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Dev Raj Vs. State

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Court : Delhi

Decided On : Oct-10-2013

Judge : G. S. Sistani

Appellant : Dev Raj

Respondent : State

Judgement :

$~R-1 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: October 10, 2013 + CRL.A. 116/2006 DEV RAJ ..... Appellant Through: Mr.Vishwa Bhushan Arya, Adv. versus STATE ..... Respondent Through: Mr.Firoz Khan Ghazi, Adv. for State. Mr.P.K.Sharma, Adv. for CBI CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J.(Oral) 1. Present appeal has been filed under Section 374 Cr.P.C. assailing the judgment of the Trial Court dated 25.01.2006 and order of sentence dated 27.01.2006 by which the appellant was convicted under Section 8 of the Prevention of Corruption Act 1988 and sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs.5,000/- and in default of payment of fine further simple imprisonment of two months.

2. The case of the prosecution as noticed by the Trial Court is as under:

2. on 13.2.1997 one Manoj Kumar, son of Shri Raj Kumar, r/o Village and Post Office Khan Raghunathpur, Distt. Beghu Sarai (Bihar), present address: Magu Transport Company, Shama Road, Moti Nagar, Delhi had made a complaint in the

anticorruption branch regarding the demand of bribe by a Tout for sharing it with the officials of Transport Authority, for getting a duplicate permit of his tempo. The said statement when translated reads as under:- I am residing at the above said address and working as Driver in Maghu Transport. I used to drive the four wheeler Tempo bearing registration No.DDL-2250. The permit of my vehicle bearing No.T-4569/96 had lost somewhere. My employer had asked me to obtain a duplicate permit for which I had gone to the office of Transport Authority at Rajpur Road on 12.2.1997. There near the Permit Window/counter, I met a person who disclosed his name as Dev Raj who after seeing me that I am fed up had asked me on which I told him that I want to obtain a duplicate permit on which he told me that he will get done by [sic]. work and took me to the Main gate of the Authority Office where a person was sitting on a chair to whom I had shown the photocopy of the permit then he told that I will have to make a report to the police station regarding the fact that my permit has lost. Thereafter, I went to PS Civil Lines and got written a report regarding loss of my permit and shown its copy to Dev Raj on which he told me that it will involve an expenditure of Rs.500/-. I told him that I am having only Rs.300/on which he told me that he will also obtaining [sic]. a report from ITO for which he will have to pay Rs.150/- to the officials at ITO and inside the transport office Rs.200/- will have to be paid to the clerk of Transport Authority and therefore the work will not be done by any amount less than Rs.500/-, thereafter he told me to bring all the relevant documents and Rs.500/- and he will get my work done. I am against giving any bribe. However, I had agreed out of my helplessness. I neither have any enmity or any dealings with Dev Raj. I have heard the statement which is correct.

3. On the above said complaint, pre-raid proceedings were drawn and the raid was conducted and after successful completion of the raid, FIR No.10/1997 was registered and the accused was arrested and after completion of the post raid proceedings and the investigation, challan was filed in the Court u/s 8 of the Prevention of Corruption Act, Accused was summoned and copy of the challan was supplied to him and thereafter the accused was heard on the point of charge and on 9.12.2002 charge u/s 8 of the Prevention of Corruption Act, 1988 was framed against both the accused persons to which they pleaded not guilty and claimed trial. Accused Mishri Lal died during the trial and this case against him

stood abated on 20.9.2004.

4. During the trial, eight witnesses were examined on behalf of the Prosecution. The complainant Manoj Kumar (Driver) is examined as PW-5. His employer Shri Manohar Lal is examined as PW-4, PW-6 Mr.Satish Kumar is the panch witness. PW-1 ACP Vijay Malik has proved the deposit of case property i.e. three bottles by Inspector Ramesh Singh on 13.2.1997. PW-2 HC Sewak Singh is the Mal Khana Moharar and he has proved the deposit of case property in the malkhana vide extract of register No.19 as Ex.PW-2/A. PW-3 ASI Onkar Singh has taken the case property to CFSL Chandigarh vide RC No.28/1997. PW-7 Inspector S.K.Banta is the Raid Officer. PW-8 ACP Ramesh Singh who was working as Inspector in the Anti-Corruption Branch at the relevant time is the Investigating Officer who has also proved the CFSL report Ex.PW-8/B which gave positive tests for phenolphthalein powder and solution of sodium carbonate.

