

**M.P. Singh Vs. State**

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**Court :** Delhi

**Decided On :** Jan-23-2014

**Judge :** S. Muralidhar

**Appellant :** M.P. Singh

**Respondent :** State

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.81 of 2008 M.P. SINGH ..... Appellant Through: Mr. K.B. Andley, Senior Advocate with Mr. M.L. Yadav and Mr. Lokesh Chandra, Advocates. Versus STATE ..... Respondent Through: Ms. Aashaa Tiwari, APP for State. CORAM: JUSTICE S. MURALIDHAR

ORDER

2301.2014 1. This appeal is directed against the judgment dated 19th December 2007 passed by the Special Judge in CC No.61/06/01 convicting the Appellant of the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act). The appeal is also directed against the order on sentence dated 20th December 2007 whereby the Appellant was sentenced to rigorous imprisonment (RI) for two years and to pay fine of Rs.4,000 and in default of payment of fine to undergo RI for six months for the offence under Section 7 of the PC Act and to RI for three years and to pay fine of Rs.6,000 and in default to undergo RI for 9 months for the offence under Section 13(2) read with Section 13(1)(d) of the PC Act.

2. During the pendency of the appeal, the sentence awarded to the Appellant was suspended by an order dated 29th January 2008.
3. The case of the prosecution is that the Airports Authority at Indira Gandhi International Airport, New Delhi used to auction goods and the Complainant Raj Kumar Chawla (PW-8) used to purchase the goods through such auction. As part of the terms of the said purchase of goods through auction, PW-8 as a successful bidder was required to pay 33% of the final amount at the time of the auction and the balance amount within three days. The delivery of the auctioned goods could be taken only upon presentation of a challan prepared by the Cargo Disposal Unit (CDU) Office, upon deposit of the balance final amount.
4. On 29th December 1999, Lot Nos. 26139 and 26148 were auctioned for Rs.30,000 in favour of PW-8. On that day itself he deposited Rs.10,000. He was required to deposit the balance amount of Rs.20,000 within three days thereafter for the purposes of taking delivery of the auctioned goods. It is stated that the Appellant was posted as Assistant Grade-I and the co-accused Sumit Kumar Verma (A-2) was posted as Assistant Grade-III in the office of the Director, CDU at IGI Airport New Delhi. The case of the prosecution is that on 29th December 1999 after his bid amount was accepted, the Appellant met PW-8 and asked him to take delivery of the auctioned goods on the following day and to pay Rs.500 as his share. It is further the case of the prosecution that on 30th December 1999 at about 11.30 am PW-8 went to the Anti Corruption Branch (ACB) and lodged a complaint (Ex.PW-8/A) with it to the effect that the Appellant had demanded money for getting the challan issued. Inspector Sudesh Kumari (PW-10) recorded the complaint in the presence of the panch witness Gulshan Kumar (PW11). PW-8 produced one government currency (GC) note of Rs.500 and PW-10 recorded its number in the pre-raid proceedings. The said GC note was treated with phenolphthalein powder. PW-8 was asked to touch the note and dip his fingers in the sodium carbonate solution and the solution turned pink. The treated GC note was handed over to PW-8 who kept it in the left pocket of his shirt. PW-8 was asked to handover the treated note to the Appellant on his demand in the presence of PW11. PW-11 was instructed to remain close to PW-8, to hear the conversation, to observe the transaction and to give a signal to the raiding party by

placing his hand over his head after the transaction is over. These proceedings were recorded in the pre-raid report (Ex.PW10/A). Inspector Y.S.Negi (PW-13) was to take over further investigation after the raid as the Investigating Officer (IO).

