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Niranjan Singh Vs. C.B.i.

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Court : Delhi

Decided On : Jul-22-2013

Judge : Mukta Gupta

Appellant : Niranjan Singh

Respondent : C.B.i.

Advocate for Def. : Mr. R.V. Sinha, Ms. Sangita Rai

Advocate for Pet/Ap. : Mr. Mahabir Singh, Mr. Rakesh Dahiya, Mr. Dilbagh Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.45/2003 Reserved on:

16. h May, 2013 Decided on:

22. d July, 2013 % Niranjan Singh Through: ..... Appellant Mr. Mahabir Singh, Sr. Adv. with Mr. Rakesh Dahiya and Mr. Dilbagh Singh, Advs. versus C.B.I. Through: ..... Respondent Mr. R.V. Sinha, Standing counsel with Ms. Sangita Rai, Advocate. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA 1 The Appellant impugns the judgment dated 21st January, 2003 whereby he has been convicted for offences punishable under Section 7 and 13(2) read with Section 13 (1) (d) of Prevent of Corruption Act, 1988 (in short the PC Act) and order on sentence dated 22nd January, 2003 whereby he has been directed to undergo Rigorous Imprisonment

for four years with a fine of Rs.500/- each under Sections 7 and 13(2) of PC Act and in default of payment of fine to further undergo Rigorous Imprisonment for three months on each count.

2. Learned counsel for the Appellant contends that the learned Trial Court erroneously relied upon the tape recorded conversation to corroborate the version of the Complainant in the absence of scientific analysis of the tape. The voice sample of the Appellant was neither taken nor sent for voice spectrography nor did the expert opine that there was no tempering/ interpolation in the cassette. The Appellant in fact became victim of the inflated ego of Mr. Salim, General Secretary of Employees Association, who asked the Appellant to do the work, however, since the Appellant did the work according to rules and taking his own time, the same was not liked by him. Reliance is placed on Subhash Chand Chauhan v. C.B.I., 117 (2005) DLT 187.Though at the time of alleged initial demand, the Complainant was accompanied by two witnesses namely Nizamuddin and Yusuf and their statements were recorded under Section 161 Cr.P.C., however, they were not examined in the Court as witnesses. Hence adverse inference is required to be drawn against the prosecution on account of withholding of material witnesses. There are material contradictions in the testimony of witnesses. Though the Complainant and all witnesses stated that the pocket wash solution also turned pink, however, when it was sent for examination the same was found to be colourless. 10 days period is not sufficient to fade the pink colour of the solution. Thus, the learned Trial Court erroneously held that colour faded due to passage of time. The Appellant rendered his explanation under Section 313 Cr.P.C. which was probable. However, the same has been totally ignored by the learned Trial Court.

3. Learned counsel for the CBI on the other hand contends that the evidence of the Complainant and other witnesses cannot be washed away merely because two independent witnesses could not be examined. The prosecution has proved its case beyond reasonable doubt. Since the Appellant accepted the tainted GC notes, a presumption is required to be raised under Section 20 of the PC Act. Hence there is no merit in the appeal and the same be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. The case of the prosecution is based on the complaint of PW2 Sakhi Jan Ex.PW2/A which he gave to SP CBI on 18 th November, 1996. As per the complaint, the Complainant had applied for electricity connection in house No. K-54A, Abul Fazal Enclave, Okhla, New Delhi and had deposited a sum of Rs.4702/- as development charges. Despite the same, electricity connection was not installed. Thus, he took help of his acquaintance Mr. Salim, who helped him and got traced his file in DESU office when the officials of DESU told him that rate of development charges have since increased and asked him to deposit further amount of Rs.932/- against development charges which he deposited on 14th October, 1996. He was asked by officials to deposit some more documents pertaining to electricity connection at DESU office, Kilokri which was also done. He further stated that since Mr. Salim had advised him to hand over these papers after getting them entered in Kilokri Office to Niranjan Chaudhary, he took those documents to the office at New Friends Colony probably on 8th or 9th month of 1996. He asked the Appellant to do the work. However, he stated that electricity connection shall not be installed. On the next day, on the advice of his neighbor Mr. Islam, he deposited the papers at DESU office, with the request to increase the power of the connection to 2 KW and deposited Rs.225/-. On 18th November, 1996, he along with Nizamuddin and Yusuf visited DESU office, New Friends Colony and asked the Appellant about his electricity connection when the Appellant stated that the same would cost Rs.1000/-. The Complainant showed his inability to pay Rs.1000/- on which the Appellant told him to pay Rs.100/- or Rs.200/- less than the demanded amount and told him to come with money on the next day, when he would send a person to install the electricity meter at his house. Thus, in the afternoon of 18th November, 1996 the Complainant gave the complaint to the CBI. After lodging the complaint, he visited the office of CBI on 19 th November, 1996 at 9.00 AM along with Rs.700/- when two public witnesses Shri R.L. Sharma and Shri R.D. Sachdeva and other CBI officials after completing the pre-trap formalities went for the raid. The Complainant was given a small cassette recorder which he kept in the left front pocket of his shirt. PW3 Shri R.L. Sharma accompanied him and was to give signal by placing his hand on his head after acceptance of illegal gratification. On reaching the office of the Appellant, the