3. Learned counsel for the appellant submits that the learned Trial Court has failed to take into consideration that neither the complainant PW-5 nor the owner of the vehicle PW-4 have supported the case of the prosecution. Learned counsel further submits that both PW-4 and PW-5 have denied that they ever applied for a duplicate permit or that they paid bribe amount and in the absence of any such evidence the appellant could not have been convicted in this case. Learned counsel further submits that PW-4 Manohar Lal, the owner of the vehicle has categorically testified that he never authorised his driver Manoj PW-5 to apply for a duplicate permit. PW-4, the owner has even disputed that Manoj PW-5 was his driver and thus the case of the prosecution has not been proved. Counsel submits that PW-5 has deposed that one Sahab took his tempo for getting household goods shifted and had asked him to get a permit. It is submitted that PW-5 has not even testified that money was handed over to the appellant. It is further submitted that the learned Trial Court has incorrectly relied upon Section 20 of the Prevention of Corruption Act which is not applicable to the facts of the present case.

4. Per contra learned counsel for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. It is submitted that

although the complainant PW-5 has turned hostile but he has not disputed the fact that a complaint was made by him and he had approached the office for a duplicate permit but he has confused the issue by introducing a person referred to as Sahab without giving his particulars. He further submits that Trial Court has rightly applied the law with respect to placing reliance on the evidence of a hostile witness and the Trial Court has only relied upon that portion of the testimony of PW-5 which is reliable and trustworthy. He further submits that the case of the prosecution has been supported by PW-6 as also by PW-8. Both the witnesses have proved the scientific evidence on record to show that the solution had changed colour and that all the bottles were duly kept in the malkhana by PW-2 whose evidence also corroborates the evidence of PW-5. Learned counsel for the appellant in rebuttal submits that since the evidence of PW-5 is unreliable there is no corroboration to his evidence which can be looked into.

5. I have heard learned counsel for the parties and considered their rival submissions in this case. As per the case of the prosecution a complaint was made by PW-5 that since he had lost the permit of his vehicle he had approached the office of the Transport Department at Rajpur Road on 12.2.1997 where he had met a person named Dev Raj being the appellant herein. He had agreed to help the complainant in securing a duplicate permit, however, he demanded Rs.500/-. There is no doubt that PW-4, the owner of the vehicle has not supported the whatsoever. case of the prosecution in any manner In fact, he has testified that a permit was never required by him as he had never misplaced or lost the permit. He also testified that his driver Manoj (PW-5) had never discussed with him with regard to a duplicate permit, nor had he paid any money to the driver for preparation of a duplicate permit.

6. The evidence of PW-5 Manoj Kumar makes an interesting reading. At the beginning of his testimony he has admitted that he is a driver of the four-wheeler tempo No.DDL-2250 with a transport company but he disputes any incident regarding the permit of the vehicle and disputes lodging of any complaint. However, he deposes that he accompanied one Sahab towards Civil Lines area along with his tempo for getting his household goods shifted from his house and this person had asked him to get a permit of the vehicle prepared. The said officer

