Satish Kumar Gupta Vs. State

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Court : Delhi

Decided On : Sep-10-2014

Judge : Indermeet Kaur

Appellant : Satish Kumar Gupta

Respondent : State

Judgement :

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

03. 09.2014 Judgment delivered on :

10. 09.2014 CRL.A. 126/2006 SATISH KUMAR GUPTA Through versus ..... Appellant Mr. Karunesh Tandon, Adv. 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 27.01.2006 and 28.01.2006 respectively wherein he was convicted under Section 13 (2) and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act). He was sentenced to undergo RI for a period of 18 months and to pay a fine of Rs.3,000/- and in default of payment of fine to undergo SI for 3 months for the offence under Section 13 (2) of the said Act; for the offence under Section 7 of the said Act, he was sentenced to undergo RI for a period of one year and to pay a fine of Rs.2,000/- and in default of payment of fine, to

undergo SI for two months. 2 The version of the prosecution is that a complaint was made by Babu Lal (PW-7) which was to the effect that on 10.02.1997 the appellant who was working as a Superintendent in the Delhi Electric Supply Undertaking (DESU) at Shalimar Bagh had demanded bribe of Rs.400/- from the complainant for the purpose of passing his electricity bill. The complainant in his complaint had explained that the electricity bill of their factory used to be deposited under a Court order for which they had to get endorsement of the bill from the concerned Superintendent. On 10.02.1997, he had visited the DESU office at Shalimar Bagh wherein the appellant, working in his capacity as Superintendent, had agreed to get the bill of the complainant deposited (for the month of January, 1997) only if a bribe of Rs.400/- was paid to him. This bill was for Rs.22,350/-. Not willing to pay this amount as bribe, a complaint was lodged by the complainant on the following day. 3 Pre-raid proceedings were drawn. Raid was conducted in which handed by the raiding party with the bribe money of Rs.400/-. After the registration of the FIR, the challan was filed. Charges under Section 7 read with Section 13 (1)(d) punishable under Section 13 (2) of the said Act were framed against the appellant. 4 The prosecution in support of its case had examined nine witnesses; the complainant Babu Lal was examined as PW-7. The shadow witness who was present along with PW-7 at the time of raid was D.N. Mehto examined as PW-6. The Raid Officer ACP Ramesh Singh was examined as PW-8, and the Investigating Officer Inspector Bir Singh was examined as PW-9. The hand washes of the appellant and his left pant pocket wash (from where the money was allegedly recovered) after sealing had been deposited in the malkhana and the entries in the register No.19 was proved through HC Sewak Singh (PW3); the CFSL, Chandigarh had opined that these hand washes had tested positive for phenolphthalein, thus advancing the version of the prosecution that this tainted money had been touched by the appellant. 5 In the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.PC), he had pleaded innocence. His submission was that this money was forced into his pocket by the complainant at the time when the electricity bill was purportedly being paid by the complainant; the appellant was in the course of returning this money to the complainant when all of a sudden he was apprehended by the Anti-Corruption Branch. 6 In defence, Suresh Chand Aggarwal (DW-1) had come into

the witness box substantiating this defence on oath. 7 On the basis of oral and documentary evidence collected by the prosecution, the appellant had been convicted and sentenced as aforenoted. 8 On behalf of the appellant, arguments have been addressed in detail. At the outset, it is pointed out that the provisions of Section 17 of the said Act have not been complied with. Section 17 mandates that no person below the rank of ACP shall carry out the investigation in a matter pertaining to the said Act until and unless he has delegated this authority. Submission being that the notification relied upon by the Department was dated 19.03.1999 which was later in time to the offence which was dated 11.02.1997, and as such the entire investigation being without any authority is void. Second submission of the learned counsel for the appellant is based on the version of panch witness (examined as PW-6). Attention has been drawn to his testimony. Submission is that in this version, the panch witness has not spoken a word about the appellant having made a demand upon the complainant in the absence of which conviction of the appellant is clearly not sustainable. It is pointed out that the complainant is admittedly an interested witness and his version alone, uncorroborated by the version of the panch witness could not have been the basis of convicting the appellant. Additional submission being that the version of the prosecution is even otherwise confused as PW-6 in his cross-examination had admitted that there were two bills wherein he has stated in his examination-in-chief that the complainant had given two bills to the appellant and the appellant had returned one bill and had also begun to write on the other bill. This admission of PW-6 is contrary to the version set up by the prosecution who has otherwise relied upon only one bill (Ex.P-1). The case of the prosecution is in fact ambiguous; PW-6 has also not corroborated the version of the complainant. The version of the prosecution is full of inherent contradictions and infirmities. Accordingly, the appellant is entitled to a benefit of doubt. The last submission of the learned counsel for the appellant is on the quantum of sentence. For this proposition, he has placed reliance upon a judgment of the Apex Court in V.K. Verma Vs. CBI in Criminal Appeal No.404/2014, reported as (2014) 3 SCC485 Submission being that in this case also, the appellant had been convicted under Section 5 (1)(d) of the Prevention of Corruption Act, 1947 (old Act) and the allegations against him were that he had accepted a bribe of Rs.265/-. The Court, noting the fact that he