5. A raiding party comprising PW-8, PW-11, PW-13 and other officers of the ACB left for the CDU at 12.30 pm on 30th December 1999 and reached there at around 1.20 pm. On the directions of PW-10, PW-13 and the driver stayed back. PW-8 and PW-11 went to the room of the Appellant. It is alleged that the Appellant demanded Rs.500 as bribe from PW-8 and asked PW-8 to give the said sum to a person sitting in front of him in the room whose name was later disclosed as Sumit Kumar Verma (A-2). It is further alleged that on the directions of the Appellant, A-2 received the treated GC note of Rs.500 by his left hand from PW-8. A-2 kept the GC note in the left pocket of his leather jacket. PW-8 also handed over the original EMD receipt to A-2. On completion of the said transaction, PW-11 gave the pre determined signal upon which PW-12 and other members of the raiding team except PW-13 came there. On enquiry PW-11 told PW-10 that the Appellant had demanded bribe and asked PW-8 to give the same to A-2 who had received it by his left hand and kept in the left pocket of his jacket. It is stated that on directions of PW-10, PW-11 recovered the treated GC note from the left pocket of the jacket which A-2 was wearing. PW-11 tallied the number of the GC note with that recorded in the pre-raid report. PW-10 took the left hand wash of A-2 and the solution turned pink. The wash was then collected in two clean bottles which were sealed. The left pocket of the jacket of A-2 was also similarly washed and the solution which turned pink was transferred to clear bottle and sealed. The recovered GC note was taken into possession by a memo Ex.PW-8/B-1. The post-raid proceedings were recorded by PW-10 and on that basis an FIR was registered.

6. PW-13 then took possession of the recovered GC note, all exhibits and seizure memos and formally arrested the Appellant and A-2. He also took their personal search and seized certain documents.

7. The key witnesses examined by the prosecution included PWs-8 and 11 i.e. the Complainant and the panch witness. In his examination-in-chief, PW-8 deposed

that the Appellant was taking lunch at the time when PW-8 came to his office in the CDU and that the Appellant demanded kharcha pani for the preparation of the challan. PW8 further explained that the Appellant demanded Rs.500 for preparing the challan and he asked PW8 to pay the sum of Rs.500 at another table where some other person used to sit. But that person was not sitting at that time. However, a jacket was lying on his seat. PW8 stated:

I put a note of Rs.500 in the pocket of that jacket which was lying on the table.

PW8 stated that the panch witness gave a signal and the raiding party reached the spot.

8. The shift in the stand of PW8 in his examination in chief began with his stating that he went to the ACB to make complaint against one Gautam but that the said Gautam was not found present on his seat. PW8 further stated that the raiding party conducted the proceedings in the room and that it was very small that PW-8 had to remain outside the room and that all the proceedings were conducted inside the room. At that stage, the learned Additional Public Prosecutor (APP) made a request to the trial court and was permitted to cross-examine PW-8 as he was suppressing the truth.

9. In his cross-examination by the APP, PW-8 stated that it is correct that I made allegations in my complaint against M.P.Singh that whenever he used to prepare a challan he used to take money from me. It is also correct that without accepting money M.P.Singh did not use to prepare the challan and he used to compel me to use the money. However, he denied that the Appellant had met him on 29th December 1999 at the time of auction and had asked him to meet him on the following day for taking the delivery of goods and had demanded his share of Rs.500. He immediately added I had stated in my complaint that M.P.Singh used to demand money and I agreed to pay the money under pressure. I handed over a currency note of Rs.500 in the AC Branch which I had to pay to M.P.Singh.

PW8 again did a flip flop by stating:

The AC Branch officials asked me to keep mum and they will conduct the proceedings in their own way. I did not tell them the name of M.P.Singh.

While he denied making any statement (mark PW-8/X) to the police, he stated that it is correct that when I entered in the room of M.P.Singh I was asked by M.P.Singh whether I have brought the money which I was asked to bring. I replied in positive that I have brought Rs.500. It is incorrect to suggest that M.P.Singh asked me to give the money to Sumit who will prepare the challan (confronted with portion A to A of mark PW-8/X where it is so recorded). It is incorrect to suggest that M.P.Singh asked Sumit Kumar to prepare the challan and accept whatever the complainant is giving to you (Sumit) (confronted with portion B to B of mark PW-8/A. Vol. Sumit was not present on his seat at that time only a jacket was lying there. It is incorrect to suggest that I handed over the EMD receipt to Sumit and Sumit then asked for the money upon which I took out a note of Rs.500 from the left side pocket of my shirt and Sumit took that note as bribe from me and put in the pocket of the jacket which he was wearing at that time (confronted with portion C to C of mark A/A where it is so recorded).

10. In the remaining part of his cross-examination, PW-8 virtually resiled from all the statements made by him during investigation. He stated that the police obtained signatures on several papers by tallying me that they have completed the proceedings when I was outside the room. Ex.PW-8/B-1 to Ex.PW B-6 bears my signatures at point A. Vol. these signatures were obtained by the police voluntarily when I was called from outside. He stated that it was wrong to suggest that Sumit Kumar had received Rs.500 from me as bribe on the instructions of accused M.P.Singh. He also denied that Rs.500 was recovered from A2 in his (PW-8) presence.