had papers relating to the vehicle and it was this officer who gave him Rs.500/- in denomination of Rs.100/- each and also detained the papers. He directed him to go to the place where duplicate papers of the vehicle are made. He also admits that he met Dev Raj and identified him in Court and admits that when he was talking to Dev Raj the police officials arrived and apprehended Dev Raj at the spot. He has further testified that after this incident he went to the officer who had sent him to collect papers and he collected the papers and also returned the Rs.500/- which was given to him by the said person. As far as the papers are concerned he admits that they are related to the vehicle No.DDL-2250 of which he was the driver and also returned those papers to the owner of the company. He has testified that the police had taken his signatures on some papers but disputes that his statement was recorded. This witness was cross-examined by the APP. He denied having seen report Mark PW-5/A but admitted his signatures at point A. He denied the suggestion that police officials conducted pre-raid proceedings in the Anti Corruption Office in his presence but admitted his signatures on the proceedings Mark PW-5/B. He disputed that he had joined the panch witnesses Satish Kumar and Insp.S.K.Banta and others when the trap was laid at the Transport Authority Main Road. He however admitted his signatures at point A on the proceedings Mark PW-5/C. Subsequently he denied that he had lost the permit of the four-wheeler tempo or that he was directed by the owner to get a duplicate permit prepared. This witness has denied that he lodged DD No.25 dated 12.2.1997 at PS Civil Lines regarding loss of his permit but admitted as correct that Dev Raj had told him at the spot that he would charge Rs.500/- from him for preparation of a duplicate permit. All proceedings conducted in furtherance of the raid including the hand wash have been denied by this witness. In the same breath this witness has admitted his signatures at point C and the bottle Ex.P-3 which bear the signatures of the witness as a sealed parcel with the seal SKB Mark RHW-IIA was produced before this witness to enable him to identify is signatures at point A which has label on the bottle Ex.P-1. Similarly bottle RHW-II was also produced. The witness disputed the proceedings but admitted his signatures on these documents as well. The seizure memo of the bottles and signatures on the seizure memo of the bottles have also been admitted, but the proceedings are denied. The search conducted on the accused persons was disputed but the signatures on the

search memo have been admitted by this witness.

7. Another important witness is PW-6 Satish Kumar. Satish Kumar is a panch witness. His testimony is important and is therefore reproduced below:

In February, 1997 I was posted as UDC in Kasturba Polytechnic for Women, Maharani Bagh, New Delhi. On 13.2.1997 I was directed to perform duty as panch witness in the Anti Corruption Branch. (At this stage learned counsel for the accused has pointed out that the witness is holding in his hand summon of this Court on the back of which he has noted down the dates and names of officers.) I as per order visited the Anti Corruption Office for giving duty. There in my presence complainant one Manoj lodged his report to the official of the anti corruption which is Ex.PW-6/A and is also signed by me at point B. Complainant complained in his report that he had gone to the Transport Authority Rajpur Road for getting a duplicate permit prepared where two persons met him and demanded Rs.500 bribe from him for getting a duplicate permit. He had also mentioned the name of said person in his ruqqa. The complainant also gave five currency notes of the denomination of Rs.100/- each to the Inspector of the Anti Corruption Branch. The Anti Corruption officials noted down the currency notes number in his file. The Inspector also applied some chemical on those currency notes. The police official then gave a demonstration by touching the notes in the hand of the complainant. Those notes were not touched with my hand. After the demonstration we were told that whosoever would touch those notes and if the wash of such thing is taken it would change its colour to pink. Thereafter, those currency notes were handed over to the complainant Manoj. We were also instructed that at the time of bribe giving transaction I should see the same and as soon as Manoj pays the money to the persons who had demanded from him I should signal the police party by placing my hand over my head. Thereafter, myself and the complainant Inspector Banta and 3-4 police officials left the anti corruption office around 11.30 am. Thereafter, we reached Transport Authority Rajpur Road. We had parked our official vehicle some distance away from the Transport Authority. Myself and the complainant proceeded together to the Transport Authority office and the police officials followed at some distance behind us. When we reached near the gate of the transport authority which were by the side of the road. On the gate we found