had suffered a mental trial of more than 30 years as the offence was more than 30 years old and the appellant at that stage was a senior citizen being 76 years of age, sentence already undergone i.e. period of three months was treated as the sentence which would be suffered by him and the period of incarceration of one year was reduced to the period already undergone. Submission of the learned counsel for the appellant being that in this case also, out of 18 months of incarceration which has been ordered against him, he has suffered incarceration of about six days. 9 Needless to state, these submissions have been refuted by the State. 10 Arguments have been heard. Record has been perused. 11 Charges have been framed against the appellant on two counts i.e. for the offence under Section 7 of the said Act as also for the offence under Section 13 (2) read with Section 13 (1)(d). 12 The complainant Babu Lal examined as PW-7 was the star witness of the prosecution. The incident as per the complaint was dated 10.02.1997. The complaint was filed in the CBI office on 11.02.1997. This was in his own hand-writing running into 1- pages and has been proved as Ex.PW-6/A. In this complaint, while explaining the procedure vide which the complainant was paying his factory bills for electricity before the DESU, he had explained that on the fateful day i.e. on 10.02.1997 when he had gone to the office of DESU at Shalimar Bagh, the Superintendent Gupta Ji i.e. the appellant had, for the purpose of accepting his bill of Rs.22,350/-, made a demand of Rs.400/- stating that that bill would be accepted only if the demand was fulfilled. This complaint was accordingly filed on 11.02.1997. The pre trap proceedings were proved as Ex.PW-6/B and panchnama which was drawn at the spot i.e. at the time of raid was proved as Ex.PW-6/H. These documents were proved in the version of the panch witness D.N. Mehto. 13 Before adverting to the testimony of the panch witness, the testimony of PW-7 is to be examined. PW-7 has in his version fully corroborated his complaint and explained the manner and the procedure as to how his bills were being paid at the DESU office at Shalimar Bagh, as well as the incident of 10.02.1997 i.e. when he had gone to the DESU Office and he met the appellant Satish Kumar Gupta who was working as a Superintendent in that office. The appellant had made a demand of Rs.400/- for accepting payment of the bill of approximately Rs.22,000/- which the complainant had to pay. The complainant informed the appellant that he did not have the money at that time but this amount

of approximately Rs.22,000/- was being tendered by him under the orders of the Court. He had made his police complaint to the CBI. 14 PW-7 has thereafter gone on to explain on oath the pre-raid proceedings where in the CBI office apart from the CBI Officer, they were joined by the panch witness namely D.N. Mehto examined as PW6. A sum of Rs.400/- had been handed over by raid officer to the complainant. In the presence of PW-7, PW-6 as also the other members of the raiding party, the raid officer explained that the money was being treated with phenolphthalein and as a consequence of this, if any person touched this treated money and his hand was dipped in a solution of sodium carbonate, the solution would turn pink. After this live demonstration, the complainant was informed that the treated money was to be handed over to the appellant only on demand. The raid proceedings had also been explained. These have been proved through document Ex.PW-6/H which was drawn after the raid was completed and duly signed by PW-7, PW-6 and ACP Ramesh Singh (PW-8) who was the Raid Officer. 15 PW-7 in this context has deposed that on 11.02.1997 when he entered the office of the appellant and handed over the bill to him for payment, the appellant inquired if he had brought the bribe money to which the complainant told him that he would give the money after his bill was accepted. The appellant thereupon threw the bill on the table. The complainant again put it on the table and took out the treated money and handed it over to the appellant who accepted the money in his left hand and after counting with both hands, he had put it in the front pocket of his coat. PW-6 had given the appointed signal to the members of the raiding party who reached the spot and money was recovered from the front pocket of the coat of the appellant. Both the hand washes i.e. left and right hand washes were taken, besides the pocket wash of his coat. They were prepared in six small bottles and slips were pasted on them for the purposes of identification; the panch witness had also signed on these slips. The coat of the appellant was also taken into possession. 16 In his lengthy cross-examination, PW-7 stuck to his stand. He reiterated that there was only one bill and the appellant had not accepted the payment on the bill stating that he would accept it only if the bribe money of Rs.400/- was paid to him. It was reiterated that the bribe was demanded on the previous day and on 11.02.1997, he had gone to the office to pay this bribe money along with the raiding party. 17 PW-6 D.N. Mehto, the panch witness has also

