(2009) 12 DEL CK 0116

In the Delhi High Court

Case No : Criminal Appeal 646 of 1999

V.N. Deosthali APPELLANT

Vs

State RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 45, 47, 62, 67, 73
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2)

Citation : (2009) 12 DEL CK 0116

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant; Ashiesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is an appeal against the judgment dated 12.11.2009 and Order on Sentence dated 18.11.2009, whereby the appellant was convicted under Sections 11 and Sections 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/- and to undergo rigorous imprisonment for six months in default u/s 11 of Prevention of Corruption Act, 1988. Identical sentence was awarded to him u/s 13(1)(d) read with Section 13(2) of the Act. The sentences were to run concurrently.

2. The case of the prosecution, in brief, is that the appellant while working as Assistant Manager, UCO Bank, Hamam Street Branch, Bombay, during the period 1990-91, was dealing with sales and purchase of securities, bonds etc. in respect of a firm M/s. Batlivala & Karani and its subsidiary/sister concern Batlival & Karani Money Markets (Pvt.) Ltd., which had a current account with the Bank. According to the prosecution, the appellant travelled from Bombay to Delhi in February, 1991 to attend a marriage and the cost of the air ticket for his travel was paid by M/s. Batlivala & Karani Money Market Pvt. Ltd., through its employee

Mr. Adesh Narain, who along with another employee of his firm Umesh Gupta travelled with the appellant from Bombay to Delhi on 16.2.1991. This is also the case of the prosecution that while in Delhi, the appellant stayed at Hotel Meridian in the night intervening 19/20th February, 1991 and the boarding and lodging charges amounting to Rs. 4134.30 for his stay in the Hotel were paid by the aforesaid firm through Mr. Adesh Narayan, who made the payment using his credit card and the later took reimbursement from the firm. This is also alleged that while returning from Delhi to Bombay, the appellant travelled by air and the expenses for the air travel were paid by Batliwala & Karani/Batliwala & Karani Money Market Private Limited.

3. Section 11 and Section 13(1)(d) of Prevention of Corruption Act reads as under:

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.- Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage without any public interest.

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

4. It is not in dispute that the appellant being the Assistant Manager of UCO Bank, was a public servant at the time offences are alleged to have been committed by him.

5. In order to prove that the appellant use to transact business with Batliwala & Karani in his capacity as a public servant, the prosecution has examined PW-1, Shri P.A. Karkhanis, PW-3 Shri Umesh Gupta and PW-4 Shri P.M. Ratanakim

6. PW-1 Shri P.A. Kharkhanis was the Senior Manager Incharge of UCO Bank Branch at Hamam Street Bombay from 3.9.1990 to 18.4.1992 and the appellant was working under him in that Branch as Assistant Manager. He has stated that Batliwala & Karani was having Account No. 436 with them and security transactions being carried out in this account were handled by the appellant. He has identified signatures of the appellant on the Debit Advice Ex.PW-1/B prepared in respect of debit of 9,49,90,619.72 in the account of Batliwala & Karani and Debit Advice Ex.PW-1/C in respect of debit of Rs. 7,00,53,008.22. He has also proved two Credit Advices signed by the appellant in respect of the credit of Rs. 11,96,86,671.23 and 4,98,69,863.01 respectively which are Ex.PW-1/D & E. He has also proved Ex.PW-1/F which is the receipt issued by the appellant, on the basis of delivery order of M/s. Batliwala & Karani dated 5.4.1991. A cost memo was prepared on 5.4.1991 for Rs. 4,98,69,863.01, which is Ex.PW-1/G and is signed by the appellant. He specifically stated that Batliwala & Karani and UCO Bank were having official dealings which were being handled by the appellant.

7. PW-3 Shri Umesh Gupta is an employee of Batliwala & Karani. He has stated that UCO Bank, Hamam Street, was one of the bankers of their firm and that he used to visit branch in connection with delivery of security orders etc. and used to meet the appellant in the branch. According to him, the appellant also used to visit their office, on some occasions. He has identified the signatures of the appellant on the bank receipt Ex.PW-1/8. According to him, delivery orders Ex.PW-3/A to PW-3/C were handed over by him to the appellant in the Bank and the voucher Ex.PW-1/C to Ex.PW-1/E were handed over to him by the appellant.

