

Dharmamveer Singh Vs. Cbi

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Court : Delhi

Decided On : Mar-04-2005

Reported in : 120(2005)DLT603

Judge : Manju Goel, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1), 13(2) and 19(1);
Indian Penal Code (IPC) - Sections 120B

Appeal No. : Crl. Revision Petition No. 374/2004

Appellant : Dharmamveer Singh

Respondent : Cbi

Advocate for Def. : H.J.S. Ahluwalia, Adv.

Advocate for Pet/Ap. : S.K. Sharma, Adv

Disposition : Revision dismissed

Judgement :

Manju Goel, J.

1. The petitioner along with Surender Singh was charged with offence u/s 120B read with section 7 and section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (PC Act) by the Court of Sessions Judge vide order dated

19.5.2004. The petitioner has come up in revision against this order.

2. The complainant a work contractor of the Municipal Corporation Delhi (MCD) submitted bills of payment which were lying with Surender Singh, Section Officer. Surender Singh is the principal accused in this case who demanded bribe for himself as well as for the petitioner, Deputy Director of Horticulture (DDH) for clearing those bills. The complaint is that when the complainant went to the petitioner and told him that Surender Singh had demanded a bribe on his behalf also, the petitioner stated that the complainant should go by the advise of Surender Singh because he was the person to pass the bills as he was the SO. Eventually the case RCNo.2(A)/2003/CBI/ACU-II was registered and a trap was laid. 80 notes of Rs.500/- denomination amounting to Rs.40,000/- was produced by the complainant which were treated with phenolphthalein powder and the same notes were given to Surinder Singh at the gate of the MCD Building at Rajpur Road. A shadow witness heard the conversation of demand and payment. Surinder Singh was caught red-handed. The investigation proceeded in the usual way of obtaining the hand-wash of Surinder Singh to establish the Chemical test and the notes had been received by him. Investigation revealed that the petitioner did not take any action on the reports submitted by Surinder Singh in respect of the progress in the work contract awarded to the complainant although in matters relating to other matters action had been taken by him. After apprehension of Surinder Singh, the petitioner recorded four different notes on the measurement book of Surinder Singh to the effect that work was not completed by the complainant. The notes had been appended after the book had been closed on 21.4.2003 and thus it revealed the attempt on the part of the petitioner to escape his liability. The investigation inter alias recovered a slip written by Surinder Singh on which he had indicated the share of DD(H) to the extent of Rs.75,000/-.

3. The petitioner raises the following pleas in support of his demand for discharge

(a) the sanction for prosecution of the petitioner was once denied but the competent authority has reviewed its orders and has granted sanction without any additional material and therefore the sanction itself was bad.

(b) an entry on a piece of paper recovered from accused Surender Singh and relied upon by the Special Court carrying the words DDH 75000 could not be admissible in evidence as against the petitioner.

(c) the petitioner never demanded any bribe for himself and if the principal accused demanded bribe in his name he could not be charged u/s 7 and Section 13(2)(i) read with section 13(1)(d) of the Prevention of Corruption Act.

4. Apart from these, the petitioner has pointed out further shortcomings in the prosecution case namely:

(a) the statement of principal accused was not recorded after he was trapped

(b) the case of the complainant that bills worth Rs.7,50,000 was due was itself absurd because the contract given to him was only worth Rs.5,68,824/-

(c) original bills were not recovered at all by the investigation.

5. The first thing to be examined is whether there is a valid sanction to prosecute the petitioner. The letter dated 2.7.2003 in respect of sanction for prosecution of the petitioner is as under:

'The entire matter was placed before the Commissioner/MCD for considering to accord sanction for prosecution in respect of Sh. Dharamveer Singh, Deputy Director (Hort.), who observed that merely levelling allegation upon Sh. Dharamveer Singh by Sh. Surender Singh that he demanded and accepted the bribe on behalf of Sh. Dharamveer is not a sufficient reason for giving prosecution sanction against Sh. Dharamveer. If the CBI has any specific evidence about the involvement of Sh. Dharamveer in the present case, they may be requested to inform us about the same.'