deposed on the same lines. His version read in entirety negatived the submission of the appellant that there was no demand made by the appellant in the presence of the panch witness. PW-6 has deposed that he accompanied the appellant to the DESU Office. The complainant showed the electricity bill to the Superintendent who was sitting in the room i.e. the appellant. The appellant kept the bill of the complainant separately. The complainant at that point of time asked the appellant to sign the bill as they were getting late and he gave it to the appellant. The appellant asked the complainant, kal jo bat hui thee wo tum laye ho to which the complainant replied in the affirmative and told the appellant, pahley aap sign kar do. This version of PW-6 corroborates and is in affirmation of the version of PW-7. 18 The words of the appellant kal jo bat hui thee wo tum laye ho contain the implicit demand. The appellant at that point of time was referring to the conversion of the previous day wherein the appellant had categorically told the complainant that his bill would be accepted only if the bribe money of Rs.400/- was paid to him. Submission of the learned counsel for the appellant that no demand was made by the appellant is thus wholly negatived. 19 PW-6 was also subjected to a lengthy cross-examination but he stuck to his stand. In one part of his cross-examination, he stated that there were two bills, stating that the accused had returned one bill and had also begun to write on the other bill. This could only be an inadvertence as admittedly there was only one bill which the complainant had gone to pay and which had been proved as Ex.P-1 and upon which there was an endorsement of Rs.22,350/- having been accepted by the appellant. This was specifically brought to the notice of the appellant who has admitted that this endorsement of acceptance on Ex.P-1 is in his own hand-writing. 20 This confusion of two bills as is appearing in one part of the cross-examination of PW-6 appears to be on the count that both PW-6 and PW-7 have admitted that when the bill was handed over to the appellant for acceptance, he had returned it stating that unless and until the bribe money was paid, he would not accept it. At that point of time, PW-7 had again presented the bill to the appellant. It is probably for this reason that in this cross-examination of PW-6 there is a reference to two bills. PW-6 being doubtful about the identity of the coat which had been worn by the appellant on the date of the offence also does not dent the version of the prosecution as this in fact reflects the veracity and truthfulness of the witness. It is not as if PW-6 was blindly toeing

the version of PW-7. He was deposing as per memory and this Court notes the fact that the witness had entered the witness box in May, 2005 when the incident relates to the month of February, 1997. 21 The Raid Officer ACP Ramesh Singh (PW-8) had participated in the pre-raid proceedings and had explained the manner in which the currency notes were treated with phenolphthalein powder. This was in the presence of both the complainant and the panch witness. He reiterated the deposition as detailed by PW-6 and PW-7 qua the raid proceedings. 22 The Investigating Officer Inspector Bir Singh, examined as PW-9, had prepared the site plan Ex.PW-9/A; he had taken possession of the documents i.e. the electricity bill Ex.P-1; the accused was also arrested by him vide memo Ex.PW-6/G. He had sent the exhibits i.e. two hand washes of the appellant and his left hand pocket wash to the CFSL, Chandigarh, which had opined these hand washes to be positive for phenolphthalein and sodium carbonate again advancing the version of the prosecution, meaning thereby that the tainted money had touched the hands of the appellant as also his coat pocket. The sanction for prosecution of the appellant was proved as Ex.PW-1/A. 23 The defence of the appellant as appearing in the statement under Section 313 of the Cr.PC was that this money was forced into the pocket of his coat; before he could return it to the complainant, he was caught red-handed. 24 The defence witness DW-1 not being a summoned witness, had stated that on the fateful day, he was standing in queue in the DESU office at Shalimar Bagh for payment of his electricity bill. He had handed over his bill to the appellant for payment. He had seen one person forcibly putting money into the pocket of the appellant. In his cross-examination, he admitted that the bill which he had handed over to the appellant (Ex.DW-1/A) for payment neither contained his name and nor his address. It was in the name of one Bimla Devi. The trial Judge had rightly disbelieved this witness noting that the document which the witness had sought to produce was wholly disproved. Moreover there was no reason whatsoever on the part of the members of the raiding party or for that matter even for the complainant to falsely implicate the appellant. Apart from the oral deposition, the documentary evidence which included the hand washes and pocket wash of the appellant also cannot be ignored. 25 The prosecution on all counts has been able to prove its case to the hilt. 26 Argument of the learned counsel for the appellant that an Inspector of Anti-Corruption Branch is not competent to lay the trap and until and

