

Samir Kumar Ghosh Vs. Cbi

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Court : Delhi

Decided On : Jan-30-2015

Judge : Vipin Sanghi

Appellant : Samir Kumar Ghosh

Respondent : Cbi

Advocate for Pet/Ap. : Mr. Gurinder Pal Singh, Mr. Mishal Vij, Mr. Motish Kumar Singh

Judgement :

\$~4. * IN THE HIGH COURT OF DELHI AT NEW DELHI + % Date of Decision:

30. 01.2015 CrI.M.(Bail). No.28/2015 in CRL.A. 28/2014 SAMIR KUMAR GHOSH Through: Appellant Mr. Gurinder Pal Singh, Mr. Mishal Vij & Mr. Motish Kumar Singh, Advocates. versus C.B.I Respondent Through: CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI VIPIN SANGHI, J.

(OPEN COURT) 1. This application has been preferred by the appellant under Section 389 Cr.P.C. to seek suspension of sentence and for grant of bail during the pendency of the appeal. The appeal was admitted on 14.02.2014 and has been directed to be listed in due course in its turn.

2. The appeal is directed against the judgment passed by the Special Judge (PC Act), CBI-III, South District, Saket Courts, New Delhi in CC No.49/12 dated

17.12.2013. By the impugned judgment, the appellant has been convicted of the charge under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (PC Act). appellant has been awarded the following sentence:

19 Keeping in view the above discussions, convict Samir Kumar Ghosh is sentenced in the following manner: The (a) To undergo rigorous imprisonment of four years and to pay fine of Rs. 75,000/ (Rupees seventy five thousands only) for the offence u/s 7 of Prevention of Corruption Act, 1988. In default of payment, he shall further undergo simple imprisonment for three months. (b) To undergo rigorous imprisonment of five years and to pay fine of Rs. 75,000/ (Rupees seventy five thousand only) for the offence u/s 13 (2)r/w section 13 (1) (d) of Prevention of Corruption Act, 1988. In default of payment, he shall further undergo simple imprisonment for three months. 20 All the sentences of imprisonment will run concurrently. Benefit of section 428 Cr.P.C. be given to convict Samir Kumar Ghosh for the period of imprisonment already undergone by him i.e. from 24/01/2007 to 09/04/2007.

3. The appellant was in custody for 2 months and 16 days during trial, and after conviction, has been in custody since 18.12.2013.

4. Learned counsel for the appellant submits that the appellant was on bail during the substantial period of the trial and did not misuse his bail. He submits that the appeal is likely to take time to be heard and, therefore, the appellant be released on bail.

5. It is further submitted that the appellant has a strong chance of success in the appeal since, according to the appellant, the prosecution had failed to establish demand of bribe by the appellant. In this respect, he seeks to place reliance on the evidence of the complainant, who was examined as PW-9 and that of the shadow witness, who was examined as PW-11.

6. Learned counsel submits that PW-9, the complainant had turned hostile and did not support the case of the prosecution at all. He had stated that he had been instructed by the CBI officials that as soon as he enters the office of the appellant,

he should handover the bribe amount. He further stated that he should handover the bribe amount as soon as he meets the appellant and that within the particular time frame the CBI officials would be reaching there. Learned counsel submits that even in his cross- examination, after being declared hostile, the PW-9 had stuck to his earlier statement.

7. So far as PW-11 is concerned, learned counsel submits that the said witness had stated that the complainant took out the money (Rs.3 Lakhs) from the pocket of his coat jacket of black colour and handed over the same to the appellant, which he kept in the pocket of his pant. On the aforesaid basis, it is argued that though, there was recovery of the GC notes from the appellant, the making of the demand was not established by the prosecution, which is an essential ingredient for constitution of the offences of which the appellant has been convicted.

8. Since the appeal is yet to be heard, it would be premature and unadvisable to deal with the submissions of the appellant in any great detail at this stage. However, since the appellant has pressed the application and desires that this Court should pass an order on the merits thereof - which I was otherwise not inclined to allow after hearing the arguments and perusing the impugned judgment as well as testimonies of PW-9 and PW-11, I consider it necessary to take prima facie note of some of the statements made by PW-9 and PW-11, to deal with the submissions of learned counsel for the appellant.

9. PW-9 had stated at several places that he had been instructed by the CBI officials to handover the money to the appellant as soon as he sees him. However, during his cross-examination at one stage he states that it is correct that the GC notes were handed over to him by CBI officer with instruction to give the same to the accused on specific demand, but I do not remember whether these GC notes were kept in the right side pocket of the pant.

10. The testimony of the said witness in his examination-in-chief can, prima facie, be described as fantastic. He states that On reaching the office of Regional Manager, I took out the GC notes from my pocket, and the CBI officials who were to come from outside, so far I remember, had reached there by that time and I was holding the GC notes in my hand at that time and the CBI officials who were

already present alongwith me inside the office of Regional Manager, instructed me to handover the GC notes to Mr. SK Ghosh.

. The aforesaid statement, if one were to believe, would mean that the complainant PW-9 handed over the GC notes to the accused after the CBI official entered the room and that they were so handed over upon the instructions of the CBI officials to handover the money to the appellant, and that the appellant accepted the money in the presence of the CBI officials. Thus, prima-facie, it appears to me that the appellant cannot seek to derive the benefit from the statement of PW-9, whose credibility appears to be doubtful.

