(2013) 07 DEL CK 0289

In the Delhi High Court

Case No : Criminal Appeal No. 293 of 2003

V.K. Verma APPELLANT

Vs

C.B.I. RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 161

Citation : (2014) 1 JCC 196 : (2013) 3 JCC 1878

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : K.B. Andley and Mr. M. Shamikh, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The Appellant assails the judgment dated 9th April, 2003 whereby he has been convicted for offences u/s 161 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (in short ''PC Act'') and the order on sentence dated 10th April, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of one and a half years and to pay a fine of Rs. 5000/- each and in case of default of payment of fine to further undergo rigorous imprisonment for four months on both the counts. Learned counsel for the Appellant contends that the alleged demand was for Rs. 650/- for passing three bills out of which two bills had already been cleared and only the third bill of Rs. 1000/- remained. Thus there was no reason that the Appellant could have demanded the money after clearing the bills. The actual dispute was whether the measurement from outer side or inner side should be considered which made a difference of 20 to 25% in the payment. The complainant admitted that the final payment was made as per the internal measurement though the Executive Engineer and Superintendent Engineer were ready to give payments as per external measurement. Despite the fact that all senior officers wanted that the measurement should be from the outer side, the Appellant insisted that the measurements should be from inner side and prepared the bill accordingly on 22nd September, 1984 and approved the same for Rs. 1714/- after deducting security amount of Rs. 904/-. The complainant accepted the inner measurement though under protest on 29th October, 1984 and on the date of alleged trap the file was pending with the Executive Engineer, Vidyut Bhawan which was seized from him. Thus when the alleged demand was made the Petitioner''s role had already been over and he was in no capacity to demand the illegal gratification. The version of PW3 that the hand-wash solution of both the hands turned pink is not supported by PW4 the shadow witness who stated that only right hand-wash solution turned pink and the left hand-wash did not change the colour. The defence of the Appellant that this was the money given by the Appellant to the complainant to buy the tyre and tube for his scooter which was being returned, has not been considered by the learned Trial Court. DW1 Santosh Kumar Tahalramani proved the defence of the Appellant but of no avail. In view of the material contradictions and no motive being proved the Appellant is entitled to be acquitted.

2. Learned counsel for the CBI on the other hand contends that the defence of the Appellant was suggested to the complainant, however he denied the same. The demand, acceptance and recovery have been proved beyond reasonable doubt. Mere inconsistencies in the prosecution case do not affect the otherwise credible and cogent testimony of the witnesses. Hence no case for interference is made out. The appeal be dismissed.

3. Heard learned counsel for the parties. PW2 Sanjeev Sawhney was doing the contract work on behalf of CPWD in the various Government departments regarding air-conditioning, G.I. Pipe fitting etc. He had three bills pending in the CPWD, ACD-II against three contracts for Rs. 11016/-, 7125/- and 6500/-. The complainant had already received Rs. 10,000/- from the running account payment and the Appellant was dealing with the bills of the complainant and had to release the payments to him in respect of these contracts. The Appellant told the complainant that he would release the bills only after he was paid his commission at the rate of 5%. Since the total amount was Rs. 13,000/- the 5% thereof was Rs. 650/-. The Appellant released Rs. 10,000/- and came to his shop on 19th December, 1984 and insisted that he should pay him Rs. 650/-. It was settled that the complainant would pay him Rs. 265/- in cash and buy a scooter tyre tube for his scooter out of the balance payment of the bribe amount. This Rs. 265/- was to be paid on 22nd December, 1984 in his office. Since the complainant did not want to pay the bribe amount, he lodged a complaint with the SP, CBI on which a raiding party was constituted wherein Shri P.J. Sonnie and Shri Hariharan Ganpati were associated as independent witnesses. On reaching Vidyut Bhawan it was decided to bring the accused to a restaurant in the Shanker market opposite Vidyut Bhawan. Thus the complainant went to the office of Appellant who was sitting alone in his room. The Appellant asked him to give the money. The complainant stated that he wanted to talk to him about some other matter and they should go down to the restaurant for a cup of tea.

