

Darshan Lal Vs. State

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Court : Jammu and Kashmir

Decided On : Apr-07-2005

Reported in : 2006CriLJ402,2005(3)JKJ256

Judge : S.K. Gupta, J.

Acts : Prevention of Corruption Act, 2006 (1949 A.D.) - Section 5(2); ;[Evidence Act, 1872](#) - Section 73; ;Ranbir Penal Code (IPC) - Sections 161 and 165A

Appeal No. : Cr. Appeal No. 4 of 1994

Appellant : Darshan Lal

Respondent : State

Advocate for Def. : B.S. Salathia, Adv.

Advocate for Pet/Ap. : Ajay Abrol, Adv.

Judgement :

S.K. Gupta, J.

1. This appeal is preferred by the accused-appellant, Darshan Lal, against the judgment and order dated 28-02-1994 passed by the learned Special Judge, Anti Corruption, Jammu, whereby the accused-appellant has been convicted and sentenced to one year's rigorous imprisonment and a fine of Rs. 1000/- in proof of

offences committed under Section 5(2) P.C. Act, 2006 read with Section 161 RPC, and in the event of default in payment of fine of Rs. 1000/- to undergo further simple imprisonment for three months.

2. Mr. Ajay Abrol, learned Counsel appearing for the appellant, urged that the prosecution in order to succeed must show first that there was a demand of bribe by the appellant and the acceptance of the bribe money from the complainant. His further submission is that in the absence of proof of either of these ingredients, it would entail the failure of the prosecution case. In addition to this, it was urged that when a reference is made to the statement of the complainant and the FIR lodged by him, it is significant to point out that the name of the accused-appellant has not been indicated in the complaint to have demanded the bribe money and its receipt by him for entertaining the admission Form. There is no corroboration to the statement of the complainant with regard to the demand and receipt of the bribe money by the accused-appellant. The sole statement is at variance with the FIR and the same remains uncorroborated by any independent witness in material particulars and is not qualitative and sufficient to record the conviction of the accused-appellant.

3. Another argument was addressed that even the Investigating Officer, after recording the statement of the witnesses with regard to other incriminating circumstances, has unambiguously stated that no case under Prevention of Corruption Act, 2006 has been disclosed against the accused-appellant. The trial Court has not appreciated the evidence in its proper perspective and held the accused guilty without any legal evidence which could not be read against the appellant and, thus, appeal deserves to be allowed conviction and sentence imposed upon the accused-appellant quashed and set aside. Whereas, Mr. B. S. Slathia, learned AAG appearing for the State, on the other hand, contended that the complainant who lodged the FIR is a witness of sterling character, his evidence alone is sufficient to prove essential ingredients of the offence, viz., demand and acceptance of the bribe money which stood further corroborated by the evidence of handwriting expert and another witness from whom he borrowed Rs. 100/- to be given as bribe to the accused-appellant for entertaining his admission Form for appearing in the Bi-annual Matriculation Examination of 1982.

He further submitted that there was overwhelming evidence produced by the prosecution to establish the guilt of the accused-appellant beyond hilt.

4. The case has been examined with erudite assistance of the learned Counsel appearing for the respective parties in the light of the facts as they exist on the file as well as on the basis of evidence both oral and documentary. I have also considered the rival contentions of the learned Counsel for the parties in extenso.