11. So far as PW-11 is concerned, he has, inter alia, stated as follows:

At 9.00 AM we reached the office of Mr. Ghosh and sat in his cabin. The party and Mr. Ghosh conversed with each other in Bengali language. I was introduced to the Mr. Ghosh by the Party as his Manager, Mr. Jha. After two / three minutes, Mr. Ghosh told us to accompany him to the conference room and chat there. Then we went there. The party told Mr. Ghosh that he could not arrange for rupees 5 lak and had brought only Rs. 3 lak. He further told him that he would arrange Rs. 2 lak and would pay him later on. The party then took out Rs. 3 lak from the pocket of his Court / jacket of black colour and handed over to Mr. Ghosh, which he kept in the pocket of his pant. In the meantime, I contacted Mr. Chahal through mobile phone and informed him kaam ho gaya hai. I identify accused Mr. Ghosh present in the Court (witness has correctly identified the accused).

12. The learned Trial Court has dealt with the evidence on the aspect of demand and acceptance in the following manner:

14 No doubt that testimony of PW9, PW10 and PW11 suffers from contradictions, improvements and deficiencies on some of the material facts as well as the minor details of the case. But, the important question is, whether these witnesses are consistent, natural and trust worthy on the core issues of the case. Perusal of testimony of PW9, PW10, PW11 and PW12 and documents on record proves that these witnesses have consistently deposed and corroborated each other which proved following facts of the case: i) That complaint was lodged by PW9 with the

CBI alleging demand of bribe. ii) That pre trap verification proceedings were conducted wherein complainant contacted accused Samir Kumar Ghosh (A1) over the phone which is proved by complainant and finds corroboration from PW11 and PW12. iii) There may be difference of opinion, whether there was demand in clear terms in pre trap verification proceedings. But, there is no element of doubt that accused Samir Kumar Ghosh called the complainant to his office on next day. iv) That pre trap proceedings were conducted in the office of CBI which is proved by PW12 (TLO) as well as the documents prepared in pre trap proceedings. The testimony of PW12 finds corroboration from the testimony of PW9, PW10 and PW12. v) There may be some discrepancies about the amount produced by complainant to be used as trap money but Pw9, PW10, PW11 and Pw12 consistently deposed that amount of trap money was produced by complainant. vi) PW12 (TLO) stated that G.C notes produced by complainant were smeared with phenolphthalein powder and demonstration of significance of phenolphthalein powder was shown to the witness in pre trap proceedings. Testimony of PW12 finds corroboration from the testimony of PW9, PW10 and PW11. vii) PW9, PW10, PW11 and PW12 consistently deposed that trap was laid and they alongwith other members of trap team reached in the office of MSTC. viii) Pw9, PW10, PW11 and PW12 consistently stated that PW9 and PW11 met A1. ix) It is consistently deposed by Pw9, Pw10, PW11 and PW12 that A1 met complainant PW9 and shadow witness PW11 in the office of Regional Manager, MSTC. x) PW9 and PW11 deposed that they were asked to sit in the office of Regional Manager, MSTC by A1 himself. xi) PW9 and PW11 consistently deposed that in their meeting with A1 in the office of Regional Manager, MSTC there had been talks about Eauction/tender process. xii) PW9 and PW11 stated that there had been talks pertaining to demand of bribe. xiii) PW9 & PW11 clearly stated that trap money was taken out by PW9 from his pocket and was extended to accused Samir Kumar Ghosh. Though, there is a contradiction in the testimony of PW9 and PW11 whether the trap money was put on sofa or was directly handed over to A1 but it is stated by both the witnesses that money was given to accused Samir Kumar Ghosh by complainant on his demand. xiv) Though there is contradiction between PW9 and PW11, whether the money was recovered from the sofa or from the pocket of accused Samir Kumar Ghosh but PW10 and PW12 both stated that

money was recovered from the pocket of accused Samir Kumar Ghosh. xv) It is stated by Pw12 that hand wash and pocket of A1 was taken in the solution of sodium carbonate and solution turned pink which established that the GC notes of trap money smeared with phenolphthalein powder came in contact with accused Samir Kumar Ghosh. This fact has also found corroboration from the testimony of Pw9, PW10 and PW11 as well as report of CFSL expert. xvi) It is stated by PW9, PW10, PW11 and PW12 that distinctive numbers of trap money (G.C notes) recovered from the accused were tallied with the number of GC notes recorded in pre trap handing over memo and number of GC notes tallied in toto. 15 There is no explanation from A1 that when he was unknown to the complainant and was not concerned with the Eaucion process, why he entertained complainant over the phone and fixed the meeting with him in the office of MSTC. There is no explanation from A1 that why he met complainant and shadow witness in the office of MSTC and entertained them in the office of Regional Manager. These circumstances also creates a serious doubt about the conduct of accused Samir Kumar Ghosh and corroborate the prosecution case. It corroborates the prosecution case that A1 fixed the meeting in the office of MSTC in pursuance to his demand of bribe and accepted the same from complainant. 16 Keeping in view the above mentioned discussion, in my opinion, PW9, PW10, PW11 and PW12 has supported the prosecution case on material aspects. The contradictions, improvements and deficiencies in their testimonies cannot be given much importance. In my view, the testimony of PW9, PW10, PW11 and PW12 on material facts, (in totality of circumstances), creates a ring of truth.

13. Considering the aforesaid aspects, I am of the view that I cannot agree with learned counsel for the appellant, that the appellant has made out such a strong prima-facie case that the Court should suspend the sentence and release him on bail at this stage.

14. Accordingly, the present application is dismissed. In case the appeal is not heard by the time half of the sentence has been undergone by the appellant, it shall be open to the appellant to file a fresh application. Observations made hereinabove shall not prejudice the case of the appellant at the stage of hearing of the appeal, as they have been made only for the purpose of consideration of the

application. VIPIN SANGHI, J JANUARY30 2015 B.S. Rohella

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