

Harvinder Singh Kohli Vs State

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Court : Delhi

Decided On : Oct-06-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Acts : [Prevention of Corruption Act, 1988](#), - Sections 7, 13 (1)(d) , 20 , 374(2), Cr.P.C.

Appeal No. : Crl. Appeal No.1072/2010

Appellant : Harvinder Singh Kohli

Respondent : State

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Mr. Rakesh Khanna, Sr. Mr. Davinder N. Grover, Mr. Harsh Gupta , Ms. Seema Rao, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

1. This criminal appeal under Section 27 of Prevention of Corruption Act, 1988 ("the Act" for short) read with Section 374(2) of Criminal Procedure Code has been preferred by the appellant assailing the judgment dated 4th August, 2010 and the

order on sentence dated 5th August, 2010 passed by learned Special Judge whereby the appellant was found guilty of offences punishable under Sections 7 and 13 (1)(d) of the Act and was sentenced to undergo two years imprisonment each and a fine of Rs.5,000/- each under the two offences for which he was convicted.

2. The facts relevant for the purpose of deciding the present appeal are that the appellant Harvinder Singh Kohli was working as Area Health Inspector of the area where sweet shop of complainant was situated viz. D-300, Tagore Garden, New Delhi. The father of complainant had died on 13th March, 2003. The complainant wanted to get the license of the said shop, granted in the name of his deceased father and valid upto 31st March, 2004, to be transferred in his name as now he had started running the said shop. A demand of bribe was made by the appellant. The complainant objected to it and made a complaint in this regard to Mr. Ranjan Das, Deputy Health Officer. However, that proved counterproductive, since Mr. Ranjan Das also told the complainant to pay the bribe. Encouraged by this, the appellant not only wanted the complainant to pay the bribe for transferring the license of the said shop in his name but also wanted him to pay monthly bribe of Rs.300/- per month. The complainant told appellant that he was a poor person and would not be able to pay the monthly bribe of Rs.300 per month. On this, the amount of monthly bribe was reduced to Rs.200. The complainant, instead of paying the monthly bribe decided to make a complaint to Anti Corruption Branch so he went to Anti Corruption Branch on 21st October 2003 and lodged a complaint about demand of bribe by appellant. The Anti Corruption Branch summoned an independent witness who accompanied the complainant to witness the demand and giving of bribe. A raiding party was constituted to follow the complainant and the witness. Two currency notes of Rs.100 each coated with phenolphthalein powder were handed over to the complainant. The complainant went to office of the appellant along with the witness. There the appellant demanded and accepted bribe of Rs.200 from the complainant in presence of the punch witness. A pre-determined signal/ indication was given to the raiding party. The raiding party immediately after acceptance of bribe, conducted a raid and the bribe amount of Rs.200 was recovered from the appellant. The remaining proceedings of the raid were completed and after completion of the investigation,

the appellant was tried for the offence under Section 7 and 13 (1) (d) of the P.C. Act. He suffered conviction, as stated above.

3. The appellant has preferred this appeal on the ground that the learned trial court did not appreciate the facts properly. There was no demand for bribe made by the appellant. The bribe money was put forcibly into the hands of the appellant to make the raid successful by the investigating officer and the learned trial court wrongly concluded that this defence was an afterthought. It is further submitted that it was not proved that the job of transferring the license in the name of complainant was to be done by the appellant/accused neither the record of MCD regarding applying for license or orders was proved before the learned trial court and if the complainant was to be believed, the bribe demand was actually made by Deputy Health Officer Mr. Ranjan Das for getting the work done. According to him, initially demand was of Rs.5,000/- and thereafter when he met him second time, demand put to him was Rs.1500/-, out of this he had given Rs.500 and got the license transferred, so there was no occasion for him to come to MCD office to pay further money. It is argued that the complainant in his statement has stated that the renewed license was retained back and he was only given the receipt but this renewed license and the receipt have not been proved and this throws doubt on the prosecution story.

4. It is submitted by the counsel for the appellant that there was no evidence on record to prove that the appellant had demanded bribe or voluntarily accepted the amount of Rs.200 as bribe. The prosecution did not discharge its burden beyond reasonable doubt and there was no question of shifting the burden on appellant under Section 20 of the said Act. Thus, the case of the prosecution must fail. The other limb of arguments put forth by the counsel for appellant was that the appellant was 62 years of age at the time of filing of the present appeal and he had lost his son and was mentally disturbed and had already suffered a lot, therefore, he should be acquitted. The learned counsel for appellant also argued that there was no valid sanction in this case and the same was not granted by immediate officer of the appellant but was granted by an officer superior to the immediate officer and it was granted without application of mind.

