(2013) 07 DEL CK 0604

Delhi High Court

Case No: Criminal A No. 159 of 2003

Darshan Lal Dhawan		APPELLANT
	Vs	
C.B.I. and Another		RESPONDENT

Date of Decision: July 11, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 142
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 19(3), 7

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: D.C. Mathur and Mr. Atul Guleria, Mr. Badar Mahmood and Mr. Amish Dabbas, for the Appellant; R.V. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

The Appellant lays a challenge to the judgment dated 10th March, 2003 whereby he has been convicted for offence punishable u/s 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 11th March, 2003 whereby he has been directed to undergo rigorous imprisonment for a period of four years and a fine of Rs. 500/- on each count and in default of payment of fine to further undergo rigorous imprisonment for three months on each count. Learned counsel for the Appellant contends that the sanction was granted on the basis of draft sanction order and thus there was no application of mind by the competent authority. Sanction was granted only u/s 7 PC Act whereas the charge-sheet was filed for offences u/s 7 and 13(2), cognizance was taken thereon and conviction awarded. In view of the fact that there was no sanction for offence u/s 13(1)(d) read with 13(2) PC Act, no cognizance could have been taken nor conviction awarded. All the material witnesses have been declared hostile. Thus there is no material on the basis of which the Trial Court could have

convicted the Appellant. The prosecution version is highly improbable. Two Inspectors who were members of the raiding party and material witnesses i.e. Inspector D.K. Singh and Inspector Vivek Dhir though shown in the site plan Ex. PW 5/C were not examined before the learned Trial Court. The amount of the complainant allegedly due was Rs. 7300/- and it is alleged that the Appellant as Assistant Director demanded Rs. 1400/- and settled the same at Rs. 1200/-. However, the amount allegedly given in bribe was Rs. 500/-. Thus, the version of the prosecution is highly improbable. One of the witnesses stated that the complainant was carrying a receiver instrument so that the conversation could be heard outside, however this receiver and the conversation so recorded has not been produced in evidence. One of the witness stated that the money was given in an envelope, however no such envelope was seized nor is it the case of the prosecution. Despite specific instruction that the money was to be given on specific demand, money was given without any demand. Admittedly there is no exchange of words while demanding the money. The shadow witness PW 4 Mohan Purshottam has turned hostile. He has not deposed regarding demand and acceptance. In the absence of demand having been proved, mere evidence of recovery is not sufficient to base the conviction. PW 4 Mohan Purshottam also does not support the prosecution case as he says that he does not know who recovered the money from the drawer. It is the case of the prosecution that since the Appellant asked the complainant to give the receipt and he did not know how to write, the receipt Ex. P/3B was written by Mohan Purshottam on a letter pad of the complainant. The letter pad is a straight paper and one cannot fathom how the letter pad was carried by the complainant in the pocket without holding it. There is no demand even as per the case of the complainant, as according to him only gesture by fingers was made. The cheque of the complainant was already prepared on 9th July, 1996 and the very basis for demand of bribe is thus unfounded. The complainant admits that he had lodged a trap case earlier as well. No signal was given by shadow witness Mohan Purshottam. Even as per PW 4, the complainant placed the money on the table of the Appellant and thus there was neither any demand nor acceptance. In view of this incoherent and contradictory testimony, the Appellant is entitled to the benefit of doubt and thus he be acquitted of the charges framed.

2. Learned Standing Counsel for the CBI on the other hand contends that as per the prosecution case the cheque to be paid to the complainant was in the possession of the Appellant and thus it cannot be said that he has no concern with the money due. In his statement u/s 313 Cr. P.C. the Appellant admits having made the receipts. A draft sanction order can always be sent by the investigating agency and a sanction granted on the basis of draft sanction order does not amount to non-application of mind. In any case in view of Section 19(3) of PC Act no finding or judgment can be reversed merely on account of illegality/irregularity in the grant of sanction. Further the Appellant has not been able to show any prejudice. Recovery from the drawer of the Appellant''s table has been proved beyond reasonable doubt. Hence the

conviction can be safely based thereon.

