

Har Parsad Gaur Vs. State

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Court : Delhi

Decided On : Dec-19-2014

Judge : S. Muralidhar

Appellant : Har Parsad Gaur

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 782 of 2008 HAR PARSAD GAUR Appellant Through: Mr. Amit Sharma and Mr Aditya Bhardwaj, Advocates. versus STATE Respondent Through: Mr Rajat Katyal, APP. CORAM: JUSTICE S. MURALIDHAR

ORDER

1912.2014 1. This appeal is directed against the judgment dated 28th August 2008 passed by the learned Special Judge in CC No.40/2003 convicting the Appellant under Sections 7 and 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 29th August 2008, whereby the Appellant was sentenced to undergo rigorous imprisonment (RI) for a period of two years and a fine of Rs.10,000/- and in default to undergo RI for three months for the each of the offences under Sections 7 and 13 (1) (d) of the PC Act. Both the sentences were directed to run concurrently.

2. Puran Chand, the complainant was employed with M/s Pooja Printers. He had filed a case in Labour Court against M/s Pooja Printers for his wages. By an order dated 25th May 2001, the Labour Court directed Mr Ashok Bansal (PW-3), proprietor of M/s Pooja Printers, to pay Rs. 41,452/- to Puran Chand.

3. Puran Chand then filed an execution application before the Court of Labour Commissioner. The Labour Commissioner on 19th July 2002 sent a letter to the District Collector for recovery of the aforementioned amount from M/s Pooja Printers. The matter regarding recovery was marked to the Appellant who was working as Tehsildar Kotwali and was having his office at old Civil Supply Building, Second Floor, Room No.28, Tis Hazari, Delhi.

4. On 23rd September 2002, the complainant Puran Chand went to the Appellant and requested him to expedite the recovery proceedings. According to the Complainant, at that time, the Appellant demanded Rs. 3000/- as bribe. Thereafter, Puran Chand met the Appellant a number of times, but on every occasion, the Appellant demanded the said bribe of Rs.

3000. On 7th December 2002, Puran Chand met the Appellant who showed him the two cheques he had received from M/s Pooja Printers. However, the Appellant insisted on the bribe amount of Rs. 3000/- for sending the cheques to the office of the Labour Commissioner. The Complainant requested the Appellant but the Appellant did not yield, and under duress Puran Chand paid him Rs. 3000/- 5. According to Puran Chand, when he found that even thereafter the cheques had not been sent to the Labour Commissioner, he again met the Appellant after about 10 days. This time, the Appellant demanded Rs.1,000/- from the complainant as bribe. According to Puran Chand, the Appellant called his residence on telephone on 6th January 2003 and asked him to come with the bribe amount of Rs.1000/- on that day between 1.00 and 1.30 PM to the SBI Bank at Tis Hazari.

6. Since Puran Chand was against the giving of further bribe, he went to the office of Anti Corruption Branch (ACB) and got his complaint (Ex.PW-10/A) recorded by Inspector S.S. Sandhu (PW-10). The complaint was recorded in the presence of one panch witness, Ramesh Chand, who was working as a peon in the department of Animal Husbandry, Delhi Government. The complaint was signed

by Puran Chand and the panch witness Ramesh Chand. Thereafter it was signed by PW-10.

7. It has come in the evidence of PW-10 that Puran Chand produced two GC notes of Rs.500/- each. PW-10 noted down their serial numbers in the pre-raided report (Ex.PW-10/B) and treated those GC notes with phenolphthalein powder. A demonstration as to its effect was given. The treated GC notes were then handed over to the Complainant to be given to the Appellant. Thereafter, the Complainant, the panch witness and PW-10 washed their hands with clean water and soap. The panch witness was instructed to remain close to the Complainant and to overhear the conversation between him and the Appellant and to give a pre-determined signal once the transaction was complete.

8. At 12.30 pm on 6th January 2003, PW-10 along with the Complainant, the panch witness, Inspector H.N. Meena (PW-9) and other members of the raiding party left the office of the ACB in a government Maruti Van for the SBI Building, Tis Hazari Court Complex. They reached there within 15-20 minutes. The Government vehicle was left at some distance away from the SBI. Inspector H.N. Meena (PW-9) along with the driver stayed back in the vehicle. The Complainant and the panch witness went near the SBI, Tis Hazari Branch. PW-10 and other members of the raiding party followed them.

9. PW-10 further stated that at about 12.55 pm, the Complainant and panch witness stood near an STD booth situated outside SBI Branch Tis Hazari Court premises. At about 1.05 pm, he saw that one person, medium built, wearing blue coat came near the Complainant and panch witness and kept his hand on the back of the Complainant.

10. Thereafter, Complainant turned and shook hands with that person and started a conversation. Thereafter, at about 1.10 pm, PW-10 received the pre-determined signal from the panch witness and he along with the raiding team immediately rushed towards the spot where the panch witness informed him that the Appellant had specifically demanded and accepted bribe of Rs. 1000/- from the Complainant with his right hand and had kept the same in the right side inner pocket of his coat. PW-10 thereafter disclosed his identity as Inspector of ACB and challenged the

Appellant that he had accepted the bribe of Rs.1,000 from the Complainant. PW-10 offered his search as well as the search of the raiding team before taking his search but the Appellant refused. Thereafter on his instructions, the panch witness recovered those two treated GC notes of Rs. 500/each from the right side inner pocket of the coat of the Appellant. He took left hand wash of the accused and the right side inner pocket wash of the coat of the Appellant both of which turned pink. The washes were then transferred into four small empty clean bottles, and were sealed with the seal of MAS.