accused Dev Raj present in Court today (witness has correctly identified the accused) and another person namely Mishri Lal who is not present in Court today met us there who were standing. Thereafter, Dev Raj accused asked complainant Manoj if he had brought the papers and the money. Complainant Manoj replied that he had brought the papers and the money. Complainant Manoj replied that he had brought the papers and the money to Dev Raj. Accused Dev Raj first counted the money and then handed them over to Mishri Lal. Dev Raj while giving money to Mishri Lal told him to take the money. Complainant had given those currency notes on which the powder had been applied in the anti corruption branch. The complainant had given the papers wich he has brought to Dev Raj together with the money he gave to him. On seeing this incident I gave signal to the police officials. On my signal the police party including Shri Banta came and apprehended both accused Dev Raj and Mishri Lal. After their apprehension complainant Manoj identified Dev Raj and Mishri Lal in terms of his allegations made in the report. Shri Banta took away the currency notes from Mishri Lal. Inspector Banta tallied the number of the currency notes with the numbers already noted down by him in his report which tallied with each other. Thereafter, both hands of Mishri Lal were washed. The solution in which wash of the hand of Mishri Lal was taken became red. That solution was then was willed in two bottles and those bottles were then sealed with the seal of SKB and then they were labelled. On those labels SKB was written. That label was signed by me. Wash of both the hands of Mishri Lal was taken. Thereafter, the raiding party including Dev Raj and Mishri Lal came back to the anti corruption branch office. There writing work was done. Seizure memo Mark PW-5/D bears my signature at point A and the same is now Ex.PW-6/B. Similarly, memo Mark Ex.PW-5/F bears my signature at point A and the same is now Ex.PW-6/C. Memo Mark PW-5/E is also signed by me at point A and the same is now Ex.PW-6/D. The documents which were seized vide memo Ex.PW-6/D are Ex.PW-5/A and Ex.PW-5/B. Personal search memo of the two accused also bears my signature and the same are Ex.PW-6/E (which is earlier Mark PW-5/G) and Ex.PW-6/F (earlier which is mark PW-5/H). My signature appear on these two memos at point A. The currency notes recovered from Mishri Lal are Ex.PW-6/1 to 5. Wash of right hand of accused Dev Raj was also taken in separate solutions which also had turned pink and those solutions

were also transferred into two bottles which were also sealed. At this stage six bottles out of which three are sealed with the seal of FSL and three are sealed with the seal of SKB are produced by the Moharrar Mal Khana. The witness on seeing five of them identified his signatures on the same while the label on the sixth bottle is torn and only signatures of raid officer and panch witness appears thereon. The witness identifies the same. These bottles are Ex.P-1 to Ex.P-6. (At this stage learned PP seek permission to crossexamine the witness as he has deviated from his version before the police on some material aspect. Heard. Allowed). xxxx by Shri Vishnu Saran Addl. PP It is correct that in the anti corruption branch office Manoj had informed that he was plying four wheeler Tempo No.DL2250 and that permit of that vehicle had been lost and his employer had asked him to get a duplicate permit issued and when he went to transport authority on 12.2.97 at the counter for permit one person by the name of Dev Raj had met him and seeing him asked him and then Manoj had told him that he wanted a duplicate permit. It is also correct that Manoj had also informed the anti corruption branch officials that Dev Raj had told him that he would get the duplicate permit and then Dev Raj brought him to the Main gate of the Authority Office where one person was sitting on a chair and when he showed that person a photo copy of the permit. That person told him that he will have to lodge a report to the police. Manoj Kumar had also informed the raid officer that he had then gone to police station and had lodged a report and on coming back he showed its copy of the report to Dev Raj who then told him that for his job he will have to spend Rs.500/-. It is also correct that Manoj Kumar had also reported that when he told Dev Raj that he had only Rs.300/- with him Dev Raj had told him that for his work a report will have to be obtained from ITO for which he will have to pay Rs.150/- and that Rs.200/- were to be paid to the Babu in the Transport Authority Office and so his work will not have been done for less than Rs.500/-. It is also correct that Manoj had also informed that Dev Raj had also told him that he should come with all the papers and Rs.500/next day and he would get his work done. It is correct that in the anti corruption branch office demonstration was given by getting my hand touched with the powder smeared notes. After the apprehension of the accused persons I had narrated to the raid officer whatever had transpired at the time of actual transaction. It is incorrect that when Manoj had handed over the

