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Mahavir Singh Vs. State

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Court : Delhi

Decided On : Jan-22-2014

Judge : S. Muralidhar

Appellant : Mahavir Singh

Respondent : State

Advocate for Def. : Ms. Isha Khanna

Advocate for Pet/Ap. : Mr. Joy Basu, Mr. Saket Sikri, Ms. Ekta Sikri, Mr. Sudeep Dey, Mr. Indrajeet Sircar

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.111 of 2008 MAHAVIR SINGH ..... Appellant Through: Mr. Joy Basu, Senior Advocate with Mr. Saket Sikri, Ms. Ekta Sikri, Mr. Sudeep Dey and Mr. Indrajeet Sircar, Advocates. versus STATE ..... Respondent Through: Ms. Isha Khanna, APP for State. CORAM: JUSTICE S. MURALIDHAR

ORDER
2201.2014 1. This appeal is directed against the judgment dated 15th January 2008 passed by the Special Judge, CBI in CC No.68 of 1999 and order on sentence dated 16th January 2008 convicting the Appellant for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentencing him to undergo rigorous imprisonment (RI) for two years and

a fine of Rs.2,500 under Section 7 of the PC Act and in default to undergo simple imprisonment (SI) for a period of two months and to further undergo RI for a period of two years and a fine of Rs.2,500 under Section 13(2) of the PC Act and in default of payment of a fine to undergo SI for a period of two months.

2. It must be noted at the outset that there were three accused before the trial Court and by the same impugned judgment one of the co-accused Gianender Singh has been acquitted while another co-accused Ram Sarup has been convicted along with the Appellant.

3. The case of the prosecution is that on 8th December 1997 the complainant Sudhir Kumar (PW-11) went to the office of the Anti Corruption Branch (ACB) and got his complaint Ex.PW-11/A recorded by Inspector Prem Chand (PW-12) in the presence of Shri Chandershwar Singh (PW-13) who was on duty as panch witness in the ACB on that day. In his complaint PW11 stated he was in the business of putting up hoardings. He received an order from M/s. Shiva Vision for displaying the hoardings of contact lenses in the area of Paschim Vihar. The Appellant Mahavir Singh was working as Licensing & Advertising Inspector in the Municipal Corporation of Delhi (MCD). In the complaint it was stated that the Appellant on 3rd December 1997 demanded from PW-11 Rs.3,000 as bribe for displaying 30 boards i.e. Rs.100 for each board and further threatened him that if the bribe amount was not paid, he would remove the hoardings. The Appellant is stated to have accepted Rs.500 as advance and asked PW-11 to pay the balance amount of Rs.2500 to him along with the site list on 8th December 1997 at 10 am in the MCD office, West Zone, Rajouri Garden.

4. The prosecution states that PW-11 took with him Rs.2500 i.e. five government currency (GC) notes of Rs.500 each. The numbers of those GC notes were noted down by the Raid Officer (PW-12) and treated with phenolphthalein powder. PW12got the right hand of the panch witness PW14 touched with GC notes and took his right hand wash in a sodium carbonate solution which turned pink. The treated GC notes were then given to PW-11. The instruction to PW-11 was that he should remain close to PW14 so that PW -14 was able to see the transaction and hear the conversation. The instruction to PW-14 was that he should overhear the

conversation and once he was satisfied that the bribe had been given he should give a signal by hurling his hand over his head. The pre-raid proceedings (Ex.PW-11/B) were drawn up.

5. The raiding party comprising PW-12, PW-11, PW-14 and Inspector R.P.Singh, Investigating Officer (IO) of the case, reached the MCD office at about 9.30 am on 8th December 1997. However, the Appellant did not come to the office on that day. PW-11 and PW-14 met Gianender Singh (A3) who asked PW -11 if he had brought the balance sum of Rs.2500 to which PW -11 replied in the affirmative. According to the prosecution, A-3 insisted that PW-11 should pay him the bribe amount and stated that the share of the Appellant would be given to the Appellant as and when he came. A-3 further told them that if they met the Appellant, they would have to pay more money. He was then stated to have taken PW-11 and PW-14 to the canteen and served them tea and asked them to come on 9th December 1997 at 8.30 am. PW-12 is stated to have recorded it in a separate proceeding Ex. PW-11/C.

