

State (Nct of Delhi) Vs. Devender Singh

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Court : Delhi

Decided On : Oct-25-2013

Judge : S. P. Garg

Appellant : State (Nct of Delhi)

Respondent : Devender Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

21. t AUGUST, 2013 DECIDED ON :

25. h OCTOBER, 2013 + CRL.A. 760/2012 STATE (NCT OF DELHI)Appellant
Through : Mr.M.N.Dudeja, APP. versus DEVENDER SINGH Through :
.Respondent Mr.Mohd.Shamikh, Advocate. CORAM: HON'BLE MR. JUSTICE
S.P.GARG S.P.GARG, J.

1. State has come in appeal to question the correctness of a judgment dated 29.10.2010 of learned Special Judge (P.C. Act)-06, Tis Hazari Courts, Delhi, by which the respondent - Devender Singh was acquitted of the charges. The respondent has contested the appeal.

2. On 29.03.2001, Ram Kumar lodged a complaint in Anti Corruption Bureau alleging demand of ` 11,000/- as bribe by Mr.Panwar, AE, DDA to clear payment for execution of work order in the sum of `21,950/-. The complainant was able to

arrange ` 6,000/- for payment. Insp.N.S.Minhas carried out pre-raid formalities and associated R.S.Chopra as panch witness. Allegations were that ` 6,000/- were paid as bribe to Devender Singh (the appellant) on the directions of Harpal Singh (since expired). ` 6,000/- were recovered from the possession of the appellant. Post-raid formalities were carried out. Both, Devender Singh and Harpal Singh were arrested. Statements of the witnesses conversant with the facts were recorded. After completion of investigation, a chargesheet under Sections 7/13 POC Act and 120 B IPC was submitted in the Court in which both Devender Singh and Harpal Singh were chargesheeted. During the pendency of the proceedings, Harpal Singh expired and proceedings against him were dropped as abated. The prosecution examined fifteen witnesses to prove the charges. In 313 statement, the appellant pleaded false implication. After appreciation of evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, acquitted the appellant as the prosecution was not able to establish the charges beyond reasonable doubt.

3. I have heard the learned counsel for the parties and have examined the record. The moot question before the Trial Court was if complainant - Ram Kumar was entitled to receive ` 21,950/- from DDA for execution of work order for the payment of which demand of `11,000/- was allegedly made as illegal gratification. The burden was heavily upon the prosecution to establish that it was the legal remuneration which the complainant - Ram Kumar was entitled to receive and the respondent or his associate - Harpal Singh was legally competent in their official capacity to sanction or clear the payment. In the complaint (Ex.PW-13/A) complainant did not give detailed information as to when the work order for boring a tube-well was awarded to him, when it was executed. PW-2 (R.K.Bhandari), who accorded sanction under Section 19, POC Act for Devender Singhs prosecution admitted in the crossexamination that he had not seen or examined if any work was entrusted to the complainant or it was executed by him. He revealed that some documents were on record to show that no work was entrusted or executed by the complainant. PW-6 (Mam Chand), SO, Horticulture from October, 1994 to 17.04.2000 stated that he had got bored one hand-pump in June, 2000 from one Ved Prakash and he was paid ` 600/- / 700/-. In the crossexamination, he denied having any acquaintance with the complainant - Ram Kumar. He was not aware if

