

Rajinder Kumar Narang Vs. State

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Court : Delhi

Decided On : Feb-21-2014

Judge : Indermeet Kaur

Appellant : Rajinder Kumar Narang

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on:

11. 02.2014 Judgment delivered on:

21. 02.2014 + CRL.A. 95/2006 RAJINDER KUMAR NARANG Appellant
Through: Mr.Vikas Pahwa, Sr. Advocate along with Mr. Apurv Lal, Advocate.
versus STATE Through: Respondent Ms.Fizani Hussain, APP. CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 The appellant is aggrieved by the impugned judgment and order of sentence dated 07.2.2006 wherein he had been convicted under Sections 7 and 13(1)(d) read with Section 13(2) of the Corruption of Prevention Act (hereinafter referred to as the said Act) and had been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.15,000/- in default of payment of fine to undergo SI for 6 months for the offence under Section 13(1)(d) of the said Act; for the offence under Section 7 of the said Act he has been sentenced to undergo RI for a period of 2 years and to pay a fine of Rs.5000/- in default of payment of fine to undergo

SI for 4 months. Sentences were to run concurrently. Benefit of Section 428 IPC was granted to the appellant. 2 The facts as emerged from the record show that on 26.7.1999 an oral complaint was filed by Ravinder Kumar (PW-3) to the Inspector of the Anti Corruption Branch which was to the effect that the appellant who was working as a junior engineer (Buildings) of the Rohini Zone of the MCD had demanded illegal gratification of Rs.10,000/- for giving Form-C which was required by PW-3 for the construction which he was carrying out over his plot in Maulana Azad Co-operative Group Housing Society, Pritam Pura, Delhi. This complaint Ex.PW-3/A (scribe of whom was not examined), stated that the complainant had applied for his Form-C in the office of the MCD, Rohini Zone a week ago; the Inspector had gone for site inspection; on 22.7.1999 the complainant had gone to MCD office and enquired about his Form-C wherein he was told that to obtain the Form-C he would have to pay a sum of Rs.15000/which was negotiated down to Rs.10,000/-. Under pressure the complainant agreed to pay this amount in his office on 26.7.1999; however, since he did not wish to pay this amount he made the present complaint. 3 Pre-trap proceedings were arranged at 2.55 p.m. on the same day. Shadow witness Prabhunath Prashad (PW-10) was asked to join. In his presence a demonstration was given by the raid officer ACP V.P.Singh (PW-12). 20 GC notes in the sum of Rs.500/- each which had been handed over by the complainant to the raid officer were coated with phenolphthalein powder; a live demonstration by dipping the hands of PW-10 after touching the tainted notes was conducted upon PW-10; the solution turned pink in colour. PW-3 was explained that he was to hand over the money only on demand. 4 The trap proceedings were conducted between 2.55 p.m. till the evening. They were evidenced in the panchnama (Ex.PW-3/M). Version of Pw-3 being that the demand was made by the appellant for the bribe money and the same was handed over to him in his right hand pocket which was in the presence of Pw-10; on the appointed signal being given by PW-10 the trap party which comprised of Ramesh Kaushik (PW-14) as well reached the spot. 5 In the statement of the accused recorded under Section 313 Cr.P.C., he pleaded innocence. His version was that he was falsely implicated in the present case. Submission being that the complaint had come alone to his office and he was standing in his room when the complainant forcibly put some money in his pocket. The appellant reacted and