6. When the raiding party went again to the MCD office on 9th December 1997, the Appellant was not available. They met A-3 again who reiterated the demand made by him on the previous day. It is stated that PW-11 thought it appropriate to wait for the Appellant but the Appellant did not turn up. A-3 then asked them to come on 10th December 1997 at 11 am. CRL. A. No.111 of 2008 proceedings were recorded by Raid Officer in the raid proceedings Ex.PW11/G.

7. On 10th December 1997, the PW-11 and PW-14 went inside the MCD office around 11.45 am. PW-14 gave the pre-determined signal. PW-12 on entering the room met PW-11, PW-14 and few other persons. PW-14 is stated to have disclosed to PW-12 that the Appellant demanded the bribe amount from PW-11, accepted the same with his hands, returned the bribe amount to PW-11 and asked them to handover the bribe amount to co-accused Ram Sarup (A-2). A-2 accepted the bribe amount with his left hand, kept it in the right pocket of his pant with the right hand. PW-12 is stated to have challenged both the Appellant and A-2 by disclosing his identity. Both of them became perplexed and sought pardon. It is stated that PW-14 at the instance of PW-12 searched A-2 and recovered the bribe

amount of Rs.2500 from the right side pocket of his pant. The currency note numbers were tallied and were found to be the same as indicated in the pre-raid proceedings.

8. PW-12 is stated to have taken the wash of the right and left hand of both the Appellant as well as A-2 in the sodium solution. The hand wash of both accused is stated to have turned pink. The hand washes of the right and left hands of both accused were then preserved and sealed. The pant worn by A-2 was converted into a pulanda. PW-11 is stated to have informed PW-12 that he had handed over one chit to the Appellant in which the site details were mentioned. PW-14 was asked by PW-12 to take out the said chit from the left pocket of the shirt of the Appellant. It is stated that during the proceedings, A-3 also came to the spot. Inspector Suresh Chand (PW-13) was called and handed over the custody of all the three accused persons, the case property, all the exhibits, seizure memo, sample seal and other relevant documents for further investigation. PW-13 is stated to have arrested all the three accused persons and then filed the charge sheet.

9. In order to bring home the case against the Appellant that he had demanded and accepted the bribe amount by first receiving it and then giving it back to PW-11 to be handed over to A-2 on his behalf, the prosecution relied on the evidence of PW-11, PW-12, PW-13 and PW-14. It must be recalled that PW-11, PW-12 and PW-14 were part of the raiding party. PWs 11 and 14 are stated to have been eye-witnesses to what happened in the MCD office on 10th December 1997 as regards the giving and taking of the bribe.

10. Unfortunately for the prosecution, PW-11 did not support its case when he came to the witness stand. He gave a very different version. He now stated that he tried unsuccessfully to meet the Appellant at the MCD office after receiving the contract of placing hoardings. PW-11 stated that one Suresh met him and promised to arrange a meeting with the Appellant and that Suresh demanded a bribe of Rs.500. Suresh is stated to have informed PW-11 that only some small boards could be placed and Suresh demanded Rs.3,000 as bribe to get the hoardings placed. PW-11 then stated that he was asked to pay balance Rs.2,500

to the Appellant. He further stated that since the total contract for displaying hoarding was for Rs.4,500 it was not possible for him to pay Rs.3,000 as bribe. PW-11 again went to ACB on 8th December 1997 and met with one Inspector.