3. Heard learned counsel for the parties. The case of the prosecution on the basis of the statement of PW 3 Madan Mohan the complainant is that he was running a refrigeration-cum-air conditioning workshop at Ashok Vihar. He had taken a contract pertaining to air-conditioner services from the Radio and Doordarshan Kendra. In respect of this contract work his payment was due for which he met the Appellant on 4/5 occasions. In July 1996 the complainant rang up the Appellant in his office and asked about the payment on which the Appellant stated that the complainant will have to make 20% payment to him and then only his cheque would be prepared. The Appellant further told the complainant to visit his office on 1st August with the money. On 1st August, 1996 at around 2.00 PM the complainant again called up the Appellant in his office and stated that he was not in a position to pay 20% of the amount on which the Appellant told him to pay Rs. 1200/- and asked him to come along with the money to his office at around 5.00 PM. Since he was not interested in paying the bribe, he went to the CBI office at around 4.00 PM and met the SP CBI and narrated the facts to him. On his complaint Ex. PW 3/A the pre-trap proceedings were arranged. Two witnesses i.e. Mr. H.C. Gupta PW 2 and PW 4 Mohan Purshottam were associated as recovery and shadow witness respectively. Since the complainant could not arrange Rs. 1200/- therefore he produced Rs. 500/- for the trap in the form of 10 notes of Rs. 50 denomination. The notes were treated with phenolphthalein and on the panch witnesses touching the same and thereafter by dipping the finger in the solution, the solution turned pink. The raiding team along with the complainant left the CBI office at around 5.00 PM and reached near R&D Research Centre, near ITO. The complainant and shadow witness Mohan Purshottam went inside the office and contacted the Appellant when the Appellant stated "Barsat ka mausam hai, main soch Raha Tha Aap Barsaat Ki Wajah Se Nahin Aaoge". On this the complainant replied "Aisa Nahin Hai main To Aa Gaya". The Appellant told the complainant to prepare receipt of the cheque on his letter pad. As the complainant was illiterate, he stated that his partner Purshottam will prepare the receipt. PW 4 Purshottam wrote the receipt on the letter head of the complainant. Thereafter the Appellant took out the cheque and signaled with his fingers to pay him the money. He did not demand the money by word of mouth. The complainant took out the tainted notes and extended it towards the Appellant. The Appellant did not accept the same with his hand and told him to put the same on his table. So the complainant kept the tainted Rs. 500/- on the table of the Appellant. The Appellant picked up the said money from the right hand and put the same in the right hand side drawer of his table. In the meantime the shadow witness gave signal to the trap party. The Appellant gave the cheque to the complainant after accepting the money. CBI officials came inside the office of the Appellant and apprehended him after disclosing their identity. This witness has been cross-examined by the learned APP to the limited extent of his earlier conversations with the Appellant with regard to demand of money. The complainant admitted in

his cross-examination that he was the complainant in one more trap case organized by the CBI against the officers of the MTNL. Besides this fact nothing material has been elicited from the complainant in his cross-examination. Learned counsel for the Appellant has sought to draw an adverse inference from the fact that the complainant had earlier also got trap organized by CBI. This is wholly unwarranted. The complainant having earlier also filed a complaint against demand of illegal gratification only shows that he is conscientious person and he has the legal right to lodge the complaint wherever there is demand of illegal gratification.

4. PW 4 Mohan Purshottam the shadow witness though stated that he reported to the trap officer in CBI in August 1996, however he did not remember if the complaint was shown to him or how much money was used for the trap. In the cross-examination by the learned APP he admitted about the complaint being shown and the 10 GC notes of Rs. 50 denomination being produced. He stated that he did not remember about the exact details of the conversation but the complainant asked for his cheque by saying "cheque De Dijiye" on which the Appellant responded by saying "Receipt Bana Dijiye". The complainant requested PW 4 to write down the receipt as he was not fully literate and thus he prepared the receipt for the cheque Ex. PW 3/B. He however stated that thereafter the complainant on his own placed the money on the table of the Appellant and they went outside. Thus with regard to demand and acceptance this witness has not supported the prosecution case.