8. PW-4 Shri P.M. Ratanakim, Joint Manager, UCO Bank, has stated that since December, 1990, he was posted at Hamam Street Branch of UCO Bank and that all the transactions of securities and shares, including those of Batliwala & Karani were being dealt with by the appellant. He has identified the signatures of the appellant on the vouchers Ex.PW-1/A to Ex.PW- 4/D. He has also stated that Umesh Gupta has used to visit their branch and meet the appellant.

9. In his Statement u/s 313 of Cr.P.C., the appellant has admitted that during the year 1990-91, he was posted as Assistant Manager, UCO Bank, Hamam Street and was looking sales and purchase of securities, bonds, etc. He has also admitted that Batliwala & Karani was having a current account with their branch and that security transactions carried out in that account were handled by him in his official capacity. He has also admitted the Debit Advice Ex.PW-1/B issued in respect of debit of Rs. 94990619.72 in the account of Batliwala & Company. Regarding Debit Advice Ex.PW-1/C, Credit Advice Ex.PW-1/D and Ex.PW-1/E and receipt Ex.PW-1/F, he claimed that he did not remember. He has also admitted his signatures on the vouchers Ex.PW-4/A to Ex.PW-4/D which pertain to Batliwala & Karani. Thus, the prosecution has fully proved and the appellant has also not disputed that he was having official transactions with Batliwala & Karani in his capacity as a public servant. This factual position was not disputed before

me during arguments.

10. It is also not in dispute that the appellant had travelled from Bombay to Delhi and had then gone back from Delhi to Bombay in February, 1991. The case of the prosecution is that the appellant travelled by air from Bombay to Delhi as well as on return from Delhi to Bombay, whereas the defence taken by the appellant that he had travelled by train and not by air. The case of the prosecution is that in Delhi, he stayed in Hotel Meridian whereas according to the appellant, he stayed with the friend whose marriage he had to attend in Delhi. This is not the case of the appellant that though he did travel by air from Bombay to Delhi and Delhi to Bombay, he himself had borne the expenses incurred on air travel. This is also not his case that though initially the cost of his air travel was borne by Shri Adesh Narain, employee of Batliwala & Karani, he later on repaid that amount to Mr. Adesh Narayan or to the firm. This is not the case of the appellant that though he had stayed in the Hotel Meridian, he himself had borne the expenses of his stay in that Hotel. This is also not his case that though initially the expenses of his stay in Hotel Meridian were borne by Shri Adesh Narayan, he later on returned that amount to him or to his firm.

11. PW 3 Umesh Gupta has stated that in February, 1991 he along with Avdesh Narain and the appellant came from Bombay to Delhi by air and the air fare for the journey was paid by M/s Batliwala and Karani Money Market Pvt. Ltd. He further stated that on 20th or 21st February he along with the appellant returned to Bombay by air and the tickets for the journey were purchased by Adesh Narain. Counter foils of the tickets are Ex. PW3/I & J.

12. PW 6 Avdesh Narain has stated that he was working as an officer with M/s Batli Wala and Karani Money Market Pvt. Ltd. in its Delhi office during the period 1990-1992 and used to visit Bombay for the official work. He has further stated that in February, 1991 he returned from Bombay to Delhi by air along with Umesh Gupta and the appellant and the expenses of air travel of the accused on that occasion were met by their company. According to him, he had made arrangement for stay of the appellant in Meridian Hotel and all the expenses for stay were borne by the company. He has claimed that the payment for stay of the accused was made through his credit card. He further stated that in February, 1991 he had taken the appellant to Narula, Connaught Place for lunch and paid the bill through his credit card. He also entertained the appellant at Ashoka Hotel and Hotel Hyat, New Delhi and paid the bills through his credit card. According to him, the tickets for return journey of the appellant and Umesh Gupta from Bombay to Delhi were purchased by him through his credit card. He stated that whatever amount he spent on the entertainment and journey of the appellant, was reimbursed to him by the company, vide voucher Ex.PW2/B and PW2/A, which bear his signature in token of receipt of cheque from the company. He further stated that the registration card of hotel Meridian Ex.PW1/A was filled up by him for the appellant, who appended his signature on the card at encircled portion A in his presence. Ex.PW6/A is the carbon copy of the credit voucher

pertaining to his credit card account through which he made payment to hotel Meridian. Ex.PW6/B&C are the original cheques for reimbursement delivered to him by M/s Batliwala and Karani Money Market Pvt. Ltd. Ex.PW6/C is the bill submitted by him for claiming reimbursement. He was reimbursed vide Ex.PW6/E. He also stated that the appellant did not reimburse the company for the air tickets and expenses for stay in the hotel.