11. In his cross-examination by learned counsel for the Appellant, PW-8 stated that one Gautam demanded bribe from him 15 to 20 days prior to the raid and that on the date of raid I went to AC Branch as Gautam had demanded money from me. At that time except Gautam none else demanded money from me. I went along with the raiding party to pay the money to one Gautam but Gautam was not found present there. The AC Branch officials told me that you have not to tell

anything about Gautam to us you have only to tell whether he is a Government servant or not. I did not tell the raiding party about the absence of Gautam from the office. PW-8 did yet another flip flop in the further cross-examination by learned counsel for the Appellant when he stated that it is incorrect that no demand of any bribe was made by Sh.M.P.Singh accused on the date of raid. It is also incorrect to suggest that accused M.P.Singh never asked me to give the bribe money to any person. As soon as I entered the room of accused M.P.Singh demanded the money from me but on his direction I had given the money to Sumit Kumar. Again said Sumit was not present on his chair and I only put the money in the pocket of the jacket lying on the table. I was not aware whose jacket it was. It is incorrect to suggest that accused M.P. Singh never demanded any money while I entered his room nor he directed me to give the money to any other person. It is incorrect to suggest that I myself put the money in the jacket lying in the room. It is correct that accused never said me to put the money in the jacket lying in the room. I do not know if M.P.Singh had said to the raid officer that he never demanded any money with the complainant and he never directed me to give the money to any other person. There was a rush of people at that time. It is incorrect to suggest that I am deposing falsely and falsely implicated accused M.P.Singh. I do not know whose duty was to prepare the challan.

12. It can be seen from the above deposition that PW-8 kept going back and forth on his statement. At one time he appears to be denying that the Appellant asked him to pay money to A-2 for preparation of the challan. He even denied that A-2 was apprehended and the sum of Rs.500 was recovered from him or that the number of the note was compared with the report prepared in the pre-raid proceedings. This has to be read with the statement that police obtained signatures on several papers. He then states that other than one Gautam no one demanded money from him. Again during the cross examination by counsel for the Appellant he said:

It is incorrect to suggest that accused M.P. Singh never demanded any money while I entered his room nor he directed me to give the money to any other person.

13. To say the least, PW-8 was a wholly untrustworthy witness. His testimony does not inspire confidence that he is speaking the truth. Being the Complainant, his evidence was crucial to the entire case. Yet, he kept contradicting himself on the material particulars as to what happened.

14. The next crucial witness was PW-11, the panch witness. He was present when PW-8 came to the ACB to have his complaint recorded and spoke of the GC note being treated with phenolphthalein powder and being handed over to PW-8. As regards the visit to the office of the CDU at about 1.15 pm on 30th December 1999, he stated:

I along with complainant proceeded towards the office of disposal unit and the members of raiding party took their suitable position here and there. I along with Complainant entered in the room and accused M.P.Singh present in the Court (correctly identified) was having lunch at that time. Complainant Raj Kumar asked the accused to prepare his challan because he had to deposit the money in the bank. Accused M.P.Singh told the Complainant that he would prepare the challan after the lunch. Complainant insisted to prepare the challan by saying that the bank hours would be over and in that process Complainant took out that Rs.500 GC note. Accused M.P.Singh told the Complainant that he was having lunch and he pointed towards accused Sumit present in the court (correctly identified) and asked the Complainant to get the challan prepared by accused Sumit. Thereafter we turned towards accused Sumit who was busy in some paper work. The Complainant extended that GC note of Rs.500 towards accused Sumit who accepted that GC note with his left hand which he kept in the left side pocket of his leather jacket. Thereafter I came out from the office of the accused persons and gave pre-determined signal to the raiding party.