unless there is a specific delegation of power, no officer below the rank of Assistant Commissioner of Police or a person of equivalent rank can investigate into an offence into this section and the present case having been investigated by an Inspector; being an investigation without any authority is also an argument without any merit. 27 Before the trial Court and even before this Court, a notification dated 15.03.1999 has been placed on record. This notification is by the Government of NCT of Delhi authorizing an Inspector of the AntiCorruption Branch to investigate the offence under the said Act. There is no doubt that this notification is later in time to the offence which is dated 11.02.1997 yet the admitted fact being that this notification which came into effect in March, 1999 had replaced the earlier notification (which was a notification under the old Prevention of Corruption Act, 1947) and having not been rescinded till that date (March, 1999), it continued in operation. 28 Section 30 of the said Act is the Repeal and Saving clause. It saves all actions done under the previous Act; Section 30 (2) of the said Act clearly states that anything done or any action taken or purported to have been taken under or in pursuance of the Prevention of Corruption Act, 1947 shall be deemed to have been taken under or in pursuance of the corresponding provisions of Act of 1988. As such the action taken on an earlier notification which was in operation up to March, 1999 enabled an Inspector to investigate the offences under this Act. Under this legal fiction, anything done or action taken in pursuance of the earlier Act of 1947 was deemed to have been taken under or in pursuance of the corresponding provisions of Act of 1988; this fiction is to the effect that 1988 Act had come into force when such a thing was done or action was taken. 29 There is also no dispute to the fact that when an Act is repealed but re-enacted, it is inevitable that there will be some time lag between the re-enacted statute coming into force and regulations being framed under the re-enacted statute. The Apex Court, in this context, in AIR 1961 SC838Chief Inspector of Mines Vs. Karam Chand Thapar has held as under:

It is conceivable that any legislature, in providing that regulations made under its statute will have effect as if enacted in the Act, could have intended by those words to say that if ever the Act is repealed and re-enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the reenacted statute, and thus the re-enacted statute for some time at least,

will be in many respects, a dead letter. The answer must be in the negative. Whatever the purpose be which induced the draftsmen to adopt this legislative form as regards the rules and regulations that they will have effect as if enacted in the Act, it will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that could not have been the intention of the legislature. It is satisfactory that the words used do not produce that result.

30 Even otherwise where there has been no mis-carriage of justice by such an investigation and no prejudice has been suffered by the appellant, the investigation cannot be said to be vitiated. It is also not the argument of the learned counsel for the appellant that there has been any miscarriage of justice. 31 In this context, the Supreme Court in (1997) 10 SCC567Central Bureau of Investigation Vs. Subodh Kumar Dutta had observed that after the cognizance of the offence had been taken by the Special Court constituted under the West Bengal Special Courts Act, the Prevention of Corruption Act, 1947 came to be repealed by the Prevention of Corruption Act, 1988; the matter reached the High Court and thereafter to the Supreme Court and on the question of jurisdiction, the Supreme Court held that the cognizance of the offence taken by the Special Court stood saved by virtue of Section 30 of the said Act. 32 On all counts, the appeal fails. 33 On the quantum of sentence this Court notes that the appellant has undergone incarceration of less than one week. For his conviction under Section 13(2) read with Section 13(1)(d) of the said the minimum sentence prescribed is 1 year. It may in certain cases even extend up to 7 years. The minimum sentence prescribed for the second conviction of the appellant which is under Section 7 of the said Act is 6 months. 34 The appellant before this Court is stated to be about 71 years of age. The offence relates to the year 1997 i.e. almost two decades old. It is pointed out by learned counsel for the appellant that the amount involved is a paltry sum of Rs.400/-. However, no other special circumstance had been pleaded by the appellant for the reduction of his sentence. 35 Noting the aforenoted facts this Court is of the view that the interest of justice would be met if the sentence is reduced. 36 The Supreme Court in AIR 1980 SC1141 Meet Singh Vs. State of Punjab had noted that the Appellate Court while reviewing/modifying a sentence is no doubt conferred with vide discretion but the sentences should, however, be

adequate and within the limits prescribed by the Legislature. Misplaced sentencing should be avoided; the Courts exercising discretion by passing an order on sentence below the minimum should only do so when there are special reasons for doing so. 37 The offence of a nature committed by the present appellant is an offence against society. There is no doubt that the offence is almost two decades old and the bribe money is also a small amount but the Court while upholding the conviction notes that the appellant has undergone incarceration of only about 5 days; there is no other special reason deducible from the record which may persuade the Court to impose a sentence lesser than the minimum except the fact that the appellant is 71 years of age (but otherwise in good health). This Court therefore does not think it proper to pass a sentence below the minimum which has been prescribed by the Legislature. 38 Accordingly, the sentence imposed upon the appellant under Section 13(2) read with Section 13(1)(d) of the said Act is RI for 12 months; fine is unaltered. The sentence under Section 7 of the said Act which is RI1year is reduced to RI6months; fine is unaltered. Both the sentences will run concurrently. Benefit of Section 428 of the Cr.P.C. granted to the appellant. Appeal is disposed of in the above terms. 39 Bail bond and surety bond are cancelled. Appellant be taken into custody to serve remaining sentence. INDERMEET KAUR, J SEPTEMBER10 2014 A/ndn