13. PW 11 Shri S. Mukherjee has stated that in February, 1991 he was working in Hotel Le Meridian, New Delhi. He has stated that the registration card Ex.PW11/A of Hotel Le Meridian was signed by Ms. Pervinder Kaur, Reservation Asstt. at point A. He has further stated that Shri V.N. Deoshthli had stayed in Meridian hotel from 19th February, 1991 to 20th February, 1991 in Room No. 516 and payment for the stay amounting to Rs. 4134.30 was made through credit card No. 4563981002312025 pertaining to Avdesh Narain vide credit card slip Ex.PW6/A. He has also identified the signature of Ms. Madhu Kohli, Lobby Manager of Meridian Hotel on Bill Ex.PW11/B.

14. In his statement u/s 313 of Cr.PC the appellant admitted that he had come to Delhi from Bombay in February, 1991. He further claimed that he did not travel with Umesh Gupta and Avdesh Narain by air and had in fact come by train. He denied having stayed in hotel Meridian and claimed that he had returned to Bombay by train. He denied the signature at portion A on the registration card of Meridian Hotel Ex. PW1/A. He also stated that in Delhi he had stayed with his friend Rajiv in Rajouri Garden as he had come to attend the function at their place. DW1 Shri Raj Kumar Gurshani has stated that in February, 1991 the appellant had come to Delhi to attend his marriage. He firstly stated that the appellant has stayed at his residence but then stated that he had stayed in the house of his friend, which is situated opposite to his house and had been taken by him for marriage purposes.

15. I see no reason to disbelieve the testimony of PW3 Shri Umesh Gupta and PW6 Shri Avdesh Narain as regards travel of the appellant by air firstly from Bombay to Delhi and then from Delhi to Bombay, when their testimony finds full corroboration from the documentary evidence produced by the prosecution. Ex.PW2/C is the credit card slip whereby payment of Rs. 3558/- was made by Shri Avdesh Narain to Indian Airlines on 19th February, 1991. Ex. PW2/B is the voucher whereby payment of Rs. 3558/- was made to Shri Avdesh Narain vide cheque No. 755311 in respect of air tickets for Mr. Umesh Gupta and the appellant Vinayak Deosthali. The oral deposition of PW2 Shri Umesh Gupta and PW6 Shri Avdesh Narain, coupled with the documentary evidence duly proved by them shows that the expenses for the journey performed by the appellant from Bombay to Delhi on 20th February, 1991 were borne by M/s Batliwala and Karani Money Market Pvt. Ltd. Ex.PW3/I is the counter foil of the air ticket whereby the appellant travelled from Delhi to Bombay on 20th February, 1991 by Indian Airlines flight IC 807. It was submitted by the learned Counsel for the appellant that neither the original ticket nor the Boarding Card of the appellant has been

produced by the prosecution to prove the alleged air travel. The Boarding Card remains with the passenger and, therefore, it was not possible for the prosecution to produce the same. The air ticket is also delivered to the airlines at the time of obtaining the Boarding Card. The counter foil of the ticket has, however, been produced and is admissible in evidence, this being the carbon copy prepared at the same time when the original was prepared. Ex.PW9/C and PW9/D are the booking cards whereby the tickets were booked for the travel of the appellants, Mr. Avdesh Narain and Mr. Umesh Gupta by M/s Batliwala and Karani Money Market Pvt. Ltd. and these documents were seized by PW 9, Inspector Hardeep Singh of CBI.

16. Primary evidence is defined in Section 62 of the Indian Evidence Act and explanation 2 provides that where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest. Since the carbon copies of a document is prepared at the same time when the original is prepared, by way of a common process of preparing the document, this will be deemed to be primary evidence within the meaning of Section 62 of the Evidence Act. Therefore, Ex.PW3/I is as good as the original ticket. It was submitted by the learned Counsel for the appellant that this document pertains to one Vinayak Devashali and not the appellant Vinayak Deosthali. I am unable to accept this contention. This document has to be read along with the oral deposition of the PW3 and PW6, coupled with other documentary evidence including payment by Mr. Avdesh Narain by credit card and reimbursement of that amount to him by M/s Batliwala and Karani Money Market Pvt. Ltd.