documents to Dev Raj at the time of trap Dev Raj had told Mishri Lal that the police report will have to be obtained and one affidavit also have to be prepared and money will have also to be paid inside the transport officials upon which Mishri Lal had told Dev Raj that it will have to be done and money could be taken first and then Dev Raj had demanded money from Manoj. It is incorrect that Dev Raj accepted the money with his right hand and then counted the notes with both hands and then gave the money to Mishri Lal. It is incorrect that wash of both the hands of Dev Raj was taken and wash of only right hand of Mishri Lal was taken. It is incorrect to suggest that all the memos were prepared at the spot and not in the anti corruption branch office. xxxx on behalf of accused At the time of raid I was a UDC and now I am Head Clerk/Inspector. The police had wrongly written my designation as LDC although I was UDC at that time. It is incorrect that accused Dev Raj resides in Azad Market. I have never visited his house. I did not know him from prior to the day of trap. It is wrong to suggest that I had gone to the house of Dev Raj and that is why I knew that he is residing in Azad Pur. Vol. I know his address because it is written in the statement of this case. We had come back from the spot to the anti corruption branch office around 12:30 pm. In the anti corruption branch office the writing work consumed about 1 hours. I left anti corruption branch office around 1:30 pm. This is the first case in which I am appearing as a panch witness. In no other case I appeared as a witness. It is wrong to suggest that I am a stock witness of the police. I was given a letter from my department to report to anti corruption branch office on duty as a panch witness. I had handed over that letter to the police. The name of the police officer is S.K.Banta. Now I do not remember if any particular time was mentioned in the letter. Again said it was mentioned that I should report in the anti corruption branch office at 10 AM in Old Secretariat. In the room where statement of Manoj was recorded 2-3 police officials were present besides myself, complainant and Mr.Banta. I had reached anti corruption branch office before 10 AM. Manoj was already sitting there. We left for Rajpur Road at about 11.15 AM in police vehicle. There were many persons present at the place where the two accused were present at the time of trap. For the first time I saw the currency notes in the office o anti corruption branch office when the complainant Manoj Kumar was holding them and he had handed over the same to Inspector Banta. Manoj Kumar having

some papers with him at that time but now I do not know the number of those documents and as to what was those documents. Money was not demanded by Mishri Lal. I had stated in my statement before the police that Mishri Lal had said that money should be taken first. I did not have any conversation with Manoj in the anti corruption branch office. He sat with me in the office of anti corruption branch. I had come to know at 10 am itself from Inspector Banta that Manoj Kumar was complainant. It is incorrect that I did not participate in the raid and that is why I could not tell the details in my examination in chief which I confirmed in cross-examination on being read over to me my statement u/s 161 Cr.P.C. It is also incorrect to suggest that I had been instructed by the police that I have to confirm my statement recorded by them. It is incorrect that I am deposing falsely. I know English. It is incorrect that hand washes were not taken at the spot.

8. Testimony of S.K.Banta, Inspector Vigilance PW-7 is also relevant and it is deemed appropriate to reproduce the same. On 13.2.97 I was posted as Inspector, Anti Corruption Branch. On that date one Manoj Kumar came to the anti corruption branch and made a statement for demand of illegal gratification by one whose name I do not remember verbally. His name is Dev Raj which I recall after seeing the file. His statement was recorded which is Ex.PW-5/A. He also produced currency notes numbering five in the denomination of Rs.100/each whose numbers were mentioned in the complaint. Phenolphthalein powder was applied to those notes by me in front of panch witness Satish Kumar in whose presence the statement was also recorded. The right hand of panch witness was touched with these powdered currency notes and wash of his right hand was taken in clear solution of sodium carbonate which turned pink. Thus, the demonstration was given and complainant and panch witness was told about the characteristics of these powders that whoever will touch the notes the wash of his hand will turn pink. The GC notes were handed over to the complainant with the direction that he will hand over the notes to Dev Raj who has demanded the illegal gratification on his specific demand and panch witness was told to remain with the complainant and hear the conversation between the accused and the complainant. After satisfying himself that the money transaction has been done as illegal gratification and part of which were given to the government officials of Transport Authority. A raiding party was constituted with Inspector Ramesh Singh, panch witness,

