

Pyare Lal Vs. State

Pyare Lal Vs. State

SooperKanoon Citation : sooperkanoon.com/702212

Court : Delhi

Decided On : Mar-17-2008

Reported in : I(2008)DMC806; 2009(1)SLJ248(Delhi)

Judge : P.K. Bhasin, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1) and 20; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 141 of 1999

Appellant : Pyare Lal

Respondent : State

Advocate for Def. : M.N. Dudeja, APP

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv. and; M.L. Yadav, Adv

Disposition : Appeal allowed

Judgement :

P.K. Bhasin, J.

1. This appeal takes exception to the judgment dated 11.3.1999 and order dated 12.3.1999 passed by the learned Special Judge, Delhi in Sessions Case No. CC-

169/1994 whereby he was convicted under Sections 7 and 13(1)(d) of the [Prevention of Corruption Act, 1988](#) (hereinafter referred to as 'the Act') and was sentenced to suffer rigorous imprisonment for one year and also to pay a fine of Rs. 5000/- with a default stipulation for his conviction under Section 7 and under Section 13(1)(d) was awarded rigorous imprisonment for a period of two years and also to pay a fine of Rs. 8000/- with a default stipulation.

2. The relevant facts leading to the prosecution of the appellant, who while posted as an Assistant Sub-Inspector of Police (ASI) at Preet Vihar Police Station was apprehended by the Anti-Corruption Branch officials accepting bribe from the complainant (PW-2), have been noticed by the learned trial Court in para Nos. 2 and 3 of its judgment and the same are being re-produced hereunder:

(2) On 9.5.1992, P.W.2 Brij Mohan went to the Anti-Corruption Branch and gave his complaining statement Ex. PW 2/A. Brij Mohan alleged that his brother Ravinder Chhibbar had been married to Smt. Veena in 1990. Smt. Veena left the matrimonial home and went to her parents' house in February, 1991. She lodged a complaint with the Crime against Women Cell, Nanakpura upon which case F.I.R. No. 65/92 under Sections 498-A and 406, I.P.C. was registered at Police Station Preet Vihar. A.S.I. Pyare Lal was investigating the case. Even though Crime Against Women Cell had registered the case only against Ravinder Chhibbar, A.S.I. Pyare Lal had implicated his father, mother, two sisters and another brother in the case. His mother had died due to this shock. Two days after the death of his mother i.e. 2.4.1992, accused A.S.I. Pyare Lal had come to their house. He had searched their house at Noida and had gone back after taking Rs. 2000/- without arresting anyone. A.S.I. Pyare Lal asked the complainant to meet him in the police station. The complainant has further alleged that he met A.S.I. Pyare Lal at P.S. Preet Vihar on 8.5.1992 at about 8.30 p.m. A.S.I. Pyare Lal demanded Rs. 1500/- as bribe and threatened that if this amount was not paid to him, he would get the bail of the entire family cancelled and would send them to jail. The complainant pleaded with the accused that his sister Chandra Kanta was seriously ill and orders for her anticipatory bail had already been passed by the Court and the accused should accept her bail bond at their house. The accused had told the complainant that he should come to the police station with Rs. 1500/- on the next

day. The accused told the complainant to bring the signatures of Chandra Kanta on a blank paper and that the accused will accept the surety bond in the police station itself.

(3) On the aforesaid complaint of Brij Mohan (P.W. 2), a trap was arranged including Panch-witness Kailash Chand (P.W. 3). Pre-raid proceedings were conducted in the presence of the Panch-witness. Numbers of the currency notes provided by the complainant were noted down and the phenolphthalein powder was applied to the currency notes. Necessary instructions were given to the complainant and the Panch-witnesses, as recorded in Ex. PW2/B. It is alleged that the complainant and the Panch-witness went to P.S. Preet Vihar and met the accused in his Room No. 30, which was the quarter allotted to the accused in the police station. The complainant knocked the door of the accused Pyare Lal. Pyare Lal opened the door of his room and complainant and the Panch-witness went inside. The complainant gave the blank paper with the signatures of Chandra Kanta to the accused. The complainant introduced Kailash Chand, Panch-witness as the surety for his sister. He told the accused that his sister was unwell and the accused should fill up the surety bond on the signed paper brought by him. The complainant also told the accused that he had brought Rs. 1500/- which had been demanded by the accused. The accused filled up the surety bond of Chandra Kanta with Kailash Chand as surety. The complainant then took out the money from his pocket and advanced it towards the accused. The accused opened his diary which was lying on the table and asked the complainant to keep the money in the diary. The complainant put the money in the diary. The Panch-witness then started coughing and came out of the room to give the signal to the raiding party. The accused was apprehended and the money was recovered from the diary of the accused which was lying on the table in front of him.