17. The ticket Ex.PW3/I showing the name of the passenger as Mr. Vinayak Devashali. and Ex. PW3/B in respect of Umesh Gupta have been made at the same time vide CF0101126 and the payment of both the tickets has also been made together as is evident from form of payment which is shown as TPGB 4563981002312025 on both the tickets. These particulars when viewed in the light of oral and documentary evidence produced by the prosecution, leave no reasonable doubt that the counter foil Ex.PW3/I pertains to the appellant and inadvertently the letter t. has been left out while typing the name of the appellant, thereby turning Deosthali. into Deoshali.

18. The evidence produced by the prosecution as regards travel of the appellant from Bombay to Delhi and from Delhi to Bombay by air has also to be considered in the light of the fact that though the appellant claims to have travelled by train from Bombay to Delhi as well as from Delhi to Bombay, he has neither produced any train ticket nor summoned any document from Indian Railways to prove that any person of his name had travelled from Bombay to Delhi and/or from Delhi to Bombay on the dates he is alleged to have travelled by air. In fact, the appellant has not even given the numbers of the trains by which he claimed to have travelled from Bombay to Delhi and from Delhi to Bombay. Had the appellant given even train number to the investigating agency, it could have verified, from

Indian Railways, as to whether any person by the name of the appellant had travelled through train from Bombay to Delhi on 16th February and from Delhi to Bombay on 20th February. I am, therefore, in full agreement with the learned trial court that the prosecution has established beyond reasonable doubt that the appellant had travelled from Bombay to Delhi and Delhi to Bombay by air and that the expenses for his air travel were borne by Batliwala and Karani Money Market Pvt. Ltd./ Batliwala and Karani.

19. As regards the stay of the appellant in Hotel Meridian, the deposition of PW11 coupled with the Registration Form of Meridian hotel Ex.PW1/14 would show that a person by the name of v. Deosthli had stayed in hotel Meridian between the night intervening 19-20th February, 1991. The deposition of PW6 Shri Avdesh Narain would show that this Registration Form was filled up by him. Shri Avdesh Narain has specifically stated that appellant had signed the registration from Ex.PW1/H at point A in his presence. PW1 Shri P.A. Karkhanis under whom the appellant was working in Uco Bank, Hamam, Bombay has specifically identified the signature of the appellant at point A at Ex.PW1/H. This witness has identified the signature of the appellant on a number of other documents as well, which have not been disputed by the appellant. Since the appellant was working under him in the same branch, he must have been seeing the documents written and signed by the appellant and, therefore, was in a position to identify his signature. During cross-examination of this witness, no suggestion was given to him that the registration form Ex.PW1/H was not signed by the appellant or that he was not conversant with the signature of the appellant. Similarly, during cross-examination of PW6 Shri Avdesh Narain, no suggestion was given to him that Ex.PW 1/H was not signed by the appellant at point A. In fact, no suggestion was given to him that the appellant had not stayed in hotel Meridian in the night intervening 19-20 February, 1991. When a witness deposes a particular fact and no suggestion to the contrary is given to him in cross-examination, the party against whom the deposition is made, is deemed to have admitted that fact.

20. Section 47 of the Indian Evidence Act reads as under:

47. Opinion as to hand- writing, when relevant.- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.-- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

21. The handwriting of a person can be proved by one or more of the following modes:

(1) by calling as a witness a person who wrote the document.

(2) by a person who saw it written or signed or;

(3) by a person who is qualified to express an opinion as to the handwriting by virtue of Section 47;

(4) by a comparison of the handwriting as provided by Section 73;

(5) by admission of the person against whom the document is tendered.

(6) by expert evidence u/s 45.

(7) by internal evidence afforded by the contents of the document.

In Gulzar Ali Vs. State of H.P., , the Hon''ble Supreme Court, inter alia, held as under:

It must be remembered that expert evidence regarding handwriting is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such handwriting to be regarded as relevant evidence.

