

**Dinesh Vs. State**

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**Court :** Delhi

**Decided On :** May-01-2014

**Judge :** S. Muralidhar

**Appellant :** Dinesh

**Respondent :** State

**Advocate for Def. :** Ms. Aashaa Tiwari

**Advocate for Pet/Ap. :** Mr. K.B. Andley, Mr. M.L. Yadav, Mr. M. Shamikh, Mr. Lokesh Chandra

**Judgement :**

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: April 23, 2014  
Decision on: May 01, 2014 CRL.A. No.272 of 2008 DINESH ..... Appellant  
Through: Mr. K.B. Andley, Senior Advocate with Mr. M.L. Yadav, Mr. M. Shamikh  
and Mr. Lokesh Chandra, Advocates. versus STATE ..... Respondent Through:  
Ms. Aashaa Tiwari, APP. CORAM: JUSTICE S. MURALIDHAR

**JUDGMENT**

0105.2014 1. This appeal is directed against the impugned judgment dated 13 th March 2008 passed by the learned Special Judge in CC No.1/03 holding the Appellant guilty for the offences under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 17th March 2008 sentencing him to rigorous imprisonment (RI) for two years and

fine of Rs. 2,000, and in default, to undergo simple imprisonment (SI) for a period of one month for the offence under Section 7 of the PC Act. For the offence under Section 13(1)(d) read with Section 13(2) of the PC Act, the Appellant was sentenced to undergo rigorous imprisonment for two years with a fine of Rs. 2,000, and in default, to undergo simple imprisonment (SI) for two months.

2. The case of the prosecution is that the Complainant, Radhey Shyam (PW4) was running a soda/ cold drinks business at Shop No.280, Subzi Mandi, Delhi. The Appellant Dinesh Kumar was working as Vaccinator in S.P. Zone, Municipal Corporation of Delhi (MCD). According to PW4, the Appellant demanded from him a bribe of Rs. 1,000 per month for not sealing the cold drink unit and for not challaning the shop. On 17th July 2001, the Appellant is stated to have gone to the shop of PW4 and demanded a bribe of Rs. 1,000 per month. Pursuant to negotiations, it was agreed between them that PW4 would pay Rs. 500 and that the Appellant would come at around 11:00 am on 18 th July 2001 to collect the bribe amount.

3. Since PW4 was against giving the bribe, he went to the Anti Corruption Branch (ACB) and got his complaint (Ex.PW4/A) recorded in the presence of the panch witness, Vinay Kumar (PW8). PW4 produced one government currency (GC) note of Rs. 100 and eight GC notes of Rs.

50. Inspector M.S. Sanga (PW7), the raid officer (RO) noted the serial numbers of the GC notes in his pre-raid report (Ex.PW4/B). The RO applied phenolphthalein powder on the GC notes and gave a demonstration to PWs 4 and 8. Thereafter, the treated GC notes were given to PW4 and he kept them in the left pocket of his shirt. PW7 was instructed to remain close to PW4 and to overhear the conversation between PW4 and the Appellant and to give a signal after the bribe amount was paid.

4. At around 10:30 am on 18th July 2001, the RO, PW4, PW7, Inspector N.S. Minhas (PW6), the Investigating Officer (IO) and the other members of the raiding team left the ACB for the spot in a government vehicle. The government vehicle was left near Robin Cinema on the main road at a distance from the spot with the PW6 and the driver remaining in the vehicle. PWs 4 and 7 moved towards the

Pappu Barber shop adjacent to Pappu Lemon shop of PW4. The other members of the raiding party followed them and took suitable positions.

5. At around 12:20 pm, the Appellant is stated to have come there on a Kawasaki Bajaj motorcycle. He entered the barber shop at 12:30 pm. In his deposition, PW4 stated that the Appellant came to his shop and inquired about his health and sat on a chair. PW4 requested the Appellant not to demand the bribe amount but the Appellant insisted on PW4 paying the amount of Rs. 1,000 per month; then the Appellant asked him to pay Rs. 600 as a monthly bribe but PW4 replied that he had only Rs. 500 and would pay the balance Rs. 100 after a few days. He then took out the treated GC notes and gave it to the Appellant who accepted them with his right hand and kept them in the left pocket of his shirt. At that point, PW8 gave a pre-determined signal and the raiding party rushed in. The RO disclosed his identity and challenged the Appellant.

6. PW8 corroborated the above version in part. PW8 has, in his deposition, stated that he was sitting in the barber shop which was situated near the shop of PW4. Thereafter when the Appellant came and had talks with PW4 which could not be heard by him. There was a hue and cry outside the shop and when he reached the spot, some proceedings regarding hand wash and preparation of documents were being conducted. He claimed that no money was recovered from the possession of the Appellant in his presence.

7. PW8 was declared hostile and was cross-examined. However, in his cross-examination, he admitted that around 10:30 am, he and PW4 along with the members of the raiding party left the ACB and reached Robin Cinema in a government vehicle and that he and PW4 went towards the shop of PW4 and that he (PW8) sat in the barber shop. He, however, denied the other happenings. He identified his signatures on the pre-raid proceedings and the seizure memo. He admitted as correct the fact that the Appellant was arrested and his personal search was taken and that the motorcycle was also seized.