6. Subsequent thereto, the CBI addressed the letter dated 7th July, 2003 to the Commissioner of MCD giving further details of facts required for sanction to prosecute the petitioner. The competent authority thereafter issued the sanction order in respect of the petitioner. In this sanction order details of evidence examined by the sanctioning authority for granting sanction against Dharamveer

Singh have been mentioned. It will be sufficient to quote the following paragraph

'Whereas, said Shri Dharamvir Singh, Dy. Director (Horticulture) did not take any action on the aforementioned reports submitted by Shri Surender Singh, S.O. he has taken action on similar reports submitted by Surender Singh, S.O. In the matters relating to the contracts executed by other contractors during the same period. These reports include (i) Page 81 dated 6.3.2003 in respect of tree plantation work executed by M/s Pragati Traders - seen & signed by Shri Dharamvir Singh, DD (H) on 6.3.2003 itself, i.e. on the same date when the reports in respect of three works executed by M/s P.K. Traders were simultaneously submitted to DD (H) by Shri Surender Singh, S.O. (ii) at page 85 on 22.4.2003 in respect of tree-plantation work executed by M/s Pragati Traders - seen and signed by Shri Dharamvir Singh, Dy. Director (Horticulture) on 22.4.2003 and (iii) at page 86 on 22.4.2003 in respect of supply of flowers, garlands etc. by M/s P.K. Traders - seen and signed by Shri Dharamvir Singh, Dy. Director (Horticulture) on 22.4.2003 itself - i.e. on the dates subsequent to submission of the reports in respect of four contracts executed by M/s P.K. Traders.

Whereas, consequent to apprehension of Shri Surinder Singh, SO on 9.5.2003 while demanding and accepting bribe of Rs.40,000/- from Shri Pankaj Tyagi of M/s P.K. Traders, Shri Dharamvir Singh, Dy. Director (Horticulture) recorded four different notes on 12.5.2003, belatedly, in the margin on pages 82, 83 & 84 of the aforementioned Measurement Book of Shri Surender Singh, S.O. to the effect that the work was not completed by the contractor. Letters/Notices to this effect were also sent on 12.5.2003 by Shri Dharamvir Singh, DD(H) to M/s.P.K.Traders, office copies of which are available in the respective files of the aforementioned four contracts. In fact, as per the rubber stamp affixed on page No.84 as also on page 3 of the Index of this Measurement Book, this Measurement Book was closed as on 21.4.2003 under signatures of Shri Ramesh Kumar, AE (QC) and hence, recording of the aforementioned belated notes on 12.5.2003 reveals an attempt on the part of Shri Dharamvir Singh, DD(H) to escape his liability and as such reflect guilt complex on his part.

Whereas, final action in respect of the aforementioned 4 contracts awarded to M/s. P.K.Traders were kept pending by Shri Surender Singh, S.O. (H) and Shri Dharamvir Singh, Dy. Director (Horticulture), bribe of Rs.75,000/- each for himself and Shri Dharamvir Singh, Dy. Director (Horticulture) was demanded by Shri Surender Singh, S.O. From Shri Pankaj Tyagi, Proprietor, M/s. P.K.Traders, as consideration for clearing payments in respect of bills covering these four contracts executed by the said firm/contractors, and that specific demand for part payment of Rs.40,000/- was made by Shri Surender Singh, S.O. to Shri Pankaj Tyagi on 7.5.2003 for ensuring compliance/payment on 9.5.2003. There is on record a slip written by Shri Surender Singh, S.O. which was given by him to the complainant, on which he had made a rough quantification of the value of contracts executed by the complainant in respect of which, the payments were pending and also on which slip Shri Surender Singh and had also indicated about the share of Dy. Director (Horticulture) to the extent of Rs.75,000/-. The contents of this slip are reproduced as under:-

'2 Case plantation - 2,00,000/- E.F.1P - 1,30,000Jag..... - 4,00,000Tubel - 45,000DDH/- 75,000/-'Whereas on 9.5.2003, Shri Pankaj Tyagi of M/s P.K. Traders, who did not want to pay the demanded bribe lodged a complaint with CBI, consequent to which Shri Surender Singh, S.O.(H) was caught red handed by CBI officers on 9.5.2003, in presence of independent witnesses, near MCD office at 16, Rajpur Road, Delhi while demanding and accepting the bribe of Rs.40,000/- from the said Shri Pankaj Tyagi.

Whereas, it was incumbent upon the said Shri Dharamvir Singh to conduct checks on the works allotted to private contractors for ensuring correct completion thereof, no such checks were conducted by him in respect of 4 contracts awarded to M/s P.K. Traders during January/February 2003, within the period prescribed for completion.