11. PW-11 stated that he brought the bribe amount of Rs.2500 in five GC notes of Rs.500 each and also stated about how the phenolphthalein powder was being applied to these notes and the same was touched with the right hand of PW-14. He further stated that it was demonstrated through the hand wash of PW-14 turning pink. He also spoke of meeting A-3 in the office of the MCD on 8th December 1997 and 9th December 1997. As regards what happened on 10th December 1997, PW-11 stated that he reached the office of the MCD, West Zone, Rajouri Garden at about 10.35 am. He then stated that I informed Inspector Mahavir Singh that my hoarding board was removed by the MCD. Then, Inspector Mahavir Singh asked us to sit outside and he would attend us after some time. I had given those GC notes to Panch Witness who with accused Ram Sarup went to a side in the room of Mahavir Singh and the panch witness gave those treated GC notes to Ram Sarup. I was outside that room and the fact regarding delivery of money was told to me by the Panch Witness. PW11further stated that the GC notes in question were recovered from the right pocket of the pant of A-2 and both hands of both the Appellant and A-2 were washed in some water like solution which turned into pink. It was at that stage that the learned APP sought permission to cross-examine PW-11 as he was resiling from his statement.

12. In the cross-examination by the learned APP, PW-11 totally denied implicating the Appellant for having demanded Rs.3,000 as a bribe or even meeting him on 3rd December 1997. In other words, PW-11 refused to support the case of the prosecution thereafter and denied all suggestions put to him. He, however, did state that the GC notes were recovered from the possession of A-2. In his cross-examination on 17th July 2006 he stated that It is correct that out of the three accused persons present in court today no one demanded bribe from me. One Suresh had demanded bribe for allowing installation of new kiosks. A suggestion was put to him about a person named Sanjay who was in the Hoarding Department, and had allowed some boards to be installed and further that the Appellant had made a complaint against the said Sanjay and on that basis, he had

been suspended. PW-11 denied all the above suggestions. He also denied the knowledge of the said Sanjay being trapped by the CBI and being convicted by the Special Court. PW-11 also stated that the kiosks were to be taken from the MCD but he had taken no licence.

13. It is seen, therefore, that PW-11 failed to support the case of the prosecution in the material particulars about the Appellant demanding a bribe and receiving the bribe amount. The version of the prosecution that the Appellant had accepted the bribe amount in his hands from the complainant and then returned it to the complainant to be handed over to A-2 and that A-2 then accepted the bribe amount from PW-11 is not supported by PW-11.

14. The other person who was present in the room was the panch witness PW-14. He too resiled from his earlier version. In his examination-in-chief he testified that PW-11 had given the complaint and handed over 5 GC notes of Rs.500 each to PW-12. He also deposed about the said notes being treated with phenolphthalein powder and about the hand wash of PW-14 being taken. As regards the crucial date of 10th December 1997, he states that I, along with complainant went in Room No.111, at first floor. Mahavir Singh accused present in the court today, (correctly identified). Complainant went to him and I followed him. Complainant had some talks with accused Mahavir regarding his advertising board. Complainant asked the accused to accept the money but accused Mahavir Singh scolded the complainant and asked him to go outside by stating that this matter relates to Town Hall. Thereafter, complainant tried to give those GC notes forcibly to the sweepers who were sitting outside the office of Mahavir Singh. When complainant was trying to give money to the accused persons, I gave pre-determined signal to the raiding team and members of raiding team came and apprehended accused Mahavir Singh and other persons namely Ram Sarup and Gyanender Singh, accused present in the court today (correctly identified).

15. The learned APP was also permitted to cross examine PW-14 as he too resiled from his previous statement. P-14 admitted to A-3 meeting PW-11 and himself and about A-3 enquiring whether he had brought the balance bribe amount of Rs.2500. P-14 also admitted about A-3 telling them that there was no need to

meet the Appellant and that PW-11 should give the balance amount to A-3 so that his work would be done and that A-3 would give the Appellants part to him. However, when it came to what happened on 10th December 1997 concerning the Appellant, PW -14 did not support the case of the prosecution. He continued to resile from his previous statement to the police. He then denied the suggestion that on 8th/9th December 1997, A-3 had demanded a bribe from the complainant on behalf of the Appellant or that on 10th December 1997 the Appellant had demanded a bribe of Rs.2500 from PW-11 and after counting the same returned the notes to PW-11 or that after calling A-2 he instructed PW-11 to give those GC notes to A-2 or that on his instruction A-2 accepted the bribe amount from PW-11.