3. After the completion of usual investigation formalities the Anti-Corruption Branch filed a charge-sheet against the appellant-accused in the Court of Special Judge constituted under the Act to try corruption cases and the learned Special Judge tried him for the offences punishable under Sections 7 and 13(1)(d) of the Act. Prosecution had examined eight witnesses to prove its case. In his statement under Section 313, Cr.P.C. the appellant-accused had pleaded as under:

I am innocent. I never demanded or accepted any bribe from any person. Similarly, I never made any demand from the complainant at any stage. The true facts are that the FIR No. 65/92 was registered on the statement of Smt. Veena Chhibbar against the complainant and against his other family members on my endorsement on her statement. The complainant wanted that the case be registered only against his brother Ravinder Chhibbar who was the husband of Smt. Veena Chhibbar and other person be dropped. I refused to oblige him. The complainant and his other co-accused got anticipatory bail from the Sessions Court and their bail bonds and surety bonds were accepted by me. I asked the complainant to get the bail bond and surety bond of Smt. Chandra Kanta be executed and asked him to come to the police station along with Ms. Chandra Kanta. I met the complainant on 26.4.1992 in connection of bail of concerned persons but he became angry why I had gone to his house. He telephoned to the SHO, Keshav Puram, who was known to the complainant and the said SHO threatened me and asked me to go from the house and he made the plan to trap me in this false case. On 9.5.1993, complainant came to me in my room and knocked the door. I was sleeping as on the previous night I was on patrol duty. A person was with him and asked me to complete the papers i.e. surety bond and bail bond of Ms. Chandra Kanta. I asked about Smt. Chandra Kanta but complainant asked me to fill up the surety bond first and that Smt. Chandra Kanta will be coming. I began to fill up the surety bond first and in the meantime the complainant asked for a glass of water and I went to arrange for water. As soon as I came, the Panch-witness went inside and within seconds he came with 3/4 persons who arrested me falsely. I protested but no one heard me and took me to Anti Corruption Branch where police people conducted the proceedings as per their wishes and I was not allowed to say anything. I am innocent and falsely implicated.

4. After analyzing the evidence produced from both the sides the learned Special Judge convicted the accused and feeling aggrieved this appeal was filed by the accused challenging his conviction as also the sentence awarded to him.

5. In order to find out whether the appellant has been rightly convicted or not I have examined the prosecution evidence. The undisputed position which has

emerged out of the evidence of the prosecution witnesses and the statement of the appellant-accused recorded under Section 313, Cr.P.C. is that the appellant-accused was the Investigating Officer of a criminal case registered against the complainant of the present case, namely, PW-2 Brij Mohan and his family members under Sections 406/498-A IPC vide FIR No. 65/92 registered at Preet Vihar police station on 23.3.1992 on the complaint of one Smt. Veena Chhibbar, who was the wife of complainant Brij Mohan's brother Ravinder Chhibber. Apprehending their arrest in that case the complainant Brij Mohan and his other family members had obtained anticipatory bail orders from the Sessions Court and the appellant-accused had accepted the bail bonds of all the accused persons except that of PW-6 Smt. Chander Kanta, one of the sisters of the complainant Brij Mohan, who as per the prosecution case during those days was not keeping well.

6. Now I come to that aspect of the prosecution case which was strongly disputed by the appellant-accused before the trial Court. As per the case of the prosecution, the appellant-accused had demanded bribe of Rs. 1500/- from the complainant Brij Mohan for accepting the bail bond of his sick sister Chander Kanta (PW-6) without her being required to come to the police station and had told that he could bring the signature of his sister Chander Kanta on a blank paper (to be converted into her personal bond) and he would accept her bail bond and at the same time had also threatened to get the bail of his sister cancelled and to arrest everyone in case of nonpayment of bribe money to him. This demand of bribe was made by the appellant-accused, as per the case of the prosecution case, at his house on 8.5.1992 when the complainant had gone there and the bribe was to be paid to the appellant-accused on 9.5.1992 at his residential quarter in the Preet Vihar Police Station complex. However, on 9.5.1992 the complainant decided to lodge a complaint with the Anti Corruption Branch against the appellant-accused regarding demand of bribe by him. Accordingly he went there on 9.5.1992 and got recorded his complaint Ex. PW-2/A.