5. Section 7 of Prevention of Corruption Act, 1988 reads as under: "7. Public servant taking gratification other than legal remuneration in respect of an official Act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine. Explanations.

(a)" Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) " Gratification." The word' gratification' is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) " Legal remuneration." The words" legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) " A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as

a reward for this service, the public servant has committed an offence under this section."

6. In order to prove an offence under Sections 7 and 13 (1) (d) of the said Act, the prosecution is supposed to prove

(i) that the person who demanded or accepted bribe was a public servant;

(ii) he obtained/ accepted the bribe either for himself or for any other person;

(iii) that the amount accepted by him was other than his legal remuneration;

(iv) that the motive behind accepting the amount was for doing or forbearing to do an official act or for showing or forbearing to show, in exercise of his official function, favour or disfavor or to render or admitting to render any service to a person. The offence of criminal misconduct is established if the public servant, by illegal means, obtained either for himself or for any other person any valuable thing or pecuniary advantage while holding office as a public servant.

7. PW-1 complainant in this case by his testimony proved that his father was running a shop in the name of "Gurunanak Sweets" and was holding an MCD Health Department License valid upto 30th March, 2004. His father expired in 2003 and he applied to the Health Department for renewal and transfer of the license in his name and he met appellant who was working in the Health Department of MCD. There is no cross examination on this part of the testimony. It thus stood proved beyond doubt that complainant had met appellant in respect of transfer of license of his sweet shop in his own name since his father had expired. It was not suggested to the complainant that he had not met the appellant and had not talked to him for transfer of license in his name. Rather in cross examination, this witness reconfirmed that he had gone to MCD Health Office and met the appellant and Deputy Health Officer Mr. Ranjan Das. He also reaffirmed in his cross examination about demand of bribe by both of them and he also reaffirmed that as he did not want to pay the bribe so he made a written complaint to the Anti Corruption Bureau. Thus, the demand of bribe by the appellant for performance of duties stands established by the testimony of this witness who is complainant in

the present case. The next issue arises whether this bribe was received and accepted. The complainant had after lodging complaint with Anti Corruption Bureau accompanied PW3 Dinesh Kumar who was called by Anti Corruption Bureau as a panch witness for the purpose of witnessing the demand and acceptance of bribe. PW-1, complainant deposed that he along with panch witness went to MCD Office. He gave Rs.200/- to a person accompanying the appellant and that person handed over the money to the appellant. The appellant took this money in his right hand and kept the same in his pocket. PW-3 who had accompanied the complainant also testified that two currency notes of Rs.100 each were carried by the complainant with him. Both currency notes were coated with phenolphthalein powder, their numbers were noted down in the proceedings before going to MCD office. At MCD office, he and complainant both waited outside the office but within the boundary walls of MCD office for the appellant and the appellant there came and complainant asked him to do his work. The appellant told him, "he was aware how the work is done". He also told the complainant that amount of Rs.300 per month was not an excessive amount as the complainant would be earning Rs.10,000/- per month from his shop and thereafter the appellant enquired if he had brought the money and the complainant replied in affirmative and gave the money to the appellant, which he took in his right hand, counted the same and then a pre-determined signal was given to the raiding party. The testimony of these two witnesses proved beyond reasonable doubt that not only the bribe money was demanded even on 21st October 2003 but it was consciously accepted from complainant. The counsel for appellant strenuously argued that there was difference in the testimony of two witnesses. While one witness has stated that money was given directly, the other witness has stated that money was first handed over to the person accompanying the appellant and he handed it over to the appellant. I think, this argument is of no importance because it is not the case of the appellant that the money was not recovered from him. The case of the appellant is that the money was thrust in his hands forcibly. However, even this defence has not been put to complainant at all. Whether the appellant accepted the money through his companion, as alleged by the complainant or directly is not the issue. The issue is whether the appellant accepted the bribe and this fact is proved beyond reasonable doubt by testimony of these two witnesses.

The trial court has rightly observed that the complainant seemed to help the appellant by introducing a third person without damaging his own case but that was immaterial. Moreover, the testimony of PW-3 is very categorical about payment and acceptance of bribe by appellant. PW-3 was accompanying the complainant. He is an independent witness summoned from government department to witness the transaction of bribe. He had no personal motive in mind. No enmity of any kind has been shown with him. This witness and complainant were cross examined at length and both the witnesses, even during cross examination, testified that the bribe was asked and accepted by the appellant.

