

Ajit Singh Vs. Cbi

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Court : Delhi

Decided On : Jun-30-2015

Judge : Sunita Gupta

Appellant : Ajit Singh

Respondent : Cbi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

30. h June, 2015 + CrI.M.B.No.10405/2014 (suspension of sentence) in CRL.A.1196/2014 AJIT SINGH Through: Appellant Mr.Sidharth Luthra, Sr.Advocate with Mr.Mobin Akhtar and Mr.S.Zafar, Advocates versus CBI Through: Respondent Mr.Sanjeev Bhandari, Standing Counsel for CBI
CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

CrI.M.B.No.10405/2014 (suspension of sentence) 1. By this application, the appellant seeks suspension of sentence during pendency of this appeal.

2. The allegations against the appellant are that being a Malkhana In-charge of Anti- Corruption Bench, CBI, Delhi, he was entrusted with a sum of Rs.6,20,000 on 28.07.1997 by the earlier Malkhana In-charge vide Charge of Malkhana

Ex.PW3/A. However, the accused/appellant did not hand over this amount to his successor Malkhana In-charge while handing over the charge of Malkhana vide Ex.PW4/A and also that he did not deposit this amount in bank account of S.P., CBI, ACB, Delhi during his tenure of Malkhana In-charge. He was convicted for offence under Section 409 IPC and under Section 13(1)(c) of Prevention of Corruption Act punishable under Section 13(2) of the Prevention of Corruption Act. He was sentenced to undergo rigorous imprisonment for a period of six years with fine of Rs. 4 lac; in default of payment of fine, to undergo simple imprisonment for a period of twelve months under Section 409 of IPC and rigorous imprisonment for a period of four years and fine of Rs.4 lac; in default of payment of fine, to undergo simple imprisonment for a period of 12 months under Section 13(2) of Prevention of Corruption Act.

3. It is submitted by learned Senior Counsel for the appellant that a trap was conducted and post trap house search and lockers raid of Mr R.C. Bakshi was conducted and an amount of Rs.33, 38,000/- and Rs.18,59,900/- was recovered. This amount was entrusted to PW3 - R.S. Mann. In order to usurp the entire amount Mr Mann bifurcated a sum of Rs.33,38,000/- into Rs.27,18,000 and Rs.6,20,000. He made an entry in regard to the trap money and Rs.6,20,000/- on 25.06.1997. During the period of 1997 to 2006 i.e. during which the Appellant was Malkhana In-charge, regular inspections of the Malkhana were conducted and no infirmity was found. PW3 - R.S. Mann has failed to give any reason why the sum of Rs.6,20,000/- was not deposited with Rs.18 lac on 28.06.1997 or for the period of one month before handing over charge to the appellant on 28.07.1997. He has also failed to give any reason for the bifurcation, however, PW13 has given the reason for bifurcation that the amount could not be counted as the notes were of small denomination. It is also submitted that the keys of the locker used to remain in the chest and was accessible to all persons and also if the amount of deposit exceeded Rs.50,000/- then another officer / guard as deputed by the SP used to accompany him to the bank. As per the provisions of the CBI (Criminal) Manual, 1991, the SP of the branch concerned has to conduct regular inspections and also should physically check the Malkhana in the beginning of January and July. Similarly, as per 2005 CBI Manual, the process of deposit of money into the account has to be done jointly with the SP and the Malkhana In-charge. The

Department has failed to follow the mandatory manual. No records of the original Malkhana were produced. No evidence has been produced that the Appellant has operated the locker or that the amount of Rs.6,20,000/- was ever kept in locker. Under the circumstances, it is submitted that prosecution has failed to bring home the guilt of the Appellant beyond reasonable doubt. Moreover, the Appellant has spent around nine months in custody and he has unblemished career. He was diagnosed with fistula in Ano (high) and was accordingly advised to undergo surgery. One surgery was conducted and the Appellant has not been able to undergo the second surgery on account of his conviction. The Appellant is 61 years of age and is the sole bread earner of the family. Hence, this application.

4. The application is vehemently opposed by learned Standing Counsel for CBI on the ground that pursuant to a trap laid by CBI, R.C. Bakshi was caught red-handed while accepting bribe of Rs.10,000/-. During the house search and operation of lockers, recovery of Rs.33,38,000/- was effected from the house search and Rs.18,59,900/- from the operation of three lockers. The recovered money was deposited and handed over to PW3 - R.S. Mann, Malkhana In-charge. Out of this amount, a sum of Rs.27,18,000/- was deposited on 27.06.1997 in the branch current account of Corporation Bank, CGO Complex, New Delhi after due approval of the then SP and the remaining amount of Rs.6.20 lac remained undeposited and was kept in the locker. After transfer of Mr R.S. Mann, the appellant became Malkhana In-charge. PW3-R.S. Mann handed over the case property amounting to Rs.10,000/- and Rs.6.20 lac to the Appellant vide handing/taking charge list dated 28.07.1997 under proper receipt. He continued to remain in-charge of Malkhana In-charge up to 2006 and thereafter he handed over charge of the case property of malkhana which includes only the charge of trap money of Rs.10,000/- to Mr Dayanand Sharma. He did not hand over charge of Rs.6.20 lac nor deposited this amount in current account. The misappropriation on the part of the Appellant was duly proved. The offence alleged against the Appellant is serious in nature as such he is not entitled for suspension of sentence.

5. Needless to say, the allegations against the Appellant are serious in nature. He has been convicted for a maximum period of six years and as per his nominal roll dated 07.03.2015, he has undergone a period of only seven months besides

earning remission of two months. The fine has also not been deposited. Under the circumstances, at this stage he is not entitled to be released on bail.

6. The application is accordingly dismissed. In case the appeal is not heard within a period of nine (9) months or shortly thereafter, the appellant will be at liberty to move appropriate application. The application stands disposed of accordingly. CRL.A. 1196/2014 Relist this appeal for hearing in due course at its own turn in the category of persons in custody. (SUNITA GUPTA) JUDGE JUNE30 2015/rd

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