5. The sheet anchor of the case that stems out from the record may, in brief, be noticed:

One Tarseem Lal, complainant, had to appear in the bi-annual Matriculation examination of 1982 to be conducted by the Board of School Education (hereinafter referred to as the 'Board'). He had got his admission Form filled in and deposited a fee of Rs. 53/- in the Jammu & Kashmir Bank Branch, R.S. Pura in the name of Chairman, of the Board. He also got his admission Form attested from the Principal, Government Higher Secondary School, R.S. Pura, and went to the Board Office at Jammu for the deposit of the admission Form. The complainant came in contact with the accused-appellant in the Board who was dealing with the entertainment of the admission Forms on 21st September, 1982. An amount of Rs. 100/- was demanded as bribe by the concerned person for entertaining the said Form. It is further disclosed that the official of the Board to whom he had given the admission Form for deposit, however, received Rs. 80/- from the complainant and endorsed on the bank receipt to have received the late fee. The complainant, however, subsequently learnt that the late fee was not required to be paid for the deposit of the admission Form. Being sore about the conduct of the Board official, he made a complaint with the Hon'ble Chief Minister of the State without naming the official of the Board who demanded and received the money from him on the pretext of late fee and the same stood endorsed to the Vigilance Organization, which on preliminary enquiry found that a case of criminal misconduct punishable under Section 5(2) of the P.C. Act, 2006 is disclosed against the accused-appellant. Darshan Lal, accused, an employee of the Board, where he was posted as Head Assistant demanded Rs. 100/- by abusing his official position as illegal gratification from the complainant for the entertainment of his admission Form and

thereafter misappropriated the amount instead of crediting the said amount to the Board chest. FIR No. 176 of 1983 for offences punishable under Section 5(2) P.C.A, 2006 read with Section 161 RPC stood registered and investigation ensued.

6. After the frame of the charge and prosecution evidence produced by the prosecution in sustenance thereof and hearing the parties, the trial Court found the offences established against the accused of which he was charged and held him guilty and sentenced him, accordingly, on the conclusion of the trial. In order to appreciate the rival contentions of the parties, I deem it expedient to look into the evidence produced in support of the charge and relied upon by the prosecution in the case.

7. P.W Tarseem Lal is the complainant and the sole eye witness in proof of demand and acceptance of illegal gratification by the accused-appellant for entertaining the admission Form on the pretext of late fee, and mis-appropriated the same for his own use, by abusing his official position who was posted as Head Assistant in the Board at the relevant time. According to the complainant, he filled-up the admission Form and deposited Rs. 53/- in the Jammu & Kashmir Bank to appear in the bi-annual Matriculation examination of 1982. He went to the Board office at Jammu and approached the accused-appellant to entertain his admission Form alongwith the Bank receipt in respect of the admission fee. The accused-appellant demanded Rs. 100/- on receiving the admission Form as late fee. The complainant further stated to have contacted PW Raj Kumar and borrowed the said amount from him. The complainant again approached the accused on next date in the Board and gave him admission Form alongwith Rs. 100/- late fee as demanded by the accused-appellant. At the insistence of the complainant for receipt, the accused-appellant made an endorsement on the Bank receipt by writing late fee Rs. 100/-. The complainant, however, later on learnt that there was no late fee for the deposit of admission Form to appear in the bi-annual Matriculation examination of 1982. A written complaint EXPW-TL was lodged by the complainant. It is also in his evidence that since the original receipt of the endorsement of late fee was misplaced and its Photostat copy was retained by him which was produced before the Vigilance Organization. The complainant

further stated that the accused-appellant also made an attempt for a compromise through Shri Puran Singh, Teacher, and refunded the alleged late fee of Rs. 100/-. It is admitted by the complainant that the name of the accused or person does not figure in the complaint to lay emphasis whether it was the accused who demanded Rs. 100/- on the pretext of late fee. It is significant to point out that there is no witness examined by the prosecution to provide support to the testimony of the complainant to prove the demand and receipt of bribe money by the accused - appellant.

8. The question that arises for determination is as to whether the sole testimony of the complainant, that the accused- appellant demanded and complainant paid illegal gratification to the accused-for deposit of his admission Form for Bi-annual Matriculation examination of 1982, could be taken as sufficient evidence without corroboration from any independent testimony regarding the aspect of demand for money and its receipt and the appellant could be held guilty under the P.C.A, 2006? There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After the introduction of Section 165A RPC making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. It has to be borne in mind that as the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the accused-appellant during which he demanded the money which was accepted by the accused-appellant when paid to him by the former and the Court will have to see whether this part of the evidence of the complainant has been corroborated. The prosecution has relied upon the evidence of Raj Kumar from whom the complainant is stated to have borrowed the bribe money. The evidence provided by Raj Kumar is to the effect that the complainant has been working with him since 1981 and also used to take money whenever required. He further stated that the complainant came to him in the evening on one day and asked him to pay Rs. 100/- which is to be paid as late fee for the deposit of his admission Form in the Board for appearing in the Bi-annual Matriculation examination of 1982. It is also in his evidence that the complainant did not name the person to whom the amount of late fee is to be paid. This witness

is further stated to have paid Rs. 100/- to the complainant. The evidence of this witness is of no avail to the prosecution as he does not state about the demand and acceptance of the bribe money by the accused-appellant from the complainant.