15. During his cross-examination PW11 admitted that the crucial sentence in the above deposition that the Complainant insisted on preparing the challan by saying that the bank hours would be over and in that process Complainant took out that Rs.500 GC note was an addition to what he stated to the police. After PW-11 identified the jacket of A-2 that was seized by PW-10, the APP requested and was permitted to cross-examine PW-11. This was perhaps PW11 failed to state that the

Appellant demanded a bribe. On cross-examination by the APP, PW11 began resiling from his earlier statements made to the police. He stated:

I did not tell the police that when I along with Complainant turned towards accused Sumit, he demanded the bribe by the gesture of his left hand. (Confronted with portion B to B of his statement Mark-A and contents of post raid report where it is so recorded). It is correct that Complainant had given EMD receipt to accused Sumit. I did not tell the police in my statement that I took the search of accused Sumit Kumar on the direction of raid officer. (Confronted with portion C to C of his statement MarkA and the contents of post raid report.) He further stated that it is wrong to suggest that accused M.P.Singh had enquired about the bribe amount earlier settled from the Complainant and accused Sumit had also demanded bribe from the Complainant by gesture. It is wrong to suggest that the bribe money was given to accused Sumit on his specific demand on the direction of accused M.P.Singh. It is wrong to suggest that I am deposing falsely on the confronted portion as I have been won over by the accused.

16. Consequently, even PW-11 failed to support the case of the prosecution as far as the Appellant was concerned.

17. In the impugned judgment, the trial court negated the contention of the Appellant that he was not entrusted with any duty of preparing a challan and, therefore, he could not have demanded any bribe from PW8. However, without dealing with the evidence of PWs-8 and 11, the trial court proceeded to rely on the evidence of PW-10 to hold that the voluntary and conscious handling of the treated GC note stood established beyond reasonable doubt. As regards the Appellant, the trial court observed:

the learned counsel for accused M.P.Singh did not challenge the deposition of the raid officer that the panch witness told her by pointing out towards accused M.P.Singh that he had asked the Complainant to hand over the bribe amount of Rs.500 to accused Sumit. Nothing has come in the cross-examination of the raid officer by the counsel for accused M.P.Singh, which could create any doubt on the veracity of her deposition about accused M.P.Singh.

18. The trial court then proceeded to hold that the testimonies of PWs-8, 11 and 10 proved beyond reasonable doubt that there was a previous demand by the Appellant and that on 30th December 1999 when PW-8 went to him the Appellant demanded money from PW-8 which he had also asked him to bring on the previous day and then asked PW-8 to pay it to A-2. Once it was proved that the Appellant had demanded/obtained a gratification of Rs.500 from PW-8, the onus under Section 20(1) PC Act shifted to the Appellant to rebut the presumption and show that he did so neither as a motive nor as a reward from PW-8.

19. The Court finds that the impugned judgment totally overlooks the fact that the evidence of PW-8 was inconsistent and untrustworthy and that PW-11 the panch witness failed to support the prosecution and resiled from his previous statement implicating the Appellant. The conviction of the Appellant by the trial court appears to be wholly based on the sole testimony of the raid officer PW-10. However the evidence of PW-10 is unhelpful as regards what happened inside the room where the Appellant was supposedly taking lunch. PW-10 apparently entered the room only after the pre-determined signal was given by PW-11. Even the deposition of PW-13 is unhelpful since he was involved only in the post-raid proceedings.

20. By failing to deal with the depositions of PWs 8 and 11, the trial court has rendered a perverse finding of the guilt of the Appellant for the offences under Sections 7, 13 (2) and 13 (1) (d) of the PC Act.

21. As explained by the Supreme Court in *Banarsi Dass v. State of Haryana* AIR 2010 SC1589 to constitute an offence under Section 161 of the IPC (corresponding to Section 7 of the PC Act) it is necessary for the prosecution to prove that there was demand of money and same was voluntarily accepted by the accused. Even if it is to be held that for the purposes of Section 7 of the PC Act, it is sufficient to prove that there was a conscious acceptance of illegal gratification by the accused, in the present case the prosecution has failed to prove that the Appellant himself accepted the treated GC note of Rs.500. As regards the demand of bribe, the evidence of PW-8 is wholly unreliable. Even PW-11 has resiled from his statement regarding the Appellant demanding a bribe. In the absence of demand of a bribe, the question of a statutory presumption under Section 20(1) of

the PC Act did not arise.

22. Consequently, this Court is unable to uphold the impugned judgment dated 19th December 2007 of the trial court convicting the Appellant for the offences under Sections 7, 13(2) read with 13 (1) (d) of the PC Act and the consequent order on sentence dated 20th December 2007. The impugned judgment and order on sentence are accordingly set aside. The appeal is allowed but in the circumstances with no order as to costs.

23. The bail bond of the Appellant and surety bond are discharged. S. MURALIDHAR, J.

JANUARY23 2014 dn

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