any work was ever assigned to Ram Kumar by DDA. PW-3 (Naginder Parshad Singh) also corroborated his testimony and deposed that Ved Prakash, contractor, was given material to install the pump and the boring work was done by him. He also denied any acquaintance with Ram Kumar. PW-10 (Latoor Hasan), Deputy Director, Horticulture Division in DDA in 2001 proved work order (Ex.PW-10/A) provided to M/s. Ram Kumar on 04.01.2001. He however, deposed that no work was done regarding the said work order. On 05.02.2002, he, Ved Prakash, Ram Kumar and Investigating Officer visited the alleged spot where the work order was to be executed. However, Ram Kumar was unable to specify the area where the work was done by him. In the cross-examination, he was categorical to state that complainant - Ram Kumar had not done any work and no bill was raised by him. The work for which payment was being claimed by the complainant had already been done by other contractor - Ved Prakash. Apparently, there was no cogent and worthwhile evidence on record to establish if pursuant to work order (Ex.PW-10/A) dated 04.01.2001 any work was carried out by the complainant to claim payment of ` 21,950/-. In his statement as PW-14, Ram Kumar, admitted that he was working with one contractor - Ved Prakash for boring of tube-wells in the year 2001. Relations between them became strained subsequently. In the crossexamination, the complainant revealed that tube-well was bored in the year 2000 with the assistance of Ved Prakash and he owed him a sum of ` 28,000/-. He further admitted that he did the boring jointly with Ved Prakash. Ved Prakash was not examined during investigation to ascertain execution of work order. The Raid Officer, Insp. N.S.Minhas, admitted in the cross-examination that the correctness of the complaint was not verified. He did not verify whether any payment was due to the complainant from DDA office. PW-11 (Insp. M.S.Sanga), Investigating Officer, admitted that he had made enquiries from the complainant for asking money for work which was not done by him. The complainant did not institute any civil proceedings for recovery of his dues. He did not lodge any complaint with the senior officers for non-payment of the legal remuneration. It is unclear as to when & whom he submitted the bills for payment. It is again not clear as to who was the concerned Officer to clear the bills. For release of a paltry amount ` 21,950/- a huge demand of ` 11,000/- as illegal gratification cannot be expected to be made or paid. In the complaint (Ex.PW-13/A), the complainant did not specifically name

Devender Singh or Harpal Singh to have demanded illegal gratification from him. In his Court statement, he attributed demand of bribe to both Devender and Harpal Singh and for that he was duly confronted with the statement made to the police. No doubt, a public officer has no right to demand any bribe; but when he is hauled up to answer a charge of having taken illegal gratification, the question whether any motive, for payment or acceptance of bribe at all existed is certainly relevant and a material fact for consideration. It is an important factor bearing on the question as to whether the accused had received the gratification as a motive or reward for doing or forbearing to do any official act or for showing any favour or disfavour in the exercise of his official functions. In the instant case, DDA was not legally liable to pay ` 21,950/- to the complainant - Ram Kumar as he could not prove execution of any work pursuant to the work order awarded to him. The appellant - Devender Singh and his associate Harpal Singh were not capable to sanction any such unauthorised payment.

4. The prosecution witnesses have given divergent version as to when and by whom the bribe amount was demanded. The complainant allegedly executed the work awarded to him in February, 2000 for which work order was issued to him on 04.01.2001. The complaint was lodged on 29.03.2001. The delay in claiming the payment and lodging the report has remained unexplained. Complainants statement could not be corroborated by any independent public witness as PW-13 (Ram Swaroop Chopra) joined as panch witness expired before he could be crossexamined by the appellant. Even if examination-in-chief recorded on 03.07.2007 is considered, it does not substantiate the complainants version regarding demand of bribe prior to the lodging of the complaint on 29.03.2001. PW-13 did not depose if the complainant had named the appellant Devender to have demanded bribe. He was not categorical as to which of the accused Devender Singh and Harpal Singh had demanded illegal gratification in the office. On scrutinising his testimony, it appears that the demand was raised for the first time on the day of incident. Both panch witnesses and the complainant have given inconsistent version about the arrival of Harpal Singh at the spot. In the absence of demand of bribe which the prosecution could not establish beyond reasonable doubt, there was no cogent material to base conviction under Sections 7/13 POC Act. The demand and acceptance of the money for doing a favour in discharge of

official duties is sine qua non to the conviction. Mere recovery of tainted money from the accused by itself is not enough in the absence of substantive evidence of the demand and acceptance. It is also settled in law that statutory presumption under Section 20 of the Act can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than the motive or reward as stipulated under Section 7 of the Act. It is obligatory on the part of the Court to consider the explanation offered by the accused under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probability. It is not to be proven beyond all reasonable doubt. From the very inception, the defence of the appellant was that the money was thrust in the pocket and was not meant as bribe for clearance of the bill. Appeal against the acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is cautious in taking away that right. The presumption of innocence of the accused is further strengthened by his acquittal after a full trial, which assumes critical importance in our jurisprudence. The Courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, should be adopted.

5. In the light of above discussion, I approve the findings of the Trial Court and find that the prosecution failed to prove its case beyond reasonable doubt. Considering all the facts and the circumstances of the case, I find no infirmity in the impugned judgment. The appeal is unmerited and is consequently dismissed. Trial Court record be sent back forthwith. (S.P.GARG) JUDGE OCTOBER25 2013/tr

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