The Appellant agreed and came down to the restaurant for the cup of tea. The DSP and Mr. Ganpati were sitting in the restaurant as the complainant and Appellant sat on a different table, Mr. Sonnie was asked to go and sit near them. Thus he acted as the shadow witness. The Appellant then demanded Rs. 265/- from the complainant and the complainant asked the Appellant to release the balance payment and told that he would pay Rs. 265/- and would give tyres and tubes for the scooter after the payment was made. The complainant then took out the money from his shirt pocket with his right hand and gave the same to the Appellant. The Appellant took the money in his right hand and kept it in the front pocket of his shirt. On signal being given the trap laying officer and other officials apprehended the Appellant holding his wrist. The Appellant was taken to a vacant shop nearby and currency notes were recovered from his pocket. The number of notes were tallied and the right hand, left hand and shirt pocket wash were taken. Though the right hand-wash and shirt pocket-wash turned pink, the left hand-wash of the Appellant did not change the colour.

4. The version of the complainant is fully supported by the two independent witnesses PW4 P.J. Sonnie who acted as the shadow witness and PW5 Hariharan Ganpati the recovery witness besides the trap laying officer. This version is further supported by the opinion of PW7 Shri V.S. Bisaria, Senior Scientific Officer who deposed about his report. He stated that the exhibits gave positive for phenolphthalein and sodium carbonate. The opinion of this witness Ex. PW7/A stated that the left hand-wash was light pink in colour. It is thus evident that on the left hand there were small traces of phenolphthalein, thus it was light pink which the complainant stated to be not pink.

5. The grievance of the Appellant is that on 19th December, 1984 the file was pending with the Executive Engineer and he had already performed his part of the action. No doubt the file was seized from the Executive Engineer, however in the present case the complainant had number of contracts and thus he was required to repeatedly deal with the Appellant in the day-to-day course of his business. Thus, the same did not forbid the Appellant from demanding the money even after clearing the file.

6. Learned counsel for the Appellant has urged that the defence evidence has not been considered. The explanation of the Appellant in his statement u/s 313 Cr.P.C. was that complainant wanted to submit the bill as per outer measurement of the ducts used in the work but the Appellant had taken inner measurement and the complainant accepted the inner measurement by signing and writing "measurement accepted" but later on he added the words "under protest for measurement only". Thus, he had a grudge against him. In the middle of November, 1984 the complainant came to his office when his J. Es. were sitting with him and there were talks about some tyres and tubes which the Appellant wanted for his scooter. The complainant took the benefit of this and suggested that he knew Deputy Manager in MRF and he would bring the tyre and tube at 25 to 30% concession. Thus, the Appellant gave him Rs. 650/- for arranging for the

tyre and tube immediately. On 21st December, 1984 the complainant came to his office where his J.E. Santosh Kumar and Peon were present and informed that he had got the tyres and tubes and the same are lying at the pan shop and asked him to accompany. The Appellant stated that his peon could take them, however he insisted that the Appellant should first check the tyre and tube. On this the Appellant agreed and when they came down, he insisted to have a cup of tea, as it was very cold and he took him to tea shop. While sitting in the shop the Appellant asked the complainant about the actual price of the tyre on which he told the cost of tyre and tube was Rs. 385/- and told him to take the balance amount of Rs. 265/-. The Appellant insisted for seeing the tyre and tube first and then take the balance. However, the complainant pushed back the amount which he was giving to the Appellant. The Police party immediately came and took the money lying on the table. The Appellant has also examined DW1 Santosh Kumar Tahalramani, Junior Engineer who has also deposed about the conversation. Though this witness says about the tyres and tubes and giving of Rs. 650/- by the complainant to the Appellant but one thing which defies all logic is that the Appellant clearly knew that the complainant had grudge against him as he had not passed the bill from the outer measurement but from the inner measurement, in such a situation he would not repose the confidence of giving him money to get the tyre and tube for his scooter. Thus the defence put forward by the Appellant is not plausible, whereas the prosecution has proved its case beyond reasonable doubt.

In view of the aforesaid discussion, I find no illegality in the impugned judgment convicting and sentencing the Appellant as above.

Consequently, the appeal is dismissed. Bail bond and surety bond are cancelled.