when he was in the process of returning this money the police came and arrested him. 6 Two witnesses were examined in defence. Mahesh Kumar (DW-1) proved a letter dated 02.8.1999 which was written by the accused to the office of In-charge of the Building Department regarding his false implication in a false case. B.P.Sharma (DW-2) had detailed the procedure for obtaining the Form-C and non-obtainment of the C-Form would lead to a penalty of Rs.200/-. These documents have been proved as Ex.DW-2/A and Ex.DW-2/B. Submission of the learned counsel for the appellant on this score being that the Junior Engineer have no power to issue the Form-C and it can only be obtained by a executive engineer. 7 On the basis of the aforementioned evidence collected by the prosecution the accused was convicted under the aforementioned provisions of law and sentenced accordingly. 8 On behalf of the appellant arguments have been addressed by Mr.Vikas Pahwa, Learned Senior Counsel. Submissions have been made in detail. It is pointed out that the version of the prosecution suffers from inherent improbabilities and is liable to be discarded for various reasons. Attention has been drawn to the testimony of PW-3. It is stated that PW-3 is a hostile witness and did not support the case of the prosecution. Panchwitness has also not supported the case of the prosecution. Admittedly the complaint made by the complainant is oral and not written. The scribe of the complaint has not been examined. It is pointed out that to establish the ingredients of an offence under Section 7 and 13(1)(d) of the said Act for which the appellant had been convicted there must be first and foremost a demand; after the initial demand the trap money must voluntarily accepted; in the absence of demand and a conscious acceptance the ingredients of the offence under Section 7 and 13(1)(d) of the said Act are not made out. Learned counsel for the appellant has placed reliance upon the following judgments:

2013.

101) Scale 211 State of Punjab Vs. Madan Mohan Lal Verma, 2012(11) Scale 255 Rakesh Kapoor Vs. State of M.P., 2010(4) SCC450 Banarsi Dass Vs. State of Haryana, (2009) 3 SCC779 C.M.Girish Babu Vs. CBI to support this submission. 9 Further submission being that it is only when the foundation of the case has been set up by the prosecution that the presumption under Section 20 of the said Act can be invoked. To support this submission reliance has been placed upon (2012(

11 SCC642 Mukut Bihari and Anr. Vs. State of Rajasthan, (2009) 15 SCC200 State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede and (2002) 5 SCC86 Subhash parbat Sonvane Vs. State of Gujrat. It is pointed out that the initial demand itself has not been proved as PW-3 has not supported the version of the prosecution and neither has PW-10 done so. Reliance by the trial judge on the sole testimony of PW-12 for convicting the appellant is uncalled for. There are inherent improbabilities in his version also. It is pointed out that the report of the CFSL cannot be relied upon as the link evidence is missing. Attention has been drawn to the testimony of PW-1 (R.K. Joshi) who had retained the exhibits in his almirah. Submission being that they were not deposited in malkhana. It is pointed out that there is no evidence brought forward by the prosecution to show as to through whom the samples were sent to the CFSL and in the absence of which a vital link is missing; possibility of tampering of the sample could not be excluded and benefit of doubt must accrue in favour of the appellant. Attention has also been drawn to the seizure memo Ex.PW-3/C which had effected the seizure of the GC notes. Submission being that how the FIR number in the same hand writing had appeared in the top of the documents, is unexplained. This is clearly for the reason that the documents were prepared in the office and none of the documents were prepared at the spot. Attention has also been drawn to Ex.PW-3/D and Ex.PW-3/E where also FIR number finds mentioned; submission being that it is in the same hand writing and this evidences the fact that these two documents were also not prepared at the spot. To support this argument reliance has been placed upon the judgments of this court reported as 200(10 AD (Delhi) Giri Raj Vs. State, 2000(1) AD (Delhi) 1000 Ramji Singh Vs. State and CrI. Appeal No.2 of 2008 decided on 24.01.2014 titled as Rama Kant Sharma Vs. State of Delhi. Further submission being that ample evidence has come on record to substantiate the defence of the appellant that the issuance of Form-C is not within the domain of the Junior Engineer; it can only be issued by the Executive Engineer and for this purpose attention has been drawn to the statement of DW-2 as also to the examination of PW-2, who has admitted that issuing authority of Form-C is the Executive Engineer and not the Junior Engineer. It is pointed out that PW-6 has also admitted this fact in his cross-examination. On all counts benefit of doubts accrues in favour of the appellant. 10 Arguments have been refuted by the State. It