5. PW 2 HC Gupta was also cross-examined by the learned APP. However this witness supported the pre-trap proceedings. He further stated that after he went inside the office, the Appellant had been caught hold of by the CBI officers. The two other officers present in the room of the Appellant stated that they were busy with their work and they had neither heard nor seen the Appellant accepting or refusing the money. He stated that PW 4 Mohan Purshottam checked the right drawer of the table of the Appellant and recovered the money. He and Mohan Purshottam compared the numbers and the same tallied with the handing over memo but at that time the GC notes and the handing over memo were in the hands of CBI officials. He admitted that the accused was made to dip his right hand fingers in the solution which turned pink and the said right hand wash was transferred into clean empty bottles, labeled and sealed. It is thus apparent that as regards the demand and acceptance, it is only the evidence of PW 3 the complainant which needs to be thus scrutinized.

6. It may be noted that before recovery the Deputy Director Research in the office of the Appellant was called, however this witness stated that he did not remember whether any personal search or the search of the room of the drawer of the table was taken in his presence. PW 8 Bhagwati Charan Baukhand, LDC in the office of the Appellant stated that original cheque to be given to the complainant was taken by the Appellant from him and he had obtained the acknowledgement on a receipt by

the Appellant while handing over the cheque to him. There is no suggestion even to this witness that the cheque in question was not in possession of the Appellant. Thus, the contention of the learned counsel for the Appellant that he had nothing to do with the payments and had no concern with payment of cheque to the complainant is wholly unfounded.

7. No doubt, the other two members of the trap team Inspector D.K. Singh and SI Vivek Dhir have not been examined, however the same would not belie the testimony of PW 5 Inspector Harish Karmyal the trap laying officer and PW 3 the complainant. It is not the quantity of the witnesses but the quality of witnesses which is material. PW 5 Inspector Harish Karmyal the trap laying officer deposed about the complaint of PW 3 and with regard to pre-trap proceedings. He further stated that the trap team left the CBI office at around 5-6 PM and reached I.P. Estate at about 5.40 PM. After parking the vehicles the complainant and the shadow witness Mohan Purshottam were directed to go ahead to contact the Appellant in Room No. 112 whereas other members of the raiding team took suitable positions. At about 6.00 PM the complainant came out of the room and contacted PW 5 and told that the Appellant had demanded and accepted the bribe amount of Rs. 500/-. On this he along with the other members of the raiding team went to the room of the Appellant where the shadow witness was already sitting. On the Appellant being challenged he became nervous and kept mum. On the directions of PW 5, PW 4 the shadow witness took the search of the drawer of the table of the Appellant and recovered the tainted money. The number on the recovered GC notes were tallied. The right hand fingers of the Appellant were dipped in the solution which turned pink. This solution was transferred into a bottle and sealed with the seal of CBI and properly labeled after covering the mouth with piece of cloth. In the cross-examination of this witness, nothing material has been elicited.

8. In case this Court comes to the conclusion that the testimony of PW 3 the complainant and PW 5 the trap laying officer is credible and trustworthy, the conviction can be based thereon. A perusal of the testimony of PW 5 shows that he has clearly proved the pre-trap, recovery and post-trap proceedings. As regards demand, the testimony of PW 3 the complainant cannot be washed away merely because PW 4 the shadow witness has not supported the same. The cross-examination of PW 4 by learned APP shows that he has admitted the prosecution case in its broader contours, however tried to protect the Appellant by stating that he made no demand and acceptance and the complainant kept the money on the table on his own. In the present case the money has not been recovered from the table but from the drawer of the table. Thus, the Appellant picked up the money from the table and kept the same in the drawer, which clearly proves his intention. Corroboration to the evidence of an eye-witness can also be found out from attending circumstances.

9. Learned counsel for the Appellant has relied on Rakesh Kapoor Vs. State of Himachal Pradesh, to contend that in the absence of corroboration to the oral testimony of the complainant, the benefit of doubt should be extended to the Appellant. In Rakesh Kumar the Hon''ble Supreme Court was dealing with the matter where demand was made by the Appellant therein on the mobile phone. Thus, it was held that corroboration could have been sought from the call details which had not been produced in evidence in the said case. In the present case there is no such evidence. However, it is not a rule of absolute principle of law that an uncorroborated testimony of the complainant cannot be relied upon. In the present case the testimony of complainant is supported by the trap laying officer. In State of U.P. Vs. Zakaullah, it was held that the testimony of the trap laying officer can be acted upon even without corroboration and cannot be discarded merely because he is interested in the success of the trap. Further the testimony of the briber giver cannot also be rejected merely because he is aggrieved by the conduct of the accused.

