

(2012) 12 UK CK 0029
In the Uttarakhand High Court
Case No : Criminal Appeal No. 686 of 2001

V.N. Singh

APPELLANT

Vs

C.B.I. Dehradun

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313, 374
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)(d), 13(2), 7

Citation : (2013) 1 Crimes 72

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : S.K. Agarwal, Assisted by Mr. Sandeep Tendon and Ms. Deepa Arya, for the Appellant; Arvind Vashisth with Mrs. Monika Pant, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973 (for short Cr.P.C.), is directed against the judgment and order dated 24.8.2000, passed by Special Judge, Anti-Corruption, Dehradun, in C.B.I. case No. 4 of 1995, whereby said court has convicted accused/appellant V.N. Singh u/s 7 and u/s 13 (2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (for short P.C. Act). The accused V.N. Singh has been sentenced by the trial Court to rigorous imprisonment for a period of one year and directed to pay fine of Rs. 2,500 u/s 7 and rigorous imprisonment for a period of two years and directed to pay fine of Rs. 7,500 u/s 13(2) read with Section 13(1)(d) of P.C. Act, 1988. Heard learned counsel for the parties and perused the lower court record.

2. Brief facts, of the case, are that accused/appellant V.N. Singh was Dy. General Manager (Electrical) with Tehri Hydro Development Corporation, Bhagirathpuram, New Tehri (for short T.H.D.C.). M/s. Manoj Electric Works, Meerut, of which PW 1 Samay Singh Saini was the partner, was given contract no. CO/RKSH/EL-LOA/035 relating to High Tension Electrification at Baurari, New Tehri, and contract no. LOA 036 for execution of agreement for work of Electrification of Group Housing

for Civic Centre at Baurari by T.H.D.C. PW 1 Samay Singh gave complaint (Ex. A5) to Central Bureau of Investigation (For short C.B.I.) on 18.6.1994, complaining that accused/appellant V.N. Singh (Dy. General Manager) and one Jai Kumar, Manager (Electrical) of THDC, are demanding bribe of Rs. 40,000 to clear his bills amount Rs. 3,50,000 pending for eight months. Payment was required to be made by 20.6.1994. On the basis of said report, first information report (Ex. A8) was registered by C.B.I., with crime no. RC-14(A)/94-DAD on 18.6.1994 at 4.00 p.m. The matter for investigation was entrusted to PW 3 R.K. Bhagta Dy. S.P. C.B.I. who planned to trap the accused. As per the prosecution case initially the C.B.I. team with decoy (PW 1 Samay Singh Saini) alongwith witnesses PW 2 Satish Gupta and PW 3 Anil Kumar Jain reached Chamba on 19.6.1994, but when accused V.N. Singh asked informant to come in the T.H.D.C. office on E.C. Road, Dehradun on 20.6.1994 at 4.00 p.m., the trap party reached there and arrested the accused red handed accepting Rs. 40,000 from PW 1 Samay Singh Saini. After the trap proceedings, further investigation was conducted by PW 7 Inspector P.K. Chaudhary who submitted charge-sheet (Ex. A21) against accused V.N. Singh for his trial in respect of offence punishable u/s 7, u/s 13(2) read with Section 13(1)(d) of P.C. Act, 1988.

3. The Trial Court, after giving necessary copies to the accused, as required u/s 207 Cr.P.C., heard the parties and framed charge of offence punishable u/s 7, and u/s 13(2) read with Section 13(1)(d) of P.C. Act, 1988, against accused V.N. Singh who pleaded not guilty and claimed to be tried. On this, prosecution got examined PW 1 Samay Singh Saint (informant/decoy), PW 2 Satish Gupta (witness of trap proceedings), PW 3 Anil Kumar Jain (another witness of trap proceedings), PW 4 R.K. Bhagta, Dy. S.P. C.B.I. (who laid the trap), PW 5 K.L. Jutsi, the then Managing Director. T.H.D.C., who granted sanction for prosecution, PW 6 N.K. Prasad, the then Senior Scientific Officer of Central Forensic Science Laboratory, PW 7 P.K. Chaudhary (who completed the investigation) and PW 8 C.K. Jain (another Senior Scientific Officer of Central Forensic Science Laboratory who conducted voice spectrography).