is pointed out that on no count does the impugned judgment suffer from any infirmity. It is pointed out that the testimony of the raid officer without corroboration is by itself sufficient to convict the appellant and for this proposition besides drawing attention of this court to the version of PW-12 reliance has also been placed upon (1998) 1 SCC557 State of U.P. Vs. Zakuallah . It is pointed out that in this case the court had noted that the testimony of the DSP even without corroborative and even where the link evidence is missing and there was no report of the CFSL, the evidence of the prosecution was relied upon to convict the appellant. The testimony of a hostile witness can also be relied upon and to the extent that the versions of PW-3 and PW-10 are in conformity with the version of the prosecution the same can be looked into. To support this proposition reliance has been placed upon (2010) 10 SCC349 Paramjeet Singh @ Pamma Vs. State of Uttarakhand ; testimonies of these witnesses cannot be rejected in toto. It is pointed out that the demand had been proved in the version of PW-3 who had admitted that he had signed the complaint Ex.PW-3/A; the prosecution was well within its right to draw presumption under Section 20 of the said Act. For this proposition reliance has been placed upon 2012 VIII AD (Delhi) 466 Harish Chand Khurana Vs. State . It is pointed out that that in this case where the demand and acceptance had been made by gesture it was sufficient to fall within the ambit of Sections 7 and 13(1)(d) of the said Act. On the question of FIR number being mentioned in the seizure memo it is stated that a Bench of this Court in 2013 II AD (Delhi) 288 Rattan @ Ratan Singh Vs. State had noted that the FIR number is added by the investigating officer for the purpose of record later on and the explanation of the investigating officer in that regard was found convincing; this by itself would not sufficient to demolish the version of the prosecution or to hold that the documents were not prepared at the spot. Even otherwise an illegality in investigation should not accrue for the benefit of appellant and to substantiate this proposition reliance has been placed upon 195 SCR1150 H.N.Rishbud and Inder Singh Vs. The State of Delhi . 11 Arguments have been heard. Record has been perused. 12 PW-3 is the complainant. He has proved his complaint as Ex.PW-3/A. Admittedly this complaint was not written by him. It was written under dictation of PW-12; the scribe of the complaint was, however, not examined. PW-3 had deposed that on the fateful day i.e. 26.7.1999 he was working as a property

dealer; the appellant Junior Engineer Narang had inspected his site; he has gone to obtain his C-Form. The person sitting there told him that he will have to pay Rs.10,000/- for getting the C-Form. Complaint was lodged. The pretrap proceedings have been deposed to by PW-3. He stated that in the pre-trap proceedings which were conducted in the Anti-Corruption Branch 20 GC notes Rs.500 denomination each were taken from him and had been handed over to PW-12 who applied phenolphthalein powder on the same in the presence of a public witness. The hand wash of the panchwitness after touching the notes when dipped into a solution of sodium carbonate turned pink. Raiding party was organized. PW-3 had been explained that the money has to be handed over only on demand. On reaching the spot on inquiry they learnt that JE had not come to his office. At 3.00 p.m. Mr.Narang came to his office. He was identified as the accused. PW-3 asked the appellant about his C-Form. The accused showed him his palm. The money was put by PW-3 in his pant pocket. Meanwhile raid officials reached the spot and recovered the tainted money from the pant pocket of the accused. Hand washes and pant pocket wash of the accused were taken which were seized and sealed vide memo Ex.PW-3/D in separate bottles Ex. P-21 to 24. Pant of the accused was also taken into possession vide memo Ex.PW- 3/E. In his cross-examination PW-3 admitted that he had given his complaint Ex.PW-3/A but the same was not allowed to be read by him. He denied the suggestion that a demand of Rs.15000/- had been made by the JE for solving his problem of obtaining C-Form; however, when had been mentioned. He admitted that he had been summoned in the office of the JE along with the bribe money of Rs.10,000/-. He admitted that he had mentioned the name of Narang in his complaint as he knew that the JE was one Mr. Narang. In a further part of his cross- examination he denied the suggestion that the accused had accepted the money from him in his right hand. Voluntary version of PW-3 being that he had put the money in the pant pocket of the accused when he had given an indication by showing his palm. PW-3 admitted that when he handed over the money to the accused and the money was kept by him in his right pant pocket panchwitness (PW-10) had given the preappointed signal. He admitted that his signatures on these memos were obtained in the Anti-Corruption Branch. He admitted that raid officials rushed to the spot within 2-3 seconds of his putting the money in the pocket of the accused; they

