

(2013) 07 DEL CK 0511

Delhi High Court

Case No: Criminal Appeal No. 100 of 2003

Suresh Kumar Duggal

APPELLANT

Vs

State (NCT of Delhi) C.B.I

RESPONDENT

Date of Decision: July 10, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 19(3), 20, 7

Citation: (2013) 6 AD 329 : (2013) 3 JCC 2065 : (2014) 1 RCR(Criminal) 49**Hon'ble Judges:** Mukta Gupta, J**Bench:** Single Bench**Advocate:** S.K. Sharma, Mr. Puneet Relan, Mr. Prayas Aneja and Mr. Milan Deep Singh, for the Appellant; R.V. Sinha, for the Respondent

Judgement

Mukta Gupta, J.

By this appeal the Appellant impugns the judgment dated 29th January, 2003 whereby he has been convicted for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 30th January, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of four years and a fine of Rs. 500/- each for offences u/s 7 and Section 13(2) of the PC Act. In case of default of payment of fine the Appellant has to undergo rigorous imprisonment for three months on each count. Learned counsel for the Appellant contends that the sanction granted by the competent authority suffers from non-application of mind. The sanction order was passed verbatim on the basis of draft sanction order and only the name of sanctioning authority has been filled up. Further the sanction order does not show for which offences the sanction for prosecution has been granted. Reliance is placed on [Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh](#), and [Mansukhlal Vithaldas Chauhan Vs. State of Gujarat](#), . The version of the complainant regarding initial demand is based on hearsay evidence of what was told to his father

and is thus not admissible in evidence. Further the father of the complainant has not been examined as a witness. The case of the prosecution regarding demand of money for not taking action for misuse of water is falsified from the Jal Meter Diary Ex. DW1/A (at page 221 of the Trial Court Record) wherein the Appellant made an endorsement regarding the misuse of water on 29th March, 1997 itself. There is a further endorsement in Ex. DW1/A dated 7th April, 1997 whereby report to Z.E. (W) for cost of water has been sent. The complainant in his examination-in-chief does not state that the Appellant demanded money. He was thus declared hostile on this point. The version of PW3 the shadow witness regarding the conversation at the time of alleged transaction is altogether different. PW3 in his cross-examination categorically admitted that he did not see the complainant giving money to the Appellant or the Appellant accepting the money. The prosecution failed to re-examine the shadow witness on the point of demand and acceptance of money. The shadow witness also admitted in his examination-in-chief that he did not recollect in which hand the Appellant accepted the money. Thus, in view of the major contradictions between the testimonies of complainant and the shadow witness, the demand and acceptance by the Appellant has not been proved beyond reasonable doubt by the prosecution.

2. Even the recovery has not been proved by the prosecution in view of the contradictory testimonies of the various witnesses. The complainant stated that one member of the trap team recovered the money from the pocket of the pant of the Appellant and even on cross-examination by the learned APP he stated that he did not remember what happened to the recovered money, pant of the Appellant and bottle of washes. He further stated that the recovery memo Ex. PW2/D does not bear his signatures on all the pages. There is contradiction in the testimony of the witnesses as to where the post-trap documents were prepared. In the recovery memo Ex. PW2/D the details of GC notes have not been mentioned. The complainant failed to identify the pant of the Appellant. PW3 the shadow witness has categorically stated that when the money was recovered he was standing outside the room and he did not see R.P. Sharma the recovery witness recovering the money from the pocket of the Appellant. He asserted that she was called inside the room after the recovery. PW4 the recovery witness could not be examined completely before the Trial Court as he passed away before completion of his examination-in-chief and cross-examination, thus part testimony of this witness is of no avail. There is contradiction in the testimony of the witnesses in respect of the time of trap. Even otherwise conviction cannot be based on mere recovery as held in [Banarsi Dass Vs. State of Haryana](#), . The shadow witness in his testimony has stated that the complainant was carrying a tape-recorder which was provided to him during pre-raid proceedings, however the said tape-recorder has not been produced during the trial before the Court. Thus an adverse inference is required to be drawn against the prosecution. In view of the serious illegalities and lack of evidence the Appellant be acquitted of the charges framed.