4. The oral and documentary evidence was put to the accused u/s 313 Cr.P.C., in reply to which only this much was admitted by accused V.N. Singh that he was Dy. General Manager with T.H.D.C in the year 1994, and PW 1 Samay Singh Saini was partner of M/s. Manoj Electrical, the contractor firm who was awarded contract no. LOA 035 (Ex. A1) and LOA 036 (Ex. A2) for electrification work in Baurari. In respect of the rest of the evidence the accused pleaded that the same was false and he has been falsely implicated. In defence, DW 1 Rakesh Khare, the then Manager, Rehabilitation, T.H.D.C. and DW 2 P.K. Srivastava, the then Senior Manager (Electrical) T.H.D.C., were examined. After hearing the parties the trial court found that the prosecution has successfully proved charge of offence punishable u/s 7, and u/s 13(2) read with Section 13(1) (d) of P.C. Act, 1988, against accused V.N. Singh and convicted him accordingly. After hearing on sentence, the convict was sentenced to rigorous imprisonment for a period of one year and directed to pay fine Rs. 2,500 u/s 7 rigorous imprisonment for a

period of two years, and directed to pay fine of Rs. 7,500 u/s 13(2) read with 13(1)(d) of P.C. Act. Aggrieved by said judgment and order dated 24.8.2000, passed by Special Judge, Anti-Corruption, Dehradun, in C.B.I. case No. 4 of 1995, this appeal was preferred by the convict before Allahabad High Court from where it is received by transfer u/s 35 of U.P. Reorganization Act, 2000, for its disposal.

5. Admittedly, in the year 1994, accused V.N. Singh was Dy. General Manager (Electrical) with T.H.D.C. It is also not disputed that M/s. Manoj (Electrical) Meerut, was the firm which was awarded contracts nos. LOA035 and LOA036 regarding electrification in Baurari, by T.H.D.C. The alleged demand of bribe relates to contract no. LOA No. 036. Both letters of awarding of contracts were admitted by the defence counsel before the trial court and placed on the record as Ex. A1 and Ex. A2.

6. PW 1 Samay Singh Saini has stated that he was the partner of firm Manoj Electrical. He further told that said firm was awarded contract No. 035 and 036 for Electrification in Baurari. He further narrated that under contract No. 035 supplies were to be made, and under contract no. 036 erection work to be done. He further told that one Jai Kumar, Manager (Electrical), and accused V.N. Singh Dy. General Manager (Electrical) used to pass the bills. PW 1 Samay Singh Saini further told that his bills amounting Rs. 3,50,000 were outstanding in respect of erection work for eight months. He further told that even after requesting again and again the payment was not made. He proved, M.B. (Measurement Book) as material Ex. 1. He further proved his signatures on the M.B. on several pages. PW 1 Samay Singh Saini told that when he met the accused in connection with clearance of the bill he demanded Rs. 40,000. The witness further told that when accused V.N. Singh asked him to pay the amount by 20th June, 1994; he (PW 1) made a written complaint (Ex. A5) to C.B.I. The witness further narrated that C.B.I. asked him to come to Chamba alongwith the amount to be paid to the accused V.N. Singh. According to this witness (PW 1 Samay Singh) meanwhile accused asked him to reached Dehradun on 20.6.1994 at 4.00 p.m., in T.H.D.C. office situated on E.C. Road. PW 1 further told that he communicated the same to Dy. S.P. Shri Bhagta (PW 4). Thereafter C.B.I. team alongwith decoy and witnesses came to Dehradun. PW 1 told that in the office of C.B.I. at Dehradun, a demonstration was made regarding the use of phenolphthalein powder and sodium carbonate solution. He further told that the currency numbers of cash of Rs. 40,000 were noted down by C.B.I. and memorandum (Ex. A11) of the same was prepared. He further told that on the amount of Rs. 20,000 of currency notes of denomination of Rs. 100 each, and another amount of Rs. 20,000 of currency notes of denomination of Rs. 50 each phenolphthalein powder was applied, and the amount was given to him so that the same may be handed over to the accused. The witness further narrated that micro tape recorder was also given to him in order to record voice of the accused regarding his talks at the time of giving the amount. PW 1 Samay Singh Saini further told that at 4.00 p.m., he reached in the office of T.H.D.C. at Dehradun, and after his talks in a

room with accused V.N. Singh, he called A.K. Jain (PW 3) to bring his briefcase from the vehicle as per the plan. After the amount was handed over to accused V.N. Singh who kept the same in his briefcase, a gesture/signal was given by him (PW 1) and PW 3 A.K. Jain on which C.B.I. team rushed to the room and caught the accused red handed. The witness further narrated that the hands of the accused were dipped in a sodium carbonate solution on which colour of the solution turned pink, thereafter necessary memorandum was prepared by C.B.I. team. This witness has been subjected to lengthy cross-examination but nothing has come out which creates doubt in his testimony.

7. The statement of PW 1 Samay Singh Saini has been fully corroborated by PW 2 Satish Gupta, Accounts Officer of PPCL who was called by C.B.I. to witness the trap proceedings.

8. PW 3 Anil Kumar Jain has further corroborated the entire trap proceedings narrated by PW 1 Samay Singh Saini. This witness was Assistant Divisional Manager, United India Insurance Company, who was also called by C.B.I. to witness the trap.

9. PW 4 Shri R.K. Bhagta, Dy. S.P.C.B.I. led the trap party, proved the fact that informant (PW 1) came to him with the complaint against V.N. Singh. The witness further told that he asked the informant to come to Chamba so that the trap may be laid but after getting information from the informant that meanwhile accused had asked him to come to Dehradun Office on 20.6.1994 at 4.00 p.m., the trap was accordingly planned and successfully conducted. He also proved the fact that the accused V.N. Singh was caught red handed. He proved the memorandum (Ex. A20) prepared by him regarding the currency notes in which phenolphthalein powder was applied, and which was recovered from the briefcase of the accused, whereafter another memorandum (Ex. A21) was prepared.

10. PW 5 K.L. Justi was the then Managing Director and Chairman of T.H.D.C. who has proved sanction (Ex. A17) for prosecution of accused V.N. Singh, given by him. The witness has stated that he perused the record, and the documents produced before him before granting sanction.

11. PW 6 N.K. Prasad, the then Senior Scientific Officer of Central forensic Science Laboratory has proved his report (Ex. A15) regarding the chemical analysis of the sealed parcels sent to it pertaining to papers containing phenolphthalein powder said to have been sealed at the time of demonstration and raid. Said report further corroborates the prosecution case.

12. PW 5 C.K. Jain, the then another Scientific Officer of Forensic Science Laboratory has stated that he conducted voice spectrography on the tape (between accused and informant) of conversation received. He proved his report (Ex. A22) that the sample voice tallied with the voice recorded earlier (at the time of raid).