remained present up to 7.00 p.m. 13 The next important witness relied upon by the prosecution was the panchwitness examined as PW-10. He deposed that in July, 1999 he was posted as an LDC in the SDM Court Seelampur. He was asked to report in the Anti-Corruption Branch for duty. He was informed that a junior engineer was demanding a bribe. The pre-trap proceedings and the demonstration of the tainted money smeared with the phenolphthalein powder when touched with hands and on washing the hands in solution turning pink has been explained to him. He was told that he was to give pre appointed signal only after the payment had been made by PW-3 to the appellant. He further deposed that at 3.30 p.m. the accused had come his office; after about 10-15 minutes he heard a noise of Pakro-Pakro from the room of the JE. On reaching the room he saw that the Inspector of the CBI was having chemical smeared currency notes in his hand and the accused JE was saying that he had been falsely implicated. Members of the raiding party gathered there. PW-10 further deposed that no hand writing work was done at the spot. He admitted his signatures on the pre-raid report Ex.PW-3/B as also on the seizure memo of the currency notes Ex. PW-3/C; seizure memo of the wash bottles Ex. PW-3/D and seizure memo of pant Ex.Pw-3/E. In his cross-examination, he denied the suggestion that in his presence the raid had been conducted or that the demand or acceptance was made by the appellant from PW-3 while he was present. This witness has been declared hostile by the public prosecutor but he stuck to his stand. In his cross-examination he admitted that the documents which were signed by him had not been read over to him. 14 Versions of PW-3 and PW-10 have been heavily relied upon by the learned counsel for the appellant to establish his submission that since the demand has not been established and the demand being sine qua non to establish the offences under Sections 7 and 13(1)(d) of the said Act, the acceptance by the appellant also not being conscious and voluntary, the subsequent proceedings recorded by PW-12 who had reached the spot after the incident was over do not merit any consideration. This argument has to be answered on the touchstone of the testimony of PW-3, PW-10 and PW-12. 15 PW-12 was the raid officer. He deposed that the pre-raid proceedings were organized and explained after recording the complaint Ex.PW-3/A which had been lodged by the complainant. This complaint was recorded by PW-3. In the pre-raid proceedings the live

demonstration on PW-5 was given and when the tainted money was touched; hands dipped into a solution; the solution would change its colour. He has deposed that in the raid which was conducted after 2.55 p.m. on the signal given by PW-10 he along with other members of the party entered the room and on the pointing of the complainant he challenged the accused that he had taken a bribe of Rs.10,000/- on which the accused remained silent. On the search of the right pant pocket the tainted money was recovered and the numbers of tainted money matched with the numbers of the notes recorded in the pre-raid proceedings. Hand wash of the appellant was also taken. In his cross-examination he admitted that the complainant has come alone in the Anti-Corruption Branch. He remained at the spot till 5.30 p.m.. The fan was on when he took position; it was on full speed. The memos were prepared by SI Suraj Parkash under his dictation. He denied the suggestion that the accused has been falsely implicated to make the trap successful in order that PW-12 could obtain a reward or a certificate. 16 From the version of aforementioned witnesses it is clear that PW-12 had reached the spot after the incident was over i.e. after the alleged demand and acceptance by the appellant from Pw-3 had been answered. PW-3 had given an oral complaint which had been recorded by PW-12 through a person who was not examined. Crl. Appeal No.95/2006 PW-3 has admitted his Page 15 of 23 signatures on Ex.PW-3/A but in his cross-examination he has categorically stated that the complaint Ex. PW-3/A was not read over to him. In Ex.PW-3/A it had been recorded that initially a demand of Rs.15,000/- was made by the appellant which was later on negotiated down to Rs.10,000/- whereas the version of the prosecution on oath in court is that the demand was of Rs.10,000/- and that is why 20 GC notes in the denomination of Rs.500/- has been arranged by the complainant. There is no mention of Rs.15,000/-. In another part of his deposition PW-3 has stated that at the time of the raid PW-3 had put the money in the pant pocket of the accused when the accused showed his palm. PW-3 reiterated that he himself put the money in the pant pocket of the appellant at that time; the panchwitness (PW-10) thereupon gave the appointed signal. He further admitted that after he had put the money in the pant pocket of the accused, the accused put his hand in the pant pocket and he cannot say whether he had put his hand in the pant pocket to return the money to PW-3 or for any other reason. He admitted that the raid official