3. Learned counsel for the CBI on the other hand contends that sending a draft order does not vitiate the sanction granted by the competent authority if the same is after due application of mind. Further in view of Section 19(3) PC Act, the proceedings are not vitiated for any illegality in the sanction, unless the same results in failure of justice. Learned counsel for the Appellant has not been able to point out any prejudice caused to him or any failure of justice. Reliance is placed on [Ashok Tshering Bhutia Vs. State of Sikkim](#). There is no requirement in law that the provisions of the Act for which sanction for prosecution has been granted are required to be mentioned in the sanction order. Ex. PW1/A the sanction order itself states that the competent authority granted sanction for receiving illegal gratification. Once the factual foundation is laid, there is no requirement in law to reproduce the Sections. The sanctioning authority is not required to pass a reasoned judgment but has only to pass an administrative order granting sanction after perusing the relevant records. The sanction order Ex. PW1/A states that the sanctioning authority has examined fully and carefully the material placed and thus there is due application of mind. There is no challenge to the competence of the sanctioning officer. Hence there is no illegality in the grant of sanction nor non-application of mind. The Appellant has not denied his capacity as the employee. He has also not denied the recovery. Minor inconsistencies in the statement of the witnesses will not affect their trustworthiness. Once recovery is proved, presumption is raised u/s 20 PC Act for offence u/s 7 PC Act. Relying on [Krishna Ram Vs. State of Rajasthan](#), it is contended that u/s 7 PC Act only acceptance has to be proved unlike Section 13(1)(d) where both acceptance and demand are required to be proved as proof of obtainment of illegal gratification. In view of the acceptance and recovery being proved, presumption u/s 20 PC Act is required to be raised which onus the Appellant has failed to discharge. There is no merit in the appeal and the same be dismissed.

4. I have heard learned counsel for the parties. Briefly the facts of the case are that the house in the name of mother of complainant was under renovation when the Appellant, who was working in the Water Supply Department of Municipal Corporation of Delhi (MCD), visited the house on 2nd April, 1997. The Appellant allegedly found the father of the complainant misusing the Municipal water supply for renovation of the house. When the complainant went to meet the Appellant, he threatened the complainant with disconnection of water supply on the ground of misuse, if the bribe money of Rs. 3000/- as demanded by him was not paid. Consequently a trap was laid and the Appellant was allegedly caught red-handed accepting the bribe amount.

5. The sanction for prosecution was granted by PW1 Rakesh Mohan who was then working as the Additional Commissioner (Water), MCD Delhi and was competent to appoint and terminate the Appellant who was working as LDC-cum-Meter Reader in the MCD. PW1 stated that before granting sanction for prosecution, he perused the report of the Zonal Revenue officer, the copy of the FIR and the detailed reports sent

by the CBI. Learned counsel for the Appellant has assailed the sanction order on the grounds that it does not mention the provisions of law and secondly it is verbatim the same as the draft sanction order. In *Indu Bhushan Chatterjee Vs. State of West Bengal* AIR 1958 SC 1482 their Lordships upheld the grant of sanction wherein a draft sanction order was prepared by the Police and put up before the sanctioning authority, who thereafter after going through all the relevant papers signed the same. The sanction on the basis of a draft sanction order was held to be a valid sanction accorded by the competent authority. A perusal of Ex. PW1/A shows that it is a detailed order passed after due consideration of material on record. It is well settled that a valid sanction order must either contain all the facts and materials constituting the offence or the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authority ([Major Som Nath Vs. Union of India \(UOI\) and Another,](#)). There is no requirement in law to mention the provisions of Act for which prosecution sanction is being granted. The same can be also inferred by the recital in the order or from the accompanying documents. Hence, I find no infirmity in the order granting sanction.

6. As regards contradictions PW2 the complainant Manoj Gupta in his testimony before the Court has stated that his House 725/7, Govind Puri, Kalkaji which is in the name of his mother was under renovation. On 2nd April, 1997 the Appellant visited the house when the complainant was not present and asked his father that he was misusing the domestic water connection at the said premises for the repair of his house. On the next day his father told him that the Appellant has directed him to come to the office. The complainant visited the MCD office Water Supply Department on 7th April, 1997 and met the Appellant. The Appellant stated to the complainant that they were misusing the domestic connection installed at their house and directed him to bring Rs. 3000/- on 8th April 1997 failing which he threatened disconnection of water. On the next day the Appellant lodged a written complaint with the CBI Ex. PW2/A. A trap team was constituted. The complainant gave 30 GC notes of Rs. 100/- denomination which were treated and numbers of the notes recorded on a paper which was signed by the complainant vide Ex. PW2/B. Pre-trap formalities were completed and thereafter the team left CBI office at around 12.30 or 1.00 PM and reached MCD office Water Supply Department, Sadiq Nagar, New Delhi. The complainant along with the shadow witness Pawan Kumar PW3 went to the office of the Appellant. On entering the office of the Appellant the complainant wished him "Namaste" which was replied by the Appellant as "Nameste, Aa Gaye". The complainant replied "Ji Haa". Thereafter the Appellant stated "Kaam Ho Gaya" and the complainant replied "Jee Haa". On this the complainant stated "Teen Hazaar rupee main lee aya hun jo aapne mangaye the". The Appellant replied "Theek Hai abhi rukko". Thereafter the complainant took out the tainted money of Rs. 3000/- and passed on to the Appellant who accepted the same with his right hand and kept in his right side pocket of his pant. Thereafter the shadow witness went outside, gave the pre-planned signal to the trap party and