As is usual in these kind of bribery cases instituted against public servants who are apprehended during traps laid by Anti Corruption Branch officials on complaints of demand of illegal gratification by them the material witnesses are the complainant, one independent public witness who is associated and the trap laying

officer. In the present case also the prosecution had sought to establish its accusations against the appellant-accused on the basis of the evidence of the complainant Brij Mohan (PW-2), Panch-witness PW-3 Kailash Chand and the raid officer PW-7 Inspector Tola Ram Mirwani. The complainant and the Panch-witness had both deposed regarding the pre-raid proceedings conducted by PW-7 at the Anti Corruption Branch office during which they were explained by the raid officer as to how the actual raid was going to be conducted to trap the appellant-accused accepting bribe from the complainant and what they were supposed to be doing during the actual raid at the residential quarter of the accused. For the purpose of raid the complainant had produced fifteen currency notes of Rs. 100/- denomination to be used as bribe money for being offered to the appellant-accused at the time of raid. Those currency notes were treated with phenolphthalein powder and a solution of sodium carbonate was also prepared by the raid officer. That is normally done in trap cases by the raid officers since if phenolphthalein treated notes are touched by anyone and that person's fingers are dipped in the colourless solution of sodium carbonate that would turn pink and the raid officer would be satisfied that the public servant who was to be trapped had actually accepted the bribe at the time of raid from the complainant alleging demand of bribe from him by that public servant. Regarding the actual trap at the house of the appellant-accused PW-2 Brij Mohan, the complainant, as well as PW-3 Kailash Chand, the Panch-witness have both deposed that at the time of raid the complainant first of all handed over a blank paper having the signature of his sister Chander Kanta to the appellant-accused for being converted into the personal bond of Chander Kanta and he was also told by the complainant to prepare the surety bond in the name of the Panch-witness Kailash Chand who was introduced to the appellant as the surety and the appellant was also told that Chander Kanta would be coming there and thereafter the appellant-accused prepared a surety bond in the name of Kailash Chand. The complainant and the Panch-witness had then deposed that when the complainant had offered the bribe money to the appellant-accused upon which he had opened a diary lying on the table there and had asked the complainant to keep the money in that diary (Ex. P-16) and accordingly the complainant had kept the tainted currency notes in that diary which was lying on a table in that room. The raid officer, PW-7 Inspector Tola Ram

Mirwani has deposed about the raid proceedings and stated that when he entered the room of the appellant-accused on receipt of the pre-arranged signal from the Panch-witness he had challenged the appellant-accused that he had accepted bribe of Rs. 1500/- from the complainant upon which the appellant-accused had become nervous and had kept mum and thereafter he offered his own search to the appellant-accused and upon appellant-accused declining that offer he recovered the tainted notes from the diary Ex. P-16 at the instance of the Panch-witness.

7. According to the appellant-accused that trap had been falsely got arranged by the complainant in order to implicate him in a false bribery case as he had refused to oblige him in the dowry case which was registered against him and his family members. His detailed Explanationn in this regard given at the time of his statement under Section 313, Cr.P.C. has already been reproduced. While according to the prosecution case it was a legitimate trap.

8. It was forcefully contended by Shri K.B. Andley, learned Senior Counsel for the appellant, that from the mere recovery of fifteen currency notes of the denomination of 100 each, Exs. P-1 to P-15, from the appellant's diary Ex. P-16 it could not be said that that money had been kept in that diary on the asking of the appellant-accused. Mr. Andley submitted that just before the apprehension of appellant-accused by anti-corruption branch officials the complainant Brij Mohan had requested the appellant-accused to get some water for him and when the appellant-accused went from that room to fetch water for the complainant the complainant surreptitiously kept the money in the diary lying on the table in that room. It was further contended that this plea of the appellant-accused is highly probable and should have been accepted by the learned trial Court since the complainant in his cross-examination had admitted that he had at that time asked for water. Mr. Andley contended that even though the complainant had also claimed that, in fact, he himself had taken water but that version of the complainant is highly improbable as in normal course the appellant-accused cannot be expected to have asked the complainant to himself go to the kitchen in his house and drink water and it is more probable and plausible that the appellant-accused only must have gone to the kitchen to get water, as was his plea before

the trial Court while cross-examining the complainant and then at the time of his statement under Section 313, Cr.P.C. Mr. Andley further contended that an accused in a criminal case is not expected to establish his defense plea beyond reasonable doubt as is the case in respect of prosecution allegations and all that an accused is supposed to show to the Court is that the plea taken by him is probable and in the facts and circumstances of the present case and particularly the fact that the complainant himself was claiming that the appellant-accused was bent upon implicating everyone of his family in the dowry case registered against his brother the plea taken by the appellant-accused is very much probable and in these circumstances the possibility of the complainant keeping the currency notes in the diary when the appellant-accused was away from the room to get water for him cannot be ruled out. It was also submitted that there are other serious infirmities also in the prosecution case which make the case highly doubtful.