8. PW-5 is the Inspector Mr. S. Nandi who was posted at anti corruption branch at the relevant time and had organized this raid on the complaint of complainant. In his testimony, he proved the entire sequence of events and proved apprehending appellant red-handed after he had accepted the bribe and a pre-determined signal was received by the raiding party. He proved conducting pre-raid and post-raid proceedings and testified that the tainted amount of Rs.200 was recovered from the appellant. The numbers of two currency notes of denomination 100 each were tallied with the pre-raid proceedings, they were found to be the same. Right hand of the appellant was dipped in sodium carbonate solution which turned pink showing that it was the appellant who had accepted the bribe. It is this witness who was given suggestion that the amount of Rs.200 was forcibly thrust into the hands of appellant by the complainant in the garb of "Diwali Greetings". This suggestion was denied. No suggestion of false implication of appellant has been given either to this witness or to any other witness. Neither the inspector nor the punch witness nor the complainant had been shown to have any kind of pre-acquaintance or enmity with the appellant.

9. From the testimony of witnesses and proved documents, it is apparent that the learned trial court rightly came to conclusion that the appellant had demanded the bribe money in order to transfer the sweet shop license in the name of complainant. This demand of bribe was brought to the notice of Anti Corruption Bureau. A complaint was duly lodged against the appellant and the demand and acceptance of bribe was proved by cogent evidence by examination of PW-1, 3 and 5 and the appellant was caught red-handed with the marked money. The

explanation of the appellant that the money was thrust into his hands was rightly held by the learned trial court as an afterthought. This suggestion was not given to the complainant or to the panch witness, called from government department. This suggestion is only given to the raiding officer and, therefore, the trial court came to conclusion that this was an afterthought. However, giving of this suggestion by the appellant to the raiding officer PW-5 makes it clear that the complainant was called by the appellant to his office on 21st October. The appellant met the complainant in his office on that day. The only purpose for which the complainant had to meet the appellant was about transferring of his license. This fact, coupled with the testimony of PW1 and 3 proved that there was conscious acceptance of the tainted money by the appellant. The witnesses cited by the appellant were rightly disbelieved by the learned trial court as none of these witnesses were cited by the appellant in the representation to the department relied upon by him and these witnesses did not give any cogent reasons as to why they did not inform about the incident to Health Officer or to any other person. Moreover, it was not suggested to either PW-1 or PW-3 that any commotion or quarrel had taken place at the time of incident as is deposed by DW-1. The story given by two defence witnesses was not either put to PW1, PW3 or PW5. This was altogether a new story and the learned trial court, therefore, disbelieved the defence witnesses.

10. A plea was taken before the trial court and also before this Court that it was not the appellant who was to transfer the license and it was the job of other clerk. The trial court rightly relied upon the Explanation to Section 7 of the said Act and rejected this argument. Another plea was taken by the appellant before the learned trial court and before this Court about the sanction being not a valid sanction. This argument has also been specifically dealt with by the learned trial court and the trial court came to conclusion that sanction Ex.PW8/A was accorded by Shri A.K. Singla who was competent to accord sanction and the plea taken that Shri K.D. Alolia, the immediate officer of the appellant had refused to accord sanction was found to be false on perusal of record of the department. The trial court referred to State of Maharashtra and others v Ishwar P.K. Patri 1996 CrI.L. J 1127 and found that no fault can be found with the intention regarding grant of sanction.

11. In view of my foregoing discussion, I uphold the conviction of the appellant under Section 7, 13(1)(d) of the Prevention of Corruption Act, 1988.

12. There is no doubt about the fact that in this case the main culprit was the Deputy Health Officer Mr. Ranjan Das and the prosecution should have booked him also as he was the person who not only demanded but told that the complainant that he shall not do his work unless he pays the money and the appellant acted more like his agent. However, only because Mr. Ranjan Das has not been made as an accused, the guilt of the appellant does not become less grievous and the appellant cannot be acquitted on this ground. Two wrongs do not make one right. The testimonies of complainant also show that appellant demanded monthly payment to allow complainant to run shop peacefully.

13. The learned trial court has sentenced the appellant to two years rigorous imprisonment with fine of Rs.5,000/- on each count. Looking into the fact that the appellant is now a man of advanