial number mentioned in the pre-raid proceedings. The GC note was taken into possession by seizure memo (Ex. PW-6/D).

7. PW-11 informed the Principal, Mr. V. Naraianan (PW-1). PW-11 drew up the post-raid proceedings (Ex. PW-6/F) and sent HC Birju to the ACB for registration of the case. PW-8 was called at the spot at around 5 pm and PW-11 handed over to him the custody of the Appellant, the case property, the recovered GC note and the seizure memo along with the exhibits of the case. The Appellant was arrested and, after investigation, a charge sheet was filed.

8. The prosecution examined 11 witnesses. In his statement u/s 313 CrPC., the Appellant stated that he had been falsely implicated. He denied demanding or accepting any bribe from PW-6. He stated that PW-6 had a grudge against him and, therefore, lodged a false complaint in the ACB.

9. The record of proceedings of the trial Court dated 4th December 2007 shows that the Appellant stated that he wanted to lead defence evidence. However, on next date i.e. 7th January 2008, counsel for the Appellant in the trial Court stated that he did not wish to lead any evidence.

10. In the impugned judgment dated 1st March 2008, the trial Court first dealt with the issue of the validity of the order passed by the sanctioning authority (PW-1) according sanction (Ex. PW-1/A) for prosecuting the Appellant. The trial Court, after examining the sanction order as well as the deposition of PW-1, concluded that the sanction order disclosed all the details regarding the bribe amount, the date, the name of the accused, and the purpose for which the accused had demanded and accepted the bribe. The trial Court concluded that the sanctioning authority had, after due application of mind, accorded sanction.

11. The trial Court negatived the plea that the Appellant was not in any position to ensure that PW-6 got better marks in his examination Relying on the decisions in Chaturdas Bhagwandas Patel Vs. The State of Gujarat, and State of Andhra Pradesh Vs. C. Uma Maheswara Rao and Another, the trial Court concluded that the question whether a person had authority to perform an act for which the bribe was accepted was of no consequence. On analysing the evidence, the trial

Court came to the conclusion that the accused had accepted the bribe amount with his right hand in a handkerchief, and thereafter kept it along with the GC note in the pocket of his pant. Since the washes of the handkerchief and his right hand had turned pink, the trial Court concluded that the Appellant had indeed demanded and accepted the bribe amount.

12. After discussing case law, the trial Court opined that the contradictions in the statements of the witnesses were not material and did not cast any serious doubt on the prosecution case. Accordingly, the accused was held guilty of the offences with which he was charged and sentenced in the manner noted hereinbefore.

13. Mr. Sanjeev Kumar Kakkar, learned counsel appearing for the Appellant first submitted that the very basis of the entire complaint by PW-6 was false. The complaint was vitiated by malice since there was previous enmity between PW-6 and the Appellant. He submitted that it was evident from the deposition of PW-6 that he was taunted by the Appellant that he could not clear the examination and, therefore, harboured enmity against the Appellant. Also, in the complaint he stated that he had applied for improving his marks in the practical examination whereas in the cross-examination he admitted that he had only applied for appearing in the theoretical examination. Mr. Kakkar referred to the evidence of PW-10 and submitted that there was, in fact, no demand by the Appellant of any bribe amount.

14. Mr. Kakkar pointed out that the case of the prosecution was that the entire paper work regarding the raid proceedings was completed on the spot itself. However, from the evidence it transpired that the paper work was, in fact, completed at the office of the ACB. Moreover, although the FIR was registered long after the raid proceedings, the seizure memos and other documents indicated the FIR number. This falsified the case of the prosecution that the paper work was completed on the spot itself. In this connection, he relied upon the decision in *Zohra Vs. State*, .

15. Mr. Kakkar also submitted that the Appellant wished to lead additional evidence to show that Rs. 100 offered to him by PW-6 was by way of return of the amount borrowed from the Appellant by PW-6 for purchasing a helmet. He referred to the statements of Anuja Sharma and PW-1 recorded in the disciplinary enquiry. He informed the Court that in the disciplinary enquiry, the Appellant had been found guilty and punished with lowering of his pay by three grades. Later after the conviction was handed down by the trial Court, the Appellant was removed from the service. The said removal was challenged by him before the Central Administrative Tribunal which upheld his contention and quashed the order of dismissal. The challenge to the said order by the PPI is stated to be pending in this Court. He accordingly submitted that the Appellant should be permitted to lead additional evidence on the above aspect.

16. Mr. Kakkar assailed the sanction order and contended that it suffered from non-application of mind. He pointed out that the sanction order also referred to

the Complainant having applied for improvement in his practical examination whereas he had applied only for the theoretical examination. Reliance was placed on the decisions in State of Karnataka Vs. Ameer Jan, and S.N. Bose Vs. State of Bihar, . Mr. Kakkar also referred to the decision in Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others, and submitted that where there was miscarriage of justice, this Court ought to step in and set it right.

17. Appearing for the State, Ms. Isha Khanna, learned APP, pointed out that the story about money being borrowed for a helmet by PW-6 was never put forth by the Appellant at any time before the trial Court. Despite being given an opportunity, no evidence was led by the Appellant. She submitted that in the present case it is apparent that the hand wash and the handkerchief wash of the Appellant turned pink and there is no denial of the said fact. The Appellant had no valid explanation as to why he accepted the Rs. 100 GC note. She referred to the decision in Rup Singh Vs. The State of Punjab, . According to Ms. Khanna, the evidence in the case made it abundantly clear that the Appellant had demanded and accepted the bribe.

18. As regards the sanction order, Ms. Khanna submitted that the relevant columns were filled up by hand and there was no question of non-application of mind by the sanctioning authority. As regards the statement of PW-6 that the Appellant used to taunt him, she submitted that this per se could not be said to indicate previous enmity and the reason why the Appellant decided to take the matter to the ACB. Ms. Khanna submitted that the presence of the Appellant and his demand and acceptance of the bribe amount was clearly established by the evidence.

19. The Court has examined the trial Court record. As regards the raid itself, the evidence of PW-6 and the panch witness PW-10 have corroborated each other on material particulars. From the evidence of PW-6 and PW-10 it is clear that:

(i) on 22nd October 2002 PW-6 in the presence of PW-10 went to the Room No. 203 where the Appellant was on invigilation duty.

(ii) That on demand of the accused, PW-6 handed over the GC note of Rs. 100 to the accused.

(iii) In the presence of PW-10, PW-6 told the Appellant "Ye Apne Paise Le Lo".

(iv) Thereupon the Appellant accepted the GC note in a handkerchief and kept it in his pant pocket.

20. The fact that the handkerchief turned pink on being dipped on the sodium carbonate solution corroborates the consistent stand of both witnesses that the Appellant accepted the GC note in his handkerchief. By saying "Ye Apne Paise Le Lo" PW-6 was obviously referring to the bribe amount previously demanded by the Appellant. Thus it is evident that when he took the GC note in his handkerchief, the Appellant was knowingly accepting illegal gratification. There is no cross examination of PW-10 on the above critical aspect by learned counsel

for the accused.

21. The fact that the right hand wash of the Appellant turned pink is explained by the fact that in between the departure of PW-6 and PW-10 and their arriving again at Room No. 212 in the company of the raiding party, the accused removed the GC note from the handkerchief and flung it down with his right hand. The fact of the Appellant helping to recover the treated GC from the ground floor near the garbage bin is spoken of consistently by PWs-6 and 10, apart from the raiding officer PW-11. Further, the recovered GC note tallied with the treated GC note which was provided by PW-6 to PW-11 and duly recorded in the pre-raid proceedings.