complainant and other police officials and started in a Government vehicle. After reaching the Transport Authority, Rajpur Road the complainant and panch witness were sent ahead to contact the accused and the raiding party members took the convenient position near the Transport Authority. I watched the conduct of the complainant and panch witness with the accused persons from a distance. At about 12.25 pm I received the pre-arranged signal from the panch witness. The raiding party whent ahead and asked the panch witness who told that accused whose name I do not remember has accepted the bribe money. I challenged the accused Dev Raj present in the court today (correctly identified by the witness) and told him that he has accepted the bribe money and his search is to be taken. If he wished he can search myself who refused for the same. I told the accused that he had accepted Rs.500/- as bribe money from the complainant. In the mean time the other accused Mishri Lal showed five currency notes of Rs.100/- each which he had held in his right hand and told that accused Dev Raj had handed over this money. These notes were recovered from the hand of Mishri Lal and its number were tallied with the raid report which were the same which has entered in pre-raid report. These currency notes were taken in possession vide memo Ex.PW-6/B which bears my signature at point B. The wash of right hand of Mishri Lal was taken in clearless solution of sodium carbonate which turned pink. This solution was transferred into two clean bottles and marked as RHW-IA and RHW-IIA. Similarly, the wash of both the hands of dev Raj was taken separately in clearless solution of sodium carbonate which also turned pink which was transferred into four clean bottles which were marked as RHW-I and II and LHW-I and II respectively and all the bottles were sealed with the seal of SKB and were taken into possession vide seizure memo Ex.PW-6/C which bears my signature at point B. The papers which were handed over by the complainant to accused Dev Raj were also taken in possession vide seizure memo Ex.PW-6/D which bears my signature at point B. Then a ruqqa was prepared for the registration of the case which was sent to the Police Station for registration of the case on which the case in hand was registered. The copy of the FIR is Ex.PW-7/A. After the pre-raid report and after the demonstration given to the complainant and panch witness in anti corruption branch everyone had washed their hands with soap and water. (At this stage the MHCM produced the currency notes numbering five) which are Ex.P-6/1

to 5. The exhibits i.e. six bottles are Ex.P-1 to Ex.P-6 respectively are the same which were taken into possession. Ramesh Singh Inspector was called at the spot and all the documents and the bottles and the accused persons and currency notes were handed over to him for further investigation at the spot. xxxxxxxxx by Shri T.R.Sharma, Adv. for accused Dev Raj The recovery memos were signed at the spot by me, complainant and the panch witness. It is correct that the complainant and the panch witness did not meet me before 13.2.97. The panch witness met me on 13.2.97 when the raid was conducted and he met me again after 2-3 days of the raid, exact date I do not remember when he came to me office to return the seal. I do not know who had called the panch witness. I do not remember the designation of the panch witness but it has been entered in the raid report. I did not record the statement of panch witness u/s 161 Cr.P.C. I know that prior to this case and after this case other cases were also made out against private people at the Transport Authority. As far as I remember photo copy of the permit and application for issue of duplicate permit and a loss report in the police station were taken into possession by me which I handed over to the IO at the spot. Everything related to this case documents, bottles etc. and the accused were handed over to IO Rames Chander between 12.30 and 1 pm. I do not remember whether I joined other raids in other cases. I do not know the accused by name and I do not remember having seen him in the Transport Authority earlier to this incident. I do not know whether there were any specific complaints with us of rampant corruption in Transport authorities by private persons. It is also incorrect to suggest that the accused were rounded up by our staff and entrusted to me to frame up them in this case. It is incorrect that the entire writing work was done by me in our office and nothing happened at the spot as stated by me in my earlier statement. It is incorrect that I am deposing falsely.

9. PW-8 ACP Ramesh Singh has testified that on 13.2.1997 he was posted in the Anti Corruption Branch as an Inspector. He had accompanied Insp.S.K.Banta, the complainant, panch witness and other staff members to Transport Authority at Rajpur Road in the official vehicle. He has testified that all the sealed and seized articles were handed over to him by the raiding officer. The appellant was also handed over to him who was arrested and the personal search of the appellant Ex.PW-6/E was taken in his presence being Ex.PW-6/F. He has testified that the

exhibits were sent to the CFSL and the report was received.

10. There is force in the submission made by learned counsel for the appellant that the owner of the vehicle Shri Manohar Lal PW-4 has not supported the case of the prosecution. In my view, the mere fact that PW-4 has not supported the case of the prosecution can be of no help to the appellant as neither PW-4 was the complainant nor was he present at the spot of the incident and thus merely because he has turned hostile would not affect the case of the prosecution. There is also force in the submission made by learned counsel for the appellant that the complainant person PW-5 was also declared as a hostile witness and he did not support the case in its entirety. However, this fact can also be of no help to the appellant. It seems that PW-5 was won over by the appellant as he has tried to confuse the entire issue by introducing an unknown person as the person who had asked him to get the permit for his vehicle. The witness in his testimony has admitted that he had met Dev Raj. He has admitted that he has asked Dev Raj to keep a permit prepared. He had admitted the factum of the papers being prepared and a sum of Rs.500/- which according to him was given to him by an unknown person. The witness has also denied his complaint but not the signatures on the complaint. His bald denial to all proceedings are marked with the fact that signatures on all these proceedings are admitted by him. He has not testified that he was made to sign under coercion or pressure. Thus in my view the trial court has rightly applied the law laid down in the case of State of Rajasthan v. Bhawani 2003 (7) SCC291to the facts of the present case. The law with regard to dealing with evidence of a hostile witness has been a subject matter of various judgments. In Radha Mohan Singh @ Lal Saheb & Ors. Vs. State of U.P, AIR 2006 SC951, it is held that:

It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found found to be dependable on a careful scrutiny thereof. (See Bhagwan Singh V. State of Haryana, AIR 1976 SC202 Rabinder Kumar Dey V. State of Orissa, AIR 1977 SC170 Syed Akbar V. State of Karnataka, AIR 1979

SC1848and Khuji @ Surendra Tiwari V. State of Madhya Pradesh, AIR 1991 SC1853.

11. In the case of Jodhraj Singh V. State of Rajasthan JT20077) SC118 the Supreme Court has held that the Courts are entitled to rely upon part of the testimony of a witness, who has been permitted to be cross-examined by the prosecution. Relevant portion of the same reads as under:-

11. The High Court took up all the appeals together for hearing. The only distinctive fact in the case involving the appellant was Pws 8 and 9 turned hostile, but the same, in out opinion, would not materially alter the prosecution case, as a conviction can even by based on the testimony of a single witness. The courts furthermore are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution.

12. In State of U.P. Vs. Ramesh Prasad Misra and Another, this Court opined:

7. The question is whether the first respondent was present at the time of death or was away in the village of DW1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the fact within their special knowledge, under Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

13. Moreover, while recording a judgment of conviction, the court may consider a part of the deposition of a witness who had been permitted to be cross-examined by prosecution having regard to the fact situation obtaining in the said case. How the evidence adduced before it shall be appreciated by the Court would depend on the facts and circumstances of each case.

14. It is trite that only because a witness, for one reason or the other, has, to some extent, resiled from his earlier statement by itself may not be sufficient to discard the prosecution case in its entirely. The courts even in such a situation are not powerless. Keeping in view the materials on record, it is permissible for a court of law to rely upon a part of the testimony of the witness who has been declared hostile.

12. Also in the case of Ramkrushna V. State of Maharashtra JT2007(6) SC637 Supreme Court has held:

19. It is well-settled that the courts are entitled to rely upon a part of the testimony of a witness who has been permitted to be cross-examined by the prosecution.

20. In State of U.P. V. Ramesh Prasad Misra and Another, this Court opined:

7.It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

13. The Trial Court has rightly considered the fact that simply because PW-5 Manoj Kumar was declared hostile does not mean that his entire evidence is to be discarded. The reliable portion of the evidence of PW-5 has been corroborated by the evidence of PW-2 HC Sewak Singh, PW-1 ACP Vijay Malik who has deposed that Insp.Ramesh Singh had deposited three bottles LHW-II, RHW-II, RHWII-A along with sample seal with SKB which he kept in almirah which would show that the incident took place and the offending material was collected in these bottles. PW-2 HC Sewak Singh has testified with respect to deposit of 5 GC notes of denomination of Rs.100/each and three bottles. This witness was not cross-examined by the accused persons. The panch witness PW-6 has given a complete description of the entire incident. His testimony has corroborated the testimony of PW-7 (Raid Officer). Any variations in the testimony are not material and do not touch the core issue involved in the present matter.

14. A mere reading of Section 20 of the Prevention of Corruption Act would show that it pertains to a presumption where a public servant accepts gratification other than legal remuneration. In the present case the appellant is not a public servant. It has also been argued before this Court that the Trial Court has erroneously placed reliance on Section 20 of the Prevention of Corruption Act. Learned counsel for the State admits that Section 20 of the Prevention of Corruption Act is not applicable as Section 20 deals with a presumption that public servant accepts gratification other than legal remuneration and the appellant herein is not a public servant.

15. For the reasons stated above, I find no infirmity in the judgment rendered by the learned Trial Court. There is no merit in the appeal and the same is dismissed. The appellant shall surrender by 10th November 2013. (G.S.SISTANI) JUDGE OCTOBER10 2013 Crl.A.116/2006

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