immediately two officials of the CBI came into the room and apprehended the Appellant from his respective wrists. Inspector Harish then summoned some senior officer from the office of the accused and took the accused downstairs. One officer probably Mr. Verma came and thereafter the trap party recovered tainted Rs. 3000/- from the pocket of the pant of the Appellant. The complainant stated that he did not remember what was done after the recovery of these GC notes and thus this witness was cross-examined by the learned APP with the permission of the Court. In cross-examination by the learned APP he fortified the suggestions with regard to the post-trap proceedings, however stated that he did not remember as to what happened to the recovered money, pant of the accused and bottles of the washes, though he stated that he signed the recovery memo Ex. PW2/D, though on all pages it did not bear his signature. In cross-examination this witness admitted that two months before the deposition they received a water bill pertaining to the arrears of charges for the water used by them for the renovation of house, however they had not made payment of the said bill, though later he stated that his parents had cleared that bill. The complainant also admitted that he had obtained a duplicate bill for the said period because he required the same for some pending civil suit against MCD Water Supply Department.

7. PW3 Pawan Kumar the shadow witness reiterated the pre-trap proceedings as stated by PW2 the complainant. He further stated that when he and the complainant went inside the room of the Appellant, the Appellant was present in the room. He identified the Appellant in the Court as the accused sitting in the office. The complainant wishes the Appellant "Namaste". Thereafter the Appellant asked "Paise Laye hoo" to which the complainant replied in the affirmative "Haa". On this the Appellant said "Kitne". The complainant replied "Teen Hazaar Rupee". Thereafter he took out the tainted Rs. 3000/- and gave to the Appellant herein. He did not remember how the Appellant accepted it. However when the complainant told the Appellant to count the money, the Appellant declined by saying "Nahin". On cross-examination this witness admitted that he signed the recovery memo because he was told that the tainted money was recovered from the Appellant.

8. PW8 Inspector H.S. Karmyal has also deposed about the pre-trap proceedings, proceedings of apprehension and post-trap proceedings. He stated that after receiving the signal they went inside and on the pointing out of the shadow witness Inspector Surender Malik and Inspector Harminder Singh caught hold of the Appellant by his respective wrist. The Appellant was nervous but kept quiet. Thereafter, recovery witness R.P. Sharma took the search and recovered Rs. 3000/- from the right side pocket of the pant of the Appellant which he was wearing. Washes of the right hand finger and the inner lining of the right pocket of the pant of the Appellant taken. Both the solutions turned pink. They were transferred to empty clean bottles and they were properly sealed and labeled.

9. It would be thus seen that the evidence of the complainant qua recovery is duly corroborated by PW8 the trap laying officer. Merely because PW3 the shadow witness has not supported the prosecution case on the point of recovery, the otherwise credible testimony of the other witnesses cannot be discarded. No doubt the evidence of PW4 the recovery witness cannot be looked into as he passed away before he could be cross-examined by the learned APP and further cross-examined by the counsel for the Appellant, and thus his testimony cannot be read. Moreover from the evidences of PW2 the complainant, PW3 the shadow witness, PW8 the trap laying officer and the expert opinion qua hand and shirt wash, the prosecution has proved its case beyond reasonable doubt.

10. The case of the Appellant is that the prosecution case is false as the Appellant in his Jal Meter Diary Ex. DW1/A had already made an endorsement regarding misuse of water on 29th March, 1997 and a further endorsement vide Ex. DW1/A dated 7th April, 1997 whereby report to Z.E. (Works) for cost of water had been sent. It is not the case of the Appellant that the amount of Rs. 3000/- offered to the Appellant was for misuse charges of the water, as this plea has neither been taken in the cross-examination of the witness PW2 nor in his statement u/s 313 Cr. P.C. Thus, mere entries in the Jal Meter Diary will not entitle the Appellant to the benefit of doubt. In view of the aforesaid discussion I find no merit in the appeal. The same is dismissed. The bail bond and surety bond of the Appellant are cancelled.