16. In other words, both PWs-11 and 14, the two persons who were entrusted with the task of carrying out the trap failed to support the case of the prosecution.

17. The approach of the trial Court in the instant case has been to see whether any portion of the evidence of the hostile witnesses, PWs-11 and 14, could be salvaged to support the case of the prosecution. The trial Court appears to have isolated portions of the evidence of PW-11 which purportedly supported the case of the prosecution. These were identified as his going to the ACB on 8th December 1997; giving a complaint of his taking Rs.2500 with him and those notes being treated with phenolphthalein powder by PW-12; the preparation of the pre-raid report; his enquiring about the Appellant in the office of the MCD on 8th and 9th December 1997; his meeting the Appellant on 10th December 1997; the recovery of the GC notes from the right pant pocket of the A-2 and regarding hand wash of both the Appellant as well as A-2. As regards PW-14, the trial court has observed that the unchallenged portion of his testimony was regarding the complainant going to the ACB, taking the GC notes with him, the treating of the notes with phenolphthalein powder, recovery of the notes from the right pant pocket of A-2 and the hand wash of both the Appellant and A-2.

18. The difference in the material aspects of the versions of both PW-11 and PW-14 as regards what happened on 10th December 1997 have not been discussed by the trial Court. For the purposes of Sections 7, 13(2) read with 13(1) (d) of the PC Act require the trial Court to be satisfied that there was a demand of a bribe by

the accused and it was accepted by the accused. The presumption under Section 20 of the PC Act presupposes the prosecution establishing beyond reasonable doubt that there was demand and acceptance of illegal gratification. In K.S. Panduranga v. State of Karnataka (2013) 3 SCC721 the Supreme Court explained It is well settled in law that demand and acceptance of the amount as illegal gratification is sine qua non for constitution of an offence under the Act and it is obligatory on the part of the prosecution to establish that there was an illegal offer of bribe and acceptance thereof. It is further explained in para 39 as under:

39. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted.

19. In the present case, the learned APP has sought to rely on the evidence of PWs-12 and 13 as per the case of the prosecution and corroborating the salvaged portions of the hostile witnesses namely PWs-11 and 14.

20. A careful reading of the evidence of PW-12 brings forth yet another version of what according to him transpired on 10th December 1997. It must be remembered that PW-12 was himself not in the room where the alleged transactions between PW-11, PW-14 and the Appellant took place. He only speaks of what PW-14 told him after the raid had taken place. It is in the nature of hearsay evidence. He states as under:

Panch Witness informed me pointing out towards accused Mahavir Singh, now present in court (correctly identified) that he had taken the bribe from the complainant and thereafter had handed over to another person Ram Sarup who is also present in the court (correctly identified) and that Ram Sarup had kept the said amount in the pocket of his pant.

21. In other words, the recollection of PW-12 as to what PW-14 stated is at variance with what PW-14 has stated in the court. The above narration appears to indicate that PW-12 was told by PW-14 that the Appellant had taken the bribe from PW-14 who handed it over to A-2. This version has not been supported by any of the prosecution witnesses. The Court fails to understand how it can be said to corroborate the salvaged portion of the evidence of PWs-11 and 14 in material particulars.

22. PW-13 is relevant as far as post-raid proceedings are concerned. He had no knowledge of what happened in the room on 10th December 1997.

23. Consequently, as regards the key elements of the entire case of the prosecution namely the demand and acceptance of bribe, the only pieces of evidence that are available for the prosecution is the hand wash of the Appellant turning pink thereby implying that he had touched the currency notes. It would be unsafe to convict a person for the offence under Sections 7, 13(2) and 13(1) (d) of the PC Act only on the basis of a hand wash turning pink when none of the elements constituting the pre-raid proceedings or even the raid itself have been proved by the prosecution. In Banshi Lal Yadav v. State of Bihar (1981) 3 SCC69 while explaining Section 4(1) of the Prevention of Corruption Act, 1947 corresponding to Section 7 of the Prevention of Corruption Act, 1988, it was explained by the Supreme Court that before presumption can be raised the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than legal remuneration etc.