22. As rightly noted by the trial Court, since the essential elements of the trap have been met in the present case, it has a high probative value. The law in this regard has been explained, as noticed by the trial Court, in the decisions in *Ganga Ram Shrivastava v. State of Bihar* 2005 VI AD (SC) 241 and *Som Prakash Vs. State of Delhi*, The statutory presumption u/s 20 of the PC Act stood attracted. In *Narendra Champaklal Trivedi Vs. State of Gujarat*, the law was reiterated as under:

13. The demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It is also settled in law that there is a statutory presumption u/s 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than the motive or reward as stipulated u/s 7 of the Act. It is obligatory on the part of the court to consider the explanation offered by the accused u/s 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probability. It is not to be proven beyond all reasonable doubt. It is necessary to state here that the prosecution is bound to establish that there was an illegal offer of bribe and acceptance thereof. The same has to be founded on facts. In this context, we may refer with profit to the decision in *M. Narsinga Rao Vs. State of Andhra Pradesh*, wherein a three-Judge Bench referred to Section 20 of the Act and stated that the only condition for drawing the legal presumption u/s 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept the gratification.

23. In the present case the Appellant has been unable to rebut the statutory presumption u/s 20 of the PC Act. The submission of learned counsel for the Appellant that PW-6 was driven by animosity to give a false complaint is not borne out by the evidence brought on record. The story of the Appellant lending PW-6 Rs. 100 for purchasing a helmet, although adverted to in the disciplinary proceedings by PW-1 and Ms. Anuja Sharma, was not brought on record by the Appellant during the trial in the present case. Also, in his statement u/s 313 CrPC, he made no mention of his lending money to PW-6 for the purchase of a

helmet. The above line of defence is also not taken in the cross examination of PW-6. As already noticed, despite an opportunity granted to him for that purpose, the Appellant did not choose to lead evidence. Consequently, the Court is not inclined to accept the plea of the Appellant that he should at this stage be permitted to adduce evidence on the above aspect. The plea of the Appellant that the entire complaint was vitiated by the previous animus of PW-6 towards him is, therefore, rejected.

24. As regards the statement made by PW-6 as recorded in the FIR that he was seeking to improve his marks in the practical examination whereas it transpired that he had applied for the theoretical examination, the Court is of the view that in light of the unimpeachable evidence in the form of PWs-6 and 10, which have adequately proved the trap and the demand and acceptance of bribe by the Appellant, the above discrepancy in the evidence of PW-6 is not material so as to falsify the entire case of the prosecution. The Court is conscious of the dictum in *Zahira Habibulla H. Sheikh* that it should ensure that there is no miscarriage of justice. However, in the present case, the Court is satisfied that the prosecution has been able to prove beyond all reasonable doubts that the Appellant did demand and accept the bribe amount in the manner described by the prosecution.

25. Turning to the order of sanction, the Court finds that the trial Court was justified in observing that the sanction order in the present case cannot be said to suffer from non-application of mind by PW-1 to the materials on record. The mere fact that the sanction order records that the bribe was demanded in consideration for PW-6 earning good marks in the practical examination will not vitiate the sanction order. This was on the basis of what was placed before PW-1 at that stage. Indeed, the FIR did record that PW-6 was seeking to improve his performance in the practical examination.

26. On the aspect of the paper work for the trap proceedings not being completed on the spot but in the office of the ACB, the Court is not persuaded to hold that the lapses of the prosecution in that regard are serious enough to warrant rejection of the entire prosecution case. The fact of the acceptance and demand of bribe during the trap proceedings has been cogently spoken of by both PWs-6 and 10 and fully corroborated by PW-11.

27. The Court is satisfied that the evidence placed on record by the prosecution proved beyond reasonable doubt that there was a demand and acceptance of bribe by the Appellant attracting the offences under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

28. However, on the aspect of sentence, the Court while maintaining the fine amounts, reduces the punishment for both offences to one year's simple imprisonment, with both sentences to run concurrently. The appeal is disposed of in the above terms. The bail bonds of the Appellant are cancelled. He is directed to be taken into custody forthwith to serve out the remaining sentence.