11. Thereafter, PW-9 was called at the spot and handed over the custody of the case property as well as the exhibits. The Appellant was charged as indicated. The prosecution examined 10 witnesses.

12. In his statement under Section 313 Cr PC, the Appellant denied the allegations and stated that he had been falsely implicated. The Appellant, however, did not deny his arrest at the spot. His answers to questions 15 and 16 read as under:

Q.15 It is in evidence against you that from there complainant was set along with panch witness near STD Booth outside SBI Branch, Tis Hazari Court and at about 1.05 PM, you wearing one blue colour coat came and met with the Complainant and shook hands with him. What you have to say?. Ans. I was being followed by the complainant of his own and he met near the State Bank of India, Tis Hazari and shook hand with me and conveyed his gratitude for sending the cheques to the labour department. Q.16 It is also in evidence against you that panch witness gave pre-determined signal and thereafter the members of raiding party came and you were apprehended. What you have to say?. Ans. I am not aware of any signal. However, I was apprehended by Inspector H.N. Meena wrongly.

The Appellant, however, denied that he was perplexed when challenged by PW-10 that he had accepted the bribe amount. Further, his answer to Question No.20 reads as under:Q.20 It is further in evidence against you that thereafter Raid Officer took the wash of your left hand and wash of right coat pocket in the solution of sodium carbonate separately which turned into pink and that thereafter the said solutions were transferred into four small clean bottles separately and the bottles were sealed with the seal of MAS and marked papers slips were pasted thereon

and witnesses signed the labels LHW-I&II, CRPWI-II, and coat was converted into pulanda. What have you to say?. Ans. It is correct. However, the fact remains that the complainant shook hands with me and while conveying his gratitude he tried to thrust the money in my pocket. That is how the hand wash and coat wash had turned pink.

13. In other words, the explanation offered by the appellant was that the treated GC notes were thrust by the Complainant and that is why his hand wash turned pink. When asked, the Appellant stated that he was falsely implicated in this case. No defence evidence was led. However, an application was filed under Section 311 Cr PC by the Appellant for summoning once again Mr Ashok Bansal (PW-3) whose examination in chief conducted on 29th August 2005 and he stated as under:

On 28.11.2002 as per direction of the Labour Court dated 25.05.2001 for the payment of back wages of Puran Chand worker I issued cheque No.922428 dated 28.11.2002 for a sum of Rs.20,000/- and another cheque No.922429 dated 28.12.2002 for a sum of Rs.21,452/- and deposited the same in the office of the Tehsildar which was received by the accused present in the court today along with my covering letter.

14. In his further examination pursuant to the above application on 1st April 2008, PW-3 stated as under:

It is correct that initially I deposited cheque for a sum of Rs. 20,000/- vide letter dated 28.11.2002 with the accused. The same is already exhibited as Ex.PW-7/B. Cheque for a sum of Rs.21452/- was deposited with the accused on 28.12.2002 vide letter Ex. PW-7/C

15. The attempt by the Appellant through the above exercise was to show that on 7th December 2002, when the Complainant met the Appellant, he could not have possibly had two cheques issued by PW-3.

16. The trial Court analysed the documents and concluded that the evidence of the Raid Officer (PW-10) together with the fact that the hand wash and the right side

inner pocket wash of the coat of the Appellant turned pink, was sufficient to draw the presumption under Section 20 of the PC Act. Since the Appellant failed to give a reliable explanation by way of rebuttal, he was held guilty under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the PC Act.

17. Mr. Amit Sharma, learned counsel for the Appellant submitted the foundational facts of the case viz., that there was any demand made by the Appellant from the Complainant remained unproved during the trial. There was no corroboration of any such demand even at the time of the raid particularly since the panch witness expired in the meantime.

18. It is submitted that in the absence of the evidence of either the Complainant or the panch witness, the prosecution had failed to prove that there was any demand of bribe by the Appellant. It is submitted that the Raid Officer, PW-10, reached the spot only after the transaction was complete and therefore, had no occasion to watch the making of any demand or conscious acceptance of the bribe amount by the Appellant.

19. Reliance was placed by learned counsel for the Appellant on the decisions in A. Subair v. State of Kerala (2009) 6 SCC587 M. Abbas v. State of Kerala (2001) 10 SCC103 C.M. Girish Babu vs. CBI, (2009) 3 SCC779 and Bansi Lal Yadav v. State of Bihar (1981) 3 SCC69 20. Mr. Katyal, learned APP, pointed out that the evidence of PW-10 gave a complete description of what transpired during the proceedings and his evidence was credible and trustworthy. He further submitted that once the presumption under Section 20 of the PC Act got attracted, then the burden was on the Appellant to rebut such presumption which the Appellant failed to do in the present case.