rushed to the spot within 2-3 second of his putting the money in the pant pocket of the accused. PW-10 another important witness who had allegedly witnessed this incident as is the version of the prosecution had reported that when he reached the spot along with members of the raiding party he learnt that the JE had not come. Within 10-15 minutes he heard the noise of Pakro-Pakro the accused JE was saying that he has been falsely implicated. Testimony of PW-10 on no count supported the version of the prosecution. PW-10 has admitted his signatures in pre-trap proceeding as also on the memos Exs.PW-3/A, PW-3/B, PW-3/C, PW-3/D, PW-3/E and Ex.PW-3/F (seizure memos alleged prepared at the spot) but he has gone on to state that all these seizures were got signed by him later on; none of them were prepared at the spot. This is also the version of PW-3 who has also categorically denied the suggestion that his signatures were obtained on the memos at the spot. His statement being that his signatures were obtained in the Anti-Corruption Branch. PW-12 had joined the raid at the time when the incident was over. 17 It is thus the versions of PW-3 and PW-10 which is relevant to answer the submission of the learned counsel for the appellant as to whether ingredients of Sections 7 and 13(1)(d) of the said have been fulfilled or not. Admittedly, there has to be a demand. The demand has to be made by a public servant. This demand was allegedly noted in Ex.PW-3/A. PW-3 had made an oral complaint. It was written by another person under dictation of PW-12 and was signed by PW-3. PW-3 has admitted that that he did not know the contents of the complaint and there being a variation in his version as to whether the initial demand started with Rs.15,000/- and then scaled down to Rs.10,000/- or that the initial demand was Rs.10,000/- alone supports the version of the PW-3 that the contents of Ex.PW-3/A were not read over to him. The initial demand has not been established. In the raid proceedings PW-3 had deposed that the appellant had shown his palm to PW-3. There is no doubt to the proposition that even by gesture a demand can be made. However, the fact that PW-3 has himself put the tainted money in the pant pocket of the appellant and the appointed signal having been given within the next 2-3 seconds of his putting the money in the pant pocket of the appellant and the raiding party had reached the room of the JE within those aforesaid 2-3 seconds is also established. The tainted money was admittedly touched by the appellant but the version of the appellant that this money which