9. Further evidence relied upon by the prosecution in support of its case is of PW Dr. I.U Khan, Joint Director, who was posted as Scientific Officer, Document Div. J&K;, FSL, Srinagar in the year 1984. He stated to have compared the questioned documents Q- 1, Q-2, Q-3, S-1, A-1 and A-2 with the standard hand writing of the accused-appellant and gave report No. 5237FSL/84 dated 30-10-1984. He further stated that it was the Photostat copy of the alleged writing of the accused, EXPW-TL/2 which the expert compared with the specimen handwritings attested by the Magistrate alongwith casual leave applications of the accused signed by him. The finding given by the Scientific Officer(Doc), J&K; FSL, Srinagar based on scientific aid like stereo zoom, microscope and x-ray viewer etc. reads as under:

'In view of the above similarities I am of the opinion that handwriting evidence points to the writer of questioned writing marked Q2 being the person responsible for writing the questioned Photostat writing marked Q3.

Questioned Photostat writings marked Q3 is not the Photostat copy of questioned writing marked Q2 due to the reason that differences were observed in the arrangement of words and its alignment.'

10. The aforesaid report of the Scientific Officer, FSL, Srinagar in its plain reading reveals that the Photostat copy of the Bank receipt marked as Q-3 is not true copy of the questioned writing marked as Q2 on the back of which the complainant is stated to have obtained the receipt in respect of the late fee from the accused-appellant under his signatures, and is not the same as the original receipt Q-2. The original receipt with regard to the receipt of bribe money of late fee of Rs. 100/- with the aforesaid endorsement is also not placed on record, as it has come in the statement of the complainant that the original one has been lost and its Photostat copy was annexed with the complaint.

11. Section 73 of the Evidence Act does not sanction the comparison of any two documents but requires that the writing with which the comparison is to be made or the standard writing as it may be called shall be admitted or proved to have been written by the person to whom it is attributed. It is significant to point out that genuineness of document with which comparison is to be made must be clearly established. A sample writing taken by the Court under the second paragraph of Section 73 is, in substance and reality, the same thing as 'admitted writing' within the purview of the first paragraph of the said section.

12. In the opinion of the Scientific Officer, the alleged receipt obtained on the Photostat copy of the Bank receipt Q-3 is not the same as the original Bank receipt Q-2. It may further be pointed out that the alleged acceptance receipt stated to have been obtained from the accused-appellant pertaining to the acceptance of bribe money is also not original but the Photostat copy as the original one is stated to have been lost by the complainant.

13. Now the question arises whether the questioned writing is a genuine writing and the document on which it is obtained is genuine with which comparison is to be made of the admitted handwriting of the accused-appellant. The answer is clearly found in the opinion of the Scientific Officer, FSL, Srinagar. In comparing the handwriting upon the disputed document with the admitted handwriting, in order to find whether the disputed document is genuine, the true test to be applied in such cases is to consider the general character of the two writings sought to be compared. When the provision of Section 73 of the [Evidence Act, 1872](#) referred to disputed documents in clear and unambiguous terms, applies to undisputed documents and the Photostat copy of disputed document which is to be not genuine being not a true copy of the questioned document.

14. That apart, the comparison according to the Scientific Officer, FSL, Srinagar in his report of the disputed writing observed that the admitted handwriting depends upon the similarities with regard to the manner of execution of English capital letters, English small letters and the habit of writing the words etc.

15. It is not in dispute that the Photostat copy of the original document sometime is partially fade, sometime very bright and sometime totally black. Thus, making the

task of comparison of handwriting is something hazardous and more oftenly inconclusive. So, it is not humanly possible to examine the formation of letters, fixed pen habits and mannerisms, and discern the identity of the writer. The identity or resemblance in handwriting has to be found out on the value of the effect of various considerations arising from individual characteristics and in idiosyncrasies which have been embodied in technical language or experts.

16. In this case specimen handwriting of the accused-appellant was taken during investigation in the presence of the Magistrate. Under Section 73, the Magistrate has no power at the investigation stage by the police to issue a direction to the accused to appear in the Court for the purpose of giving specimen handwriting and signatures at the request of the police, as is contended by the appellant's counsel. Undoubtedly, Section 73 of the Evidence Act creates a bar against taking the specimen of handwriting or the signatures of the accused when the case is under investigation, but once such specimen signatures of handwriting etc. were taken and they were sent to the expert, and the expert also has given evidence, it will not vitiate the trial, but taking the opinion of the Scientific Officer, FSL, Srinagar in its totality, it loses both relevance and value of providing a corroborative evidence in view of the aforesaid reasons. The trial court has fallen into an error in placing lucid reliance on the report of the Forensic expert without verifying the genuineness of the document alleged to have bearing the disputed handwriting before it was sent for comparison of admitted handwriting.

17. Apart from that, adverting to the Photostat copy of the alleged writing of the accused-appellant at the back of the Bank receipt of late fee of Rs. 100/- whether would prove the acceptance of Rs. 100/- as bribe money. The handwriting taken at its face value cannot be said to be a receipt of late fee. This writing nowhere indicates that this amount of Rs. 100/- was received by its author. The receipt of bribe money, in order to be relied upon by the prosecution to base the conviction of the accused-appellant, was to be established beyond any doubt. There is no evidence other than that of the complaint on record that the accused-appellant demanded Rs. 100/- as late fee and also accepted the same as illegal gratification for entertaining the admission Form of the complainant for appearing in the bi-annual Matriculation examination of 1982. Where the prosecution evidence with

attendant circumstances indisputably establishes that in furtherance of the demand made by the accused, the payment was made and was consciously accepted by the accused, he would be liable for conviction.

18. It is further disclosed in the prosecution case that the accused-appellant approached the complainant through one Sh. Puran Singh, Teacher, and offered him to return the money. This is also found in the evidence of the complainant, but Puran Singh, Teacher, has not been examined in this regard. The evidence of this witness has been withheld by the prosecution without any plausible explanation and, thus, leaves another dent in the prosecution case. It evidently makes the prosecution story unnatural even if taken only on the testimony of the complainant whose evidence too does not find support from any material on record with regard to the demand of money by the accused-appellant and its acceptance as illegal gratification. Even the handwriting relied upon by the prosecution, viz., receipt of late fee Rs. 100/-, does not in its ordinary concatenation show that it is a receipt of bribe money particularly when there is no evidence direct or circumstantial in proof thereof.

19. Another circumstance which causes serious cloud on the veracity of the complainant is the date of payment of bribe money. According to the complainant, he went to the Board office on 21-9-1982 when the accused-appellant demanded Rs. 100/- as late fee. Since he had no money, he went back to R.S. Pura and obtained money from PW Raj Kumar for the late fee and next day again approached the Board office at Jammu and gave it to the accused-appellant and secured alleged receipt from him. This clearly shows that money was paid on 22nd Sept., 1982 and the receipt obviously should have been obtained on the same date, but the alleged receipt of money EXPWTL/2 is dated 21st Sept., 1982. There is no explanation forthcoming from the statement of the complainant in his evidence on oath in the Court which further makes the prosecution case unbelievable and unacceptable and, does not inspire confidence in the Court. The complainant also did not disclose the name of PW Raj Kumar and the name of the person in the Board who had demanded Rs. 100/- as late fee. The statement of PW Raj Kumar is to the effect that the complainant asked for Rs. 100/- for late fee which was given to him. The name of the accused-appellant has also not been

mentioned in the FIR. There is no identification parade held in the case by the Investigating Agency to get the accused identified during investigation. The accused appellant, thus, came to be identified for the first time in the court after the alleged incident.