Whereas Dy. Director (Horticulture), Civil Lines Zone of MCD, Delhi and the said Shri Dharamvir Singh was the authority competent to accept the aspect of completion of work in respect of the captioned 4 contracts awarded by him to M/s P.K. Traders, after due certification to the said effect by Shri Surender Singh, S.O.

And where after the process for payment in respect of these contracts could have been initiated/completed.

Whereas instead of taking such action as he was duty bound to take, the conspiracy with Shri Surender Singh, Section Officer (Horticulture) in furtherance to which the payment action in respect of the captioned 4 contracts executed by M/s P.K. Traders, were kept pending awaiting fulfillment of their demand for bribe, as made to Shri Pankaj Tyagi of P.K. Traders, as aforementioned.

And whereas, the aforesaid acts of accused Shri Dharamvir Singh, Dy. Director (Horticulture), MCD, Civil Lines Zone, Delhi constitute offences punishable under section 120B IPC r/w Section 7 and Section 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof.

Therefore, I, Rakesh Mehta, Commissioner, Municipal Corporation of Delhi being the authority competent to remove the said Shri Dharamvir Singh from service, after fully and carefully examining the material placed before me in regard to the said allegation and circumstances, including the documents and statements of witnesses, as have come on record during the investigation, consider that the said Shri Dharamvir Singh should be prosecuted in the Court of Law for the offences u/s 120B IPC r/w Sec. 7 and Section 13(2) r/w 13(1)(d) of PC Act 1988 and for any other offence made out of the said allegations.

Now, therefore, I, Rakesh Mehta, Commissioner, Municipal Corporation of Delhi do hereby accord sanction u/s 19(1)(c) of PC Act, 1988 for prosecution of said Shri Dharamvir Singh for the said offences and other offences punishable under other provisions of law in respect of aforesaid acts and for taking cognizance of said offences by the Court of competent jurisdiction.'

7. By the letter dated 2.7.2003, the sanction was not exactly declined. The letter only calls for more details in respect of the facts discovered by the investigation vis-a-vis the petitioner. It shows that the sanctioning authority has duly applied its mind and has found that a mere allegation that the principal accused had demanded bribe not only for himself but also for the petitioner would not be sufficient to sanction prosecution against the petitioner. At that time there was

nothing other than this alleged statement of Surender Singh naming the petitioner as one of his accomplices. The second order shows that the CBI could place further evidence before the competent authority for considering whether the petitioner could be permitted to be prosecuted.

8. Petitioner's counsel has referred to several judgments to argue that once the prosecution has been declined the same cannot be granted on same evidence. These are *Vaijai Bahadur v. State of U.P. and Ors.* 1989 Cri.L.J. 61, *Valliappan v. Valliappan and Ors.* 1989 Cri.L.J. 64, *Harmesh Kumar v. State of Punjab* 1999 (2) RCR 351 and *Dr. Jaswinder Kaur v. State of Punjab and Anr.* 2001(2) RCR 58. However, these rulings are not attracted to this case because the facts disclosed by the prosecution shows that the competent authority by the first letter did not at all decline to grant sanction and only called for more information if available and subsequently on considering the entire material granted sanction later.

9. The judgment of *Mohd. Iqbal Ahmad v. State of Andhra Pradesh* 1979 CCC 113 holds that the sanctioning authority must apply its mind while granting sanction. In the present case, the facts as narrated above sufficiently disclose that the competent authority has examined the material before granting sanction. thereforee this authority also does not assist the petitioner in anyway.

10. The above discussion also takes care of the ground (c) mentioned above. The petitioner is not being prosecuted simply because of the alleged statement made by Surender Singh involving him. The prosecution has evidence over and above, the alleged statement of Surender Singh.

11. So far as the piece of paper containing the entry of 'DDH 75000' is concerned, the same is said to have been written by the principal accused to indicate that the DDH that is the petitioner was also required to be paid Rs.75,000/-. Even if this paper is ignored there is material on record to continue with the prosecution of the petitioner. thereforee, it is not necessary for this court to comment on the probative value of this document.

12. The investigation has not collected the file of the bills submitted by the complainant amounting to Rs.75,000/-. Further the prosecution may be required to

explain how the complainant could submit a bill of Rs.7,50,000/- although the contract was for Rs.5,68,824/-. These two points may assist the defense but for the present case they cannot stand in the way of framing charge against the petitioner. The evidence available with the prosecution starting from the complaint, the trap and the other evidence which find mention in the sanction order is sufficient for framing the charge.

The revision is accordingly dismissed.

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