was put forcibly in his pocket by PW-3 was being taken out by him to return it to PW-3 is also established as PW-3 on this score has stated that he could not state as to whether when the appellant had put his hand in his pant pocket; whether it was to return money to PW-3 or otherwise he could not say. This admission of PW-3 on oath leads this Court to come to a conclusion that there is a grave doubt as to whether this acceptance of the money in the right pant pocket of the appellant was a voluntary and a conscious acceptance or whether it was forcibly put in his pocket by PW-3. This is further substantiated by the fact that the raiding party had reached the room within the next 2-3 seconds. PW-12 straightway took the search of the right pant pocket of the appellant. It is not the version of the prosecution that the left pant pocket of the appellant was also searched. Submission of the learned counsel for the appellant on this score being that this is clearly a case of false implication and how PW-12 knew that the money has been kept by the appellant in his right pant pocket and nowhere else also throws a doubt on the version of the prosecution. This argument of the learned counsel for the appellant is also not without force. 18 The seizure memos, as is the admission of PW-3 and PW-10 which includes the seizure memo of the hand wash and pant pocket wash of the appellant were signed in the office. The FIR numbers appearing on these documents i.e. PW-3/C, PW-3/D, PW-3/E and Ex.PW-3/F are on the same hand writing; there is no change in the ink. PW-12 had deposed that these memos were prepared by SI Suraj Prakash; SI Suraj Prakash was not examined as a witness. There was thus no scope of cross-examination of the witness on this score. To this extent the facts of the judgment of Ratan Singh (supra) are distinct wherein the State had explained that the FIR number was subsequently mentioned for the purpose of record and the court found it to be convincing and the court had noted that the witness had also not been cross-examined on this point. There is no explanation in this case. However, there is also no doubt to the proposition that irregularity in the investigation should not come to the aid of the appellant. It is a wholesome view of the case which has to be taken. In the instant case there is also no evidence on record to show as to who had taken the sample from the Almirah of the ACP to the CFSL. The link evidence on this score is missing. The defence of the appellant as is evident from his line of cross-examination, his statement under Section 313 Cr.P.C. as also his

evidence in defence is that he was not the issuing authority of the C-Form. Attention has been drawn to byelaws of the MCD dated 23.6.1983 (DW2/C) wherein non-obtaining of C-Form would lead to a penalty of Rs.200/-. Argument on this score being that a person who is going to be penalized for Rs.200/- for non-production of C-Form would not agree to pay Rs.10,000/- to obtain the said C-Form. On this count PW-3 has been specifically cross-examined; it has been suggested to him that the penalty for not obtaining Form-C is Rs.200/-; it has also been suggested to him that the accused has been falsely implicated. The raid officer PW-12 has also been suggested that the penalty of Rs.200/is imposed if C-Form is not obtained. PW-13 ACP R.S.Yadav was the investigating officer. In his cross-examination, he admitted in his crossexamination that he had not done investigation about the penalty to be imposed if the complainant does not obtain C-Form. PW-4 (architect) has in his cross-examination admitted that if the C-Form is applied for and after 15 days it is not obtained penalty of Rs.200/- is imposed and the C-Form is not required in that case. PW-6 Head Clerk in the MCD Department has also admitted in his cross-examination that the C-Form is issued by the Executive Engineer. PW-14 has also admitted that C-Form is issued by the Executive Engineer although it is through the Junior Engineer. 18 It thus stands admitted that non-obtainment of the C-Form would lead to a penalty of Rs.200/-; further in case C-Form is not obtained within a period of 15 days it would not be required; C-Form is issued through Executive Engineer. 20 In this background the defence of the appellant that the notes were forcibly put in his pant pocket; that he had neither made any demand and this sum of Rs.10,000/- had been forcibly put in his pant pocket which notes he had touched in order to then return to PW-3 substantiated by the evidence on record that the non-obtainment of the C-Form would lead to a penalty of Rs.200/- and if after 15 days of days of application the same is not issued it would not be required lead this court to hold that it would be difficult to believe that the complainant had agreed to pay a sum of Rs.10,000/- for obtaining this C-Form. Since the prosecution has not been able to establish even the foundational facts of the case, Section 20 of the Act which raises a presumption in favour of the prosecution after only the foundational facts of the prosecution case is established, does not come to the aid of the prosecution. Version of the prosecution is full of doubts and credibility of the witnesses is

tarnished. There versions are not believable. Defence of the appellant has in fact created a dent in the case of the prosecution. 21 On this evidence the conviction of the appellant is clearly an illegality. It is liable to be set aside. Appeal is allowed. The appellant is acquitted of the charges leveled against him. Bail bond cancelled; surety discharged. INDERMEET KAUR, J FEBRUARY21 2014 ndn

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