13. On behalf of the accused attention of this Court is drawn to the statement of DW 1 Rakesh Khare the then Manager, Rehabilitation of T.H.D.C. at Dehradun, who has stated that he gave notice of meeting to the accused V.N. Singh only on 20.6.1994. On its basis it is argued that statement of PW 1 Samay Singh Saini that he was informed in the night of 19.6.1994 by the accused to meet in Dehradun office is a false statement. I have carefully gone through the statements of the two witnesses; it is not a case where the accused was given notice (Ex. a37) by DW 1 in Tehri. On 20.6.1994, according to DW 1 Rakesh Khare he got information from Tehri that accused was already in Rishikesh, as such the written communication could be made to him at Rishikesh through some messenger. In the circumstances, since T.H.D.C. was having its offices at Tehri, Rishikesh, and Dehradun, and before the time of meeting could be communicated by DW 1 at Tehri, accused had already reached Rishikesh, the testimony of PW 1 Samay Singh cannot be doubted that on 19.6.1994, accused asked him to come to office at Dehradun.

14. DW 2 P.K. Srivastava, Senior Manager (Electrical) T.H.D.C., has been got examined by the defence to show that Dy. General Manager (Electrical) had normally no power to pass the bill of the contractor unless he is specially authorized for that purpose. On its basis, an argument is developed that the accused had no power to pass the bill of the accused, as such there was no question of demand of bribe by him from the contractor. However, on careful examination of statement of DW 2 P.K. Srivastava, this Court finds that in the cross-examination this witness has admitted that in respect of the bill relating to contract no. LOA 035 there were signatures of Dy. General Manager (V.N. Singh) but he tried to save his face by saying that it was not necessary. In the cross-examination DW 2 P.K. Srivastava has further admitted that in the M.B. (measurement book) which is (Ex. A27) accused who was Dy. General Manager (Electrical) had signed said document relating to work done by the contractor (Manoj Electrical) which shows that arguments developed on behalf of the accused on the basis of statement of DW 2 P.K. Srivastava in examination-in-chief, does not carry force.

15. Attention of this Court is also drawn on behalf of the accused/appellant to the contradiction between the statements of PW 1 Samay Singh Saini and PW 3 Anil Kumar Jain on the point as to whether the briefcase containing currency notes kept in the vehicle was brought by PW 1 Samay Singh Saini after conversation was recorded on tape, to the room where trap was laid, or it was PW 3 A.K. Jain who was in the vehicle who brought it after receiving call from PW 1 Samay Singh. On careful reading of the statements of the two witnesses it is clear that after the conversation between the accused and informant was recorded secretly by PW 1 Samay Singh Saini, he came out of the room and called A.K. Jain (PW 3) so that he may bring briefcase as per the plan and when he did not see A.K. Jain he went towards the vehicle but by then A.K. Jain had proceeded towards the room where the briefcase was to be handed over by PW 1 Samay Singh Saini and Shri Saini got the briefcase to be given to the accused. In the opinion of this

Court, this minor contradiction does not create reasonable doubt to disbelieve the prosecution story.

16. Similarly, another minor contradiction that one witness has stated that briefcase had only number lock and another witness has stated that it was operational by key is of little consequence to doubt the veracity of the trap laid down by C.B.I.

17. For the reasons as discussed above, this Court is of the view that the trial court has rightly held the accused V.N. Singh guilty of charge of offence punishable u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, and the conviction does not require interference. However, on the point of sentence, considering the facts and circumstances of the case, this court is of the view that the sentence of rigorous imprisonment for a period of one year u/s 13(2) read with Section 13(1)(d) of Prevention of Corruption Act would meet the ends of justice. The sentence recorded by the trial court u/s 7 of the Act appears to be just and proper. Therefore, this appeal is dismissed on the point of conviction, and the conviction of appellant is affirmed. However, on the point of sentence, the appeal is disposed of with the modification in the sentence to the extent that the sentence of the accused/appellant V.N. Singh is reduced to rigorous imprisonment for a period of one year without disturbing fine of Rs. 7,500 directed to be paid by the trial court. The sentence awarded by the trial court u/s 7 of P.C. Act is not interfered with. Both the sentences shall run concurrently. Accused/appellant V.N. Singh is on bail. His bail is cancelled. He shall surrender before the court concerned to serve out the remaining part of the sentence. The trial court record be sent back.