9. Learned APP for the State urged to the contrary submitting that the conviction of the appellant was justified and the prosecution has proved the guilt of the appellant beyond any shadow of doubt. He supported the decision of the learned Trial Court and submitted that there was no infirmity in the same calling for interference by this Court.

10. After examining the prosecution evidence I feel persuaded to accept the submission of Mr. Andley, learned Senior Counsel for the appellant, that in the facts and circumstances of this case the prosecution cannot be said to have succeeded in establishing its case beyond reasonable doubt and also that possibility of even false implication of the appellant-accused by the complainant and keeping of the tainted notes in the diary of the appellant by the complainant while the accused was away from his room cannot be ruled out. As has already been noted that a criminal case was, as per the complainant himself, registered initially against his brother at the instance of his brother's wife, Smt. Veena Chhibber and the investigation of that case was assigned to the appellant-accused. The prosecution case as spoken to by the complainant in his evidence is that the appellant however, engulfed all the family members while investigating the matter. On the other hand, it is the plea of the appellant that the complainant wanted him to hush up the case registered against him and his family members

and on his refusal to oblige him the complainant slapped a false corruption against him. In my view it is quite possible that the complainant had foisted a false case against the appellant in order to get rid of him so that investigation could be entrusted to someone else who may oblige them.

11. Another reason for not believing the case as projected by complainant PW-2 as to what had transpired at the time of raid conducted by PW-7 at the house of the appellant is that the complainant PW-2 in his testimony deposed that he handed over a blank paper signed by his sister Chander Kanta (PW-6) to the appellant to fill up the bail bond on that paper and the appellant-accused, according to the complainant, filled up the bail bond on that blank paper signed by his sister. The prosecution has, however, not produced that paper which according to the complainant had been prepared as a bail bond of his sister Chander Kanta but instead it has placed on record a blank paper (Ex. P-19) purporting to be having signature of the sister of the complainant and the document purporting to be the bail bond written by the complainant which has been proved as Ex. P-19 does not bear the signature of the sister of the complainant. If, the appellant-accused had utilized the blank paper having the signature of the complainant's sister then how could this blank document come into the possession of the Anti Corruption Branch officials. This has remained unexplained from the side of the prosecution since none of the three witnesses of recovery of tainted notes has claimed that Ex. P-19 was recovered from the possession of the accused as has been recorded in its seizure memo Ex. PW-2/E and, therefore, not only the evidence of the complainant but the prosecution case in general also becomes highly doubtful.

12. There is yet another reason also for doubting the complainant's testimony in respect of the trap proceedings and particularly his version that he had brought one blank paper signed by his sister to the house of the accused and had then handed it over to him. This version becomes doubtful because when the complainant's sister Chander Kanta, who was also examined as a prosecution witness as PW-6 to state that her brother had obtained her signature on the blank paper Ex. P-19 on the asking of the accused who had been coming to their house, was cross-examined on behalf of the accused she stated that when her brother

had got her signature on Ex. P-19 the accused was present at that time in their house. This statement of complainant's sister thus also introduces considerable doubt about the complainant's testimony and the genuineness of the trap proceedings.

13. Now coming to the prosecution case regarding recovery of tainted notes from the diary Ex. P-16, which the appellant had admitted before the trial Court to be belonging to him, lying on a table in the room of the appellant where trap took place the defense plea during the cross-examination of the complainant and then during the statement of the accused under Section 313, Cr.P.C., as noticed already, was that the tainted currency notes were clandestinely kept by the complainant in the diary when he (the accused) had gone out from the room to fetch water for the complainant as was requested by him. Although there is no other evidence except the statement made by the accused himself in this regard at the time of recording of his statement under Section 313, Cr.P.C. and a suggestion to that effect put to the complainant in his cross-examination the Court can still consider whether his statement alone is sufficient to rebut the statutory presumption under Section 20 of the Act. Under Section 20 it is provided that when it is proved that a public servant has obtained some gratification from someone other than his legal remuneration then it shall be presumed that that gratification obtained by the public servant was as a motive or reward for showing some favor to the person from whom it was obtained in discharge of his official functions as a public servant. It is now well settled that if the Explanation offered by an accused in these kind of bribery cases regarding recovery of tainted notes either from his person or from inside a diary, etc. belonging to him is found to be probable then he becomes entitled to an order of acquittal. It is also well settled that the burden upon an accused to prove his plea in defense regarding the recovery of tainted notes is not as onerous as is for the prosecution which has to establish its accusations against an accused beyond any shadow of doubt. In the present case the plea which has been taken by the appellant-accused regarding the recovery of the tainted notes from his diary, in my considered view, is very much probable and acceptable when it is considered keeping in mind the fact that the complainant PW-2, Brij Mohan had admitted during his cross-examination that at the time of trap proceedings in the room of the appellant-accused he had