20. It is well settled proposition of law that where the petitioner had seen the accused in the Court and neither his name and address are given in the FIR, his evidence has to be considered with great care and circumspection. This becomes further necessary when there is no corroboration of testimony of the complainant with regard to the demand of the money by the accused-appellant and further its acceptance. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied upon in these circumstances.

21. Part of investigation of the case was conducted by Mr. Mohd Aslam Malik, who was then posted as Inspector Vigilance at the relevant time. According to this witness, the statements of some of the witnesses, namely, Tarseem Lal complainant, Raj Kumar, K.K. Chadha and Surrinder Singh were recorded on 13-2-1984 and 29-1-1984 respectively. It is also in his statement that the FIR was registered on 2.12.1983. He also stated that the original receipt was not produced and only its Photostat copy was produced by the complainant. The Investigating Officer made no secret of the fact that so long as the investigation remained with him, no offence was prima facie disclosed against the accused-appellant. These witnesses neither were declared hostile by the prosecution nor any clarification in respect of their statements was sought by putting questions/suggestions by it in the cross-examination. This shows that the Investigating Officer reached a conclusion that no case is established from his investigation against the accused on the statement of star witnesses, namely, the complainant, Tarseem Lal, and Raj Kumar. This aspect of the case has also not been considered by the trial Court, while evaluating, estimating and appreciating the evidence of the aforesaid witnesses. This further crumbles down the prosecution case like a pack of cards, firstly, on lack of corroboration in material particulars to the testimony of complainant and, secondly, the absence of proof of demand of illegal gratification by the accused-appellant and further when the same was paid and its receipt by

him and further its mis-appropriation being essential ingredients to prove the charge against the accused-appellant under Section 5(2) of the P.C.A, 2006. The statement of PW Mohd. Aslam Malik, Investigating Officer, cannot be lightly brushed aside.

22. In the background of the case, the accused-appellant was shown to have committed an offence regarding which First Information Report had been lodged. This was investigated by the Vigilance Organization. There is no corroboration to the statement of the complainant with regard to demand and acceptance of the bribe money by the accused-appellant and thereafter its mis-appropriation. The evidence of PW Raj Kumar and the report of the handwriting expert also do not provide any support either to the prosecution or to the testimony of the complainant. Whereas the evidence of Investigating Officer, Mohd Aslam Malik, who had recorded the evidence of the complainant and other material witnesses, also stated that no offence was disclosed in his investigation against the accused-appellant. The identity of the accused-appellant has not been narrated by the complainant in the First Information Report. It was also not disclosed by the complainant to PW Raj Kumar about the person who demanded the money in the Board as late fee. The receipt with regard to the acceptance of bribe money relied upon by the prosecution is its Photostat copy and also Photostat copy of the Bank receipt which according to the expert was not a true copy of the document Q-2. Endorsement on the back of the Bank receipt Q-3 termed by the prosecution as acceptance/receipt of the bribe money, also cannot be believed as the endorsement in its plenary reading. It cannot be construed as a receipt of bribe money or receipt of late fee of Rs. 100/-.

23. Taking the entire gamut of evidence in its cumulative in the face of this position, the legitimate inference against the accused-appellant that he had not accepted the admission Form on the first day and caused hindrance to the complainant who came from the backward area of R.S. Pura, cannot be drawn. As such demand part of the case also goes. As a consequence of this, on examination of the evidence, neither demand of bribe nor its acceptance stands established, therefore, the prosecution evidence on this ground must fail.

24. The evidence provided by the complainant, who was the bribe giver, could not be accepted, as it does not inspire confidence being without any support of other attending circumstances. The complainant being not in a better position than accomplice in view of clear provision of Section 165A of R.P.C, corroboration in material particulars is necessary before it is accepted and in taking this view, reference can usefully be made to the observation of the Apex Court in case reported as Panalal Damodar Rathi v. State of Maharashtra, : 1979 CriLJ936 .

25. Taking the overall conspectus of the aforesaid discussion, the only conclusion reached is that appeal deserves to be allowed and the impugned judgment set aside. It is ordered accordingly. The appellant is on bail, his bonds shall be discharged. Fine, if any deposited, shall be refunded back to the appellant.

26. Record of the case be sent back to the Court forthwith.

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