8. As far as PW4 is concerned, he confirmed the recovery of the GC notes from the Appellant. He also confirmed that the hand wash and the wash of the pocket of the shirt of the Appellant taken at the spot turned pink and that the washes were

transferred to clean bottles, sealed and labeled. In his cross-examination, PW4 stated that he did not have any license to run his cold drink making unit. He admitted that he had been challaned several times by the MCD for encroachment or on health grounds. He stated that the police had implicated him in more than ten cases and that he was facing a dispute in the civil Court with his landlord in two cases. PW4 was accused in 12 criminal cases. He admitted as correct that the police had declared him as a bad character of the area but claimed that this was a wrong declaration. However, he stood firm as far as the raid proceedings were concerned.

9. The learned trial Court, on an analysis of evidence, held that while PW8 had not supported the case of the prosecution, his entire deposition could not be wiped off the record. To the extent that he admitted that PW4 had, in his presence at 3:30 pm on 18th July 2001, recorded the complaint (Ex.PW4/A) and to the extent that he admitted that he went along with the members of the raiding party to the spot and further to the extent of his confirming that the Appellant was arrested and his search was taken, his evidence could be relied upon.

10. The learned trial Court next discussed the evidence of Mr. Dev Raj (DW1) who was examined by the Appellant. Although DW1 stated that the Appellant was taken from the shop of DW1 by PW4, the said evidence was inconsistent with the clear evidence of both the PW4 and the RO. Accordingly, the evidence of DW1 was disbelieved. It was further noted that the involvement of PW4 in criminal cases was irrelevant as long as the facts concerning the demand and the acceptance of the bribe was clearly made out.

11. Learned counsel for the Appellant reiterated that with the panch witness (PW8) turning hostile, and the criminal antecedents of PW4, there was no reliable evidence to prove the guilt of the Appellant beyond all reasonable doubt. There were also contradictions in the depositions of PWs 4 and 8 as to the place where the demand and the acceptance of the bribe took place. While PW4 stated that the Appellant had come to his shop and that PW8 was present there, the deposition of PW8 was that he was in the barber shop.

12. It is seen from the evidence of PW7, the RO, that the Appellant entered the barber shop and the demand and the acceptance took place there. What is significant is that the Appellant was caught with the treated GC notes in the left pocket of his shirt. Both the hand washes as well as the pocket of the shirt turned pink. There is nothing in the cross-examination of PWs 4 or 7 that discredits their versions as regards the hand washes and the wash of the shirt turning pink and the Appellant being arrested on the spot.

13. Interestingly, in his statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr. PC), the Appellant does not deny being in the shop of PW4. When asked about the recovery of the GC notes from his shirt pocket, he stated that my shirt was lying on the bench in the Pappu Lemon Shop as I was already having talking terms with the complainant because in that area my maternal uncle is residing.

This makes it clear that even according to the Appellant, he was present at the spot. In response to another question, he stated I was called out of the shop by one person, whose identity was revealed later on as Raid Officer and complainant disappeared at the same moment the said Raid Officer asked me to bring my shirt which I took from the bench. I was asked by Raid Officer to check my shirt as I have received the bribe from the complainant as and when I put my hands in my shirt I found some notes therein which was handed over to Raid Officer.

14. The above explanation appears to be an after-thought and indeed a very weak defence. There is no reason to disbelieve PWs 4 and 7 as regards the raid proceedings and the recovery of the treated GC notes from the Appellant. As rightly pointed out by the learned trial Court, the prosecution had proved beyond all reasonable doubt the fact that PW4 gave a complaint; that the treated GC notes were given to him in the presence of PW8; that PWs 4 and 8 went with the raiding party to the spot; that the Appellant was found with the treated GC notes in the pocket of his shirt when the raiding party reached on receiving the signal from PW8; that the Appellant was arrested after the recovery of the treated GC notes from the pocket of his left shirt which tallied with the notes noted in the pre-raid proceedings.

15. It was be urged by counsel for the Appellant, that the RO Mr. Sanga was himself an accused in certain criminal cases against him under the PC Act and had even been convicted by the judgment dated 20th May 2011 of the learned trial Court for the offences punishable under Section 13(1)(d) read with 13(2) of the PC Act. It was also pointed out that a departmental inquiry had been ordered against him.

16. In the considered view of the Court, the evidence on record in the present case is unimpeachable and clearly points to the guilt of the accused. The above facts concerning the RO do not in any way impinge upon the raid proceedings that took place in 2001 and which have been proved by the prosecution beyond all reasonable doubt.

17. Lastly, it was submitted that the sanction for prosecution was bad in law as sanction was granted by an officer who was not authorized to do so. This aspect of the matter has been discussed by the learned trial Court in the impugned judgment. The sanction order was proved by PW1, Mr. Anand Prakash. The learned trial Court noted that the appointing and removal authority for the Appellant was the Additional Commissioner, MCD and PW1 was posted as the Additional Commissioner at the relevant point in time. The Court is, therefore, unable to find any illegality as far as the sanction order is concerned.

18. For the aforementioned reasons, this Court is unable to find any grounds whatsoever to interfere with the impugned judgment of the learned trial Court.

19. As far as the sentence is concerned, the Court finds that the sentence of RI for two years and fine of Rs. 2,000 for each of the offences under Sections 7 and 13(1)(d) read with 13(2) of the PC Act are perfectly valid and do not call for interference.

20. The appeal is accordingly dismissed but with no order as to costs. The Appellant is directed to be taken into custody forthwith to serve out the remaining sentence.

21. A certified copy of this order along with the trial Court record be delivered by Special Messenger to the trial Court concerned forthwith. S. MURALIDHAR, J.

May 01, 2014 tp

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