10. The contention of the learned counsel for the Appellant that there is non-application of mind while granting sanction as the sanction order was passed on the basis of draft sanction order deserves to be rejected. In Indu Bhushan Chatterjee Vs. State of West Bengal AIR 1958 SC 1482 it was held that the draft sanction order can be placed before the competent authority along with the material and if the competent authority after perusing the material signs the draft sanction order it cannot be said to suffer from non-application of mind. In the present case PW 1 V.K. Dhingra Under Secretary to the Government of Ministry of Health and Family Welfare had appeared in the witness box to prove the sanction order Ex. PW1/A. He clearly stated that the SP''s report, draft sanction order and copies of statements of witnesses and all relevant documents were sent to the sanctioning authority. A perusal of the sanction order shows that it contains all vital facts and is a detailed order after consideration of material facts.

11. I also do not find and merit in the contention of learned counsel for the Appellant that as sanction was granted for offence u/s 7 PC Act the Appellant could not have been tried and convicted for offence punishable u/s 13(2) read with 13(1)(d) PC Act. Further there is no requirement in law that the sanctioning authority should mention the particular Sections of the Act while granting sanction. Suffice it is if the facts constituting the offence are mentioned in the order granting sanction or the material on the basis of which sanction is granted (Major Som Nath Vs. Union of India (UOI) and Another,).

12. Learned counsel for the Appellant has assailed the prosecution case on the ground that the same is based on leading questions put to the prosecution witnesses by the learned counsel for the CBI and the same is impermissible. This contention deserves to be rejected in view of Section 142 of the Evidence Act. In Kiran Pal Singh Vs. State this Court held:

11. The contention of the learned counsel for the Appellant that the entire prosecution case is based on leading questions put to the prosecution witnesses by the learned counsel for the CBI thus impermissible under the Evidence Act, also deserves to be rejected. In this regard, it would be relevant to note Section 142 of the Evidence Act which states: -

142. When they must not be asked: - leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

As per this provision, the prosecutor can put leading questions to the prosecution witnesses with the permission of the Court. Such questions should be either explanatory or in the opinion of the Court already sufficiently proved. As shown above, leading questions have been put by the learned counsel for the CBI only when they have been sufficiently proved and were in the form of re-examine of the witnesses on particular aspects.

13. The evidence of the prosecution based on the leadings questions put by the learned APP can also be looked into. As per Section 142 Evidence Act the provision the prosecution can put leading questions to the prosecution witnesses with the permission of the Court. Such questions should be either explanatory or in the opinion of the Court already sufficiently proved. A perusal of the statement of PW 3 the complainant would show that he had proved all material facts and only on insignificant points which were clarificatory in nature he was cross-examined by the learned APP.

14. Learned counsel for the Appellant has laid a stress on the fact that the receipt was given by the complainant on his letter head which was written by PW 4 at the time of trap. It is not known how the complainant carried the letter pad as the page is not folded and thus he could not have carried in his pocket. It may be noted that no cross-examination of the complainant was done on this aspect and his attention was not invited to this piece of evidence so that he could have given his explanation. Further in his statement u/s 313 Cr. P.C. the Appellant in question No. 6 was asked his explanation with regard to the complainant and shadow witness appearing in his office at about 5.40 PM when after some talks between the complainant and the Appellant, the Appellant asked the complainant to prepare the receipt for the cheque and on the complainant asking as he was illiterate PW 4 prepared the receipt on the letter pad of the complainant Ex. PW3/B. The Appellant in his answer has stated this to be correct. Thus no mileage can be taken by the Appellant on this count. In the light of the aforesaid discussion, I find no infirmity in the impugned judgment of conviction and order on sentence. Appeal is dismissed. The bail bond and surety bond are cancelled.