desired to have water. There is no doubt that he also claimed that the appellant-accused then told him to go inside and drink water and then he himself went and had water but in my view this statement of the complainant appears to me to be highly improbable and the version of the accused that he himself had gone to get water for the complainant is more probable one. Since the complainant was sitting in the house of the accused it is more likely that the accused himself would have gone out of the room to get water for the complainant and it appears quite improbable that he would have told the complainant to go to the kitchen himself and drink water from there. I have already held that in the facts and circumstances of this case there is every possibility of the complainant having falsely implicated the accused because he had a grievance that the appellant-accused was threatening to implicate all his family members in the dowry case registered on the complaint of the wife of his brother. That fact also probabilises the defense plea regarding the keeping of tainted notes by the complainant in the diary of the appellant-accused while he had gone to get water for the complainant.

14. It was contended by the learned Additional Public Prosecutor that since the appellant-accused took this stand only at the time of his making a statement under Section 313, Cr.P.C. and not at the time of his apprehension it would not be safe to rely upon the version stated by him which should be regarded as an afterthought. It is, no doubt, true that the appellant did not take this plea of the tainted money having been kept in his diary in his absence at the time of his apprehension but this fact alone cannot be a ground to disbelieve him or render the plea taken by him to be false which I consider to be quite probable. Reference may be made in this context to one of the decisions of the Hon'ble Supreme Court reported as : AIR 2002 SC486 Punjabrao v. State of Maharashtra where it was observed as under:

It is, of course, true as observed by the High Court that when the Investigating Officer seized the amount from the Patwari-accused, he did not offer the Explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the Explanation offered by the accused in his statement under Section 313 when such Explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the

learned Special Judge while acquitting the accused.

15. Learned Additional Public Prosecutor also contended that since the version of the complainant that he had kept the tainted money in the diary lying on the table on the asking of the accused is duly corroborated also by the evidence of the Panch-witness PW-3 Kailash Chand who was an independent witness the prosecution case cannot be viewed with any suspicion. There is no doubt that the Panch-witness had also deposed that the complainant had kept the tainted notes in the appellant's diary on the asking of the appellant-accused but his testimony cannot be said to be that of an independent witness since in cross-examination he had admitted that he had been deputed in the anti-corruption branch on 17 or 18 dates and also that he had joined three such raids during that period. For this view I am fortified by a decision of the Hon'ble Supreme Court in G.V. Nanjundiah v. State : 1988 CriLJ152 , which was also a case of bribery and one of the Panch-witnesses in that case had been associated in traps organized by the CBI on three or four occasions and because of that fact he was not considered to be an independent witness by the Hon'ble Supreme Court.

16. This Panch-witness, in fact, has caused a dent in the prosecution case instead of advancing it further on the way to success by claiming in his evidence that all the writing work after the raid was carried out at the office of the Anti Corruption Branch and even the diary Ex. P-16 was sealed there and not at the spot and as far as the recovered tainted money is concerned he deposed that the notes were not sealed at all. On this part of his statement, which definitely was contrary to the prosecution case, he was not cross-examined by the Public Prosecutor to establish that on this aspect he had not stated correct facts. If this was being so claimed by the prosecution witness whose services were sought to be utilized as an independent witness then a serious doubt about the trap being legitimate one creeps in and this is an additional reason for doubting the prosecution case.

17. In view of the foregoing conclusions, this appeal deserves to be allowed and the same is accordingly allowed and judgment dated 11.3.1999 and order dated 12.3.1999 passed by the learned Special Judge, Delhi in Sessions Case No. CC-169/1994 are set aside and the appellant-accused stands acquitted.

18. Resultantly, his bail bonds stand discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com