Complainant and Mr. Sharma went inside when conversation took place between the Complainant and the Appellant. The Complainant asked about his file on which the Appellant stated that he had come late and mistries have already left. The Appellant stated that the Mistries have gone to the site and he should come in the morning so that he can send mistries with him. On this Complainant stated to the Appellant that he has asked for Karcha Paani, however, he cannot give Rs.1000. On this, the Appellant stated Kitne Hain Aapke Paas. The Complainant stated Rs.700/- can be given on which the Appellant again stated Jo hain wohi de do. On this the Appellant accepted the money on his right hand and thereafter to the left hand and then again to his right hand where after it was put in the left front pocket of his shirt. On PW3 Mr. Sharma giving the signal, the raiding party came and apprehended the Appellant. Rs.600/- were recovered from his left front pocket, however, Rs.100/- were left out in the pocket of the Complainant. A further sum of Rs.15000/- was also recovered from the pocket of the Appellant which was seized as personal search memo. The Appellant was made to dip both his hands in a chemical solution and inner side of the left front pocket of the shirt of the Appellant was also dipped in the chemical solution and the solutions turned pink.

6. The version of PW2 the Complainant has not been fully supported by the shadow witness PW3 Mr. Sharma. Though this witness has been declared hostile, however, he has supported the prosecution case with regard to demand at the time of acceptance of money and acceptance thereafter. However, he clarified that there was some conversation regarding the wire and it was stated that the wire was not available in the store and it will have to be purchased from the office on which the Complainant stated that he would purchase the wire from the market. According to this witness, the Appellant did not demand the money, however, Sakhi Jan said Main Ek Hazaar Rupaye to Nahin De Sakta to which the Appellant stated Kitne Dega on which the Complainant stated Mere Paas to Saat Sau Rupaya Hai on which the Appellant said La. Thus, it is evident that though no witness has been examined to prove the initial demand, however, for the demand at the time of trap, the Appellant clearly stated as to how much money the Complainant had and accepted the same.

7. The most crucial aspect in the matter is that the learned Trial Court could not have relied upon the tape recorded conversation. It is admitted position that voice sample of the Appellant has not taken and thus the same was not sent to the expert at the CFSL for voice spectrography analysis. Learned Trial Court has erroneously on the identification of the Complainant held that the voice in the tape recorded conversation has been proved to that of the Appellant. The Complainant was not a person conversant with the voice of the Appellant having met him only once prior to the incident and was thus not competent to identify his voice. Further there is no evidence on record to prove that the tape recorded conversation was not interpolated and was intact. In view thereof, the tape recorded conversation cannot be looked into in evidence.

8. In Subhash Chand Chauhan v. CBI (supra) this Court held 25. I am further surprised that the learned Additional Sessions Judge relied upon the alleged tape-recorded conversation on the testimony of PW-3 and on voice identification by PW-3. Admittedly, the prosecution did not take specimen voice samples of the accused or PW-3 and the alleged tape recorded conversation was never sent for analysis or voice spectography. No reliance could be placed on the alleged tape recorded conversation. It remained unproved evidence and hence inadmissible. I may note that in para 56 of its judgment, the learned Additional Sessions Judge has expressed reservations regarding the manner in which the seal of the cassette was broken without approval of the Court.

9. The next issue is whether on the facts of the case, the explanation of the Appellant is plausible. The case of the Appellant is that he did not demand money. However, the same was thrust on him, which he pushed back and thus his hands got smeared with phenolphthalein powder and thus the left and right hand wash gave pink solution. Since he did not accept money and did not keep it in his pocket, the left pocket wash of the Appellants shirt did not turn pink which proves the defence of the Appellant. In this regard the testimony of PW2 Mr. K.S. Chhabra, Senior Scientific Officer-cum-Assistant Chemical Examiner to the Govt. of India, CFSL is relevant. He stated that on 28 th November, 1996 he received three sealed bottles, all sealed with the seal of CBI duly intact as per the specimen seal and marked Ex.RHW, LHW and SPW. He was to find out about the presence

of sodium carbonate Crl. Appeal No. 45 of 2003 and phenolphthalein. On examination, he found Ex. RHW and LHW contained pink colour liquid with sediments and Ex.SPW contained colourless liquid with sediments. The washes were taken on 19th November, 1996 and within 10 days the colour would not have faded from pink to colourless. Further the report of this witness clearly stated that Ex.RHW and LHW gave positive test for phenolphthalein and sodium carbonate, however, SPW gave negative test for phenolphthalein but positive test for sodium carbonate. It is thus abundantly clear that tainted GC notes were not kept in the pocket by the Appellant thus, belying the testimony of the Complainant. The defence of the Appellant is that the money was being thrust on him and when he tried to push it back, his hands got smeared resulting in left and right hands gave positive of sodium carbonate and phenolphthalein, however he had not accepted the money and thus pocket wash did not give positive to phenolphthalein.

10. In view of the aforesaid discussion, I deem it fit to extend the benefit of doubt to the Appellant. Consequently, the Appellant is acquitted of the charges framed. The impugned judgment convicting the Appellant for offence punishable under Section 7 and 13(1) (d) read with Section 13 (2) of the PC Act and order on sentence dated 22nd January, 2003 are set aside.

11. The Appeal is disposed of. The bail and surety bonds are discharged. (MUKTA GUPTA) JUDGE JULY 22 2013 VKM

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