22. Since PW1 is a person acquainted with the handwriting and signature of the appellant, his opinion as regards signature at point A of PW1/H is relevant u/s 47 of the Evidence Act. In fact, the signature of the appellant on Ex.PW1/H also stand proved by PW6, in whose presence, he signed the document at Point-A. In view of deposition of the two witnesses, there can be no good reason for not accepting the case of the prosecution that it was the appellant who had signed Ex.PW1/H at point A.

23. It was contended by the learned Counsel for the appellant that on Ex.PW1/H the name of the bank has been shown as PNB, whereas the appellant was working with UCO Bank. He has also pointed out that no evidence has been led by the prosecution to link the appellant with B1/12, Safdarjung Enclave, New Delhi which is the address given in Ex. PW1/H. PW6 is the person who filled up the registration form Ex.PW1/H. During cross- examination he was not asked as to why the name of the bank was given as PNB instead of Uco Bank . He was not asked as to who had given the address of the appellant as B1/12, Safdarjung Enclave, New Delhi. Since there was no cross-examination of PW6 on these aspects, the prosecution did not get an opportunity to explain why the name of the bank was shown as PNB and who had given the address of the guest at the

time of filling up the Registration Form Ex.PW1/H. Therefore, no advantage can be derived by the appellant on account of these unexplained particulars. It has to be kept in mind that the relations between the appellant and Batliwala and Karani Money Market Pvt. Ltd. must be cordial at the time when the appellant travelled from Bombay to Delhi and stayed in Meridian hotel and all the expenses in connection with his visit were borne by that firm. It is quite probable that the appellant, in agreement with PW6, wanted to conceal his identity to the extent it was possible since being a public servant he knew that he was committing an offence by accepting hospitality from Batliwala and Karani Money Market Pvt. Ltd. and for this reason he gave wrong name of the bank and a fictitious address when the registration from was filled up by PW6 and was signed by the appellant. I, however, need not dilate much on this issued, in view of overwhelming evidence produced by the prosecution.

24. The plea taken by the appellant as regards the place of his stay in Delhi is that he had stayed with his friend Rajiv in Rajouri Garden. DW1, who is the friend with whom the appellant claims to have stayed in Delhi has, however, given his name as Raj Kumar Gurshani and his address as 20/25, West Patel Nagar. He, therefore, appears to be a person different from the person named by the appellant in his statement u/s 313 of Cr.PC. This is not the case either of the appellant or of DW1 that he was known as Raj Kumar as well as Rajiv. This is also not the case either of appellant or of DW1 that he was earlier residing at Rajouri Garden. More importantly, even DW1 claimed that the appellant not stayed in his house but had stayed in the house of his friend which he had taken for marriage purposes. In his statement u/s 313 of Cr.PC the appellant did not claim that he had stayed in the house of a friend of DW1. His case was that he has stayed with his friend Rajiv in Rajouri Garden. On the other hand as per DW1 the house in which the appellant stayed was opposite to his house. The person whose house DW1 claims to have taken for his marriage has not been produced in the witness box. In these circumstances, the defence taken by the appellant as regards place of his stay in Delhi is not at all believable. No other submission was made during arguments.

25. For the reasons given in the preceding paragraphs, I am satisfied that the appellant while working as Assistant Manager Uco Bank, Hamama, Bombay had official dealings with Batliwala and Karani Money Market Pvt. Ltd. and that he travelled from Bombay to Delhi and from Delhi to Bombay by air and the cost of his travel by air was borne by Batliwala and Karani Money Market Pvt. Ltd./ Batliwala and Karani. I am also satisfied that the appellant had stayed in Hotel Meridian in the night intervening 19-20th February, 1991 and that the expenses for his stay on the hotel were borne by Batliwala and Karani Money Market Pvt. Ltd. Since the prosecution has proved the above noted allegations, I am not going into deposition of PW6 to the effect that he had also entertained the appellant, at various hostels and restaurants during his stay in Delhi and Batliwana and Karani had reimbursed him for that expenditure. The appellant has, therefore, been rightly convicted u/s 11 and 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act, 1988. Since the Trial Court has already taken a very fair and reasonable view in the matter of sentence, there is no scope for reduction of the sentence imposed upon him. Finding no merit in the appeal, the same is hereby dismissed. The appellant is directed to surrender forthwith before the trial court to undergo the remaining portion of the sentence imposed upon him. The file of the trial court be sent back within 3 days, along with a copy of this judgment.