It was further pointed out that if the accused when examined under Section 313 of the Code of Criminal Procedure with reference to the circumstances appearing against him in evidence, stated only that currency notes were thrust in his pocket,

that statement by itself without anything more is not sufficient to satisfy the necessary ingredients of Section 4(1) that the accused accepted or obtained, or has agreed to accept or attempted to obtain, any gratification other than legal remuneration so as to be able to raise the presumption.

24. To the same effect are the decisions in Gurcharan Singh v. State of Haryana 1994 CRI.L.J.1710 and M. Abbas v. State of Kerala (2001) 10 SCC103 In the latter decision it was pointed out that the presumption under Section 4(1) of the PC Act, 1947 in reference to an offence under Section 161 IPC is, as already noticed, a rebuttable presumption. Further where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities.

25. In the considered view of the Court, the prosecution here has failed to discharge the onus of proving that the Appellant had accepted or obtained or agreed to accept or agreed to obtain illegal gratification. The mere fact that his hand wash turned pink is wholly insufficient to return the finding of guilt in the absence of any rebuttable evidence to show that he either demanded or accepted illegal gratification.

26. Mr. Joy Basu, learned Senior counsel appearing for the Appellant assailed the validity of the order sanctioned by the prosecution. He relied upon the decision in State of Karnataka v. Ameerjan (2007) 11 SCC273and submitted that an order of sanction should not be construed in a pedantic manner. The trial court has observed in the present case when the sanction order itself is eloquent enough, then in that case only formal evidence has to be produced by the sanctioning authority.

27. The sanction order is Ex.PW-2/A. It has been passed by Mr. Ashok Kumar, Deputy Commissioner, West Zone, MCD who was examined as PW2. He states in his cross-examination that I have gone through the case file at the time of granting sanction. I do not remember in what language the statements were recorded which were produced before me. I do not remember how many times the raid in the present case became failed.

Significantly, he also admitted that he has not seen any application of the complainant seeking permission for putting hoarding on MCD land or not having any knowledge if complainant was having a licence in that regard. He admitted that no official was empowered from the Zonal Office to give permission for putting up the hoardings at particular sites and that sanctions were granted only from the headquarters.

28. A perusal of the sanction order merely states that after examining carefully the material placed before me in regard to the said acts and allegations and circumstances of the case, (I) consider that said Shri Mahavir Singh, Inspector, MCD be prosecuted in the court of law for the said offence/offences. The above sanction order cannot be said to be an eloquent one as termed by the trial Court. It is more in the nature of a pedantic order which was frowned upon by the Supreme Court in the above decision.

29. The third fact pointed out by learned Senior counsel for the Appellant which has not been sufficiently discussed in the judgment of the trial Court is the evidence of DW-1, Shri S.L.Satija, Head Clerk, Vigilance Department, MCD. The case of the Appellant was that the complaint itself was motivated since he had indicted one Shri Sanjay Gupta also working in the MCD. As a result Mr. Gupta was placed under suspension. The CBI had laid a trap for Shri Sanjay Gupta and in the ensuing case Shri Sanjay Gupta was convicted. This was established from the evidence of DW-1. The trial Court has only noticed the above evidence but not discussed it only on the ground that the complainant denied knowing Shri Sanjay Gupta.

30. For the aforementioned reasons, this Court is satisfied that the impugned judgment of the trial court returning the finding of guilt against the Appellant cannot be sustained in law. The impugned judgment is to that extent accordingly set aside and the appeal is allowed with no order as to costs. The bail bond and surety bond of the Appellant are discharged.

31. The trial Court record be sent back forthwith. S. MURALIDHAR, J JANUARY22 2014 dn

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