21. At first blush, the arguments that with the Complainant and panch witness both having expired, the prosecution could not be said to have proved its case against the Appellant appears plausible. However, when the evidence is closely examined, one factor which stands out is the recovery of the treated GC notes from the right side inner pocket of the Appellants coat, coupled with the fact that the Appellant does not deny that the treated GC notes were recovered from there. Another factor is that FSL report confirmed that the left hand wash as well as the wash of

the inner coat pocket of the Appellant did contain phenolphthalein and sodium carbonate. The serial numbers of the notes tallied with those noted in the pre-raid proceedings. These factors, therefore, straightaway attract Section 7 of the PC Act and consequently the presumption under Section 20 of the Act.

22. The prosecution has, for the purposes of Section 7 of the PC Act, to prove the conscious acceptance of the bribe amount by the Appellant. Once the Appellant is shown to be in possession of the treated GC notes, he had to, in order to avoid the presumption under Section 20 of the PC Act, offer a credible explanation as to how he came in possession of those treated GC notes. The explanation that the Appellant has given in answer to Question No.20 in the statement under Section 313 of Cr PC is that the Complainant shook hands with him and while conveying his gratitude tried to thrust the money into the Appellants pocket. According to the Appellant, that is how the hand wash and coat wash had turned pink.

23. As already noticed by the trial Court, the wash of the left hand of the Appellant turned pink, and it was improbable that the Complainant shook the left hand of the Appellant while greeting him. The second aspect of the matter is that if the Complainant wanted to thrust the money into the pocket of the Appellant, it was unlikely that the Complainant took the trouble of locating the right inner pocket of the coat of the Appellant and thereupon thrust the treated GC notes there. The third factor is that if the Appellant had no desire to accept the money, then he would have either resisted or flung the notes on the ground even when the Complainant tried to thrust them into the inner coat pocket. The explanation offered by the Appellant therefore does not appear credible at all. Rightly, therefore, the said explanation was rejected by the trial Court as constituting a rebuttal of the presumption under Section 20 PC Act.

24. In *M. Abbas* (supra), it was observed on the facts of that case, that the explanation offered by the Appellant under Section 313 Cr PC was quite plausible. On the facts of the present case, however, the presumption cannot be said to have been rebutted.

25. In *A. Subair* (supra), the Supreme Court relied on sub-Section (3) of Section 20 which requires the Court to decline to draw a presumption if the illegal

gratification is trivial. On the facts of that case, the bribe amount was Rs. 25/- and therefore the Supreme Court was of the view that the High Court was not justified in drawing a presumption under Section 20 PC Act. In C.M. Girish Babu (supra), the Supreme Court again held that on preponderance of probabilities the Appellant in that case had rebutted the statutory presumption. However, in the present case, the explanation offered by the Appellant is not at all credible. In Bansi Lal Yadav (supra), while explaining law in this regard in the context of Section 4 of the Prevention of Corruption Act, 1947, (which corresponds to Section 20 PC Act), the Supreme Court observed that acceptance or obtaining, or agreeing, to accept or attempting to obtain has to be a voluntary act. On the facts of that case, it was noticed in the statement of accused that this element of voluntary acceptance is missing.

In the present case, however, the fact that the treated notes were found in the inner coat pocket and no attempt was made by the Appellant to throw it on the ground is sufficient to conclude that he had accepted it voluntarily.

26. The trial Court has dealt with the plea of the Appellant, on the basis of the evidence of PW-3, that the Complainant could not possibly have seen on 7th December 2012, the cheques issued by PW-3 in the hands of the Appellant. A detailed analysis of the said evidence has been undertaken by the trial Court. This Court finds no illegality in the said analysis or conclusion of the trial Court rejecting the said plea.

27. As far as the offence under Section 13(1) (d) PC Act is concerned, PW-10 has proved that the Complainant went to the ACB and gave a complaint in which the complete details of the demand made by the Appellant have been set out in full. Since the Complainant was not alive to depose, the trial Court had to go by the evidence of PW-10 as far as the giving of the complaint was concerned. Nothing was elicited from PW-10 in his cross-examination to disbelieve the fact that such a complaint was made to him, in his presence, by the Complainant. The Court is, therefore, not persuaded to hold that the offence under Section 13 (1) (d) read with Section 13 (2) PC Act is not made out against the Appellant.

28. Consequently, the Court finds no grounds made out to interfere with the judgment dated 28th August 2008 of the trial Court holding the Appellant guilty of the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.

29. As regards the sentence, the Court notes that the Appellant has been in litigation over a decade. In the facts and circumstances, the Court reduces the sentence awarded to him by the trial Court from two years to one years RI for each of the offences under Sections 7 and Section 13 (1) (d) read with Section 13 (2) of the PC Act with no alteration of the fine amounts or the default sentences.

30. The appeal is disposed of in the above terms. The Appellant will surrender forthwith to serve out the remainder sentence. His bail bonds are cancelled.

31. A certified copy of this order together with the trial Court record be sent forthwith to the trial Court for further steps.

32. Order dasti to the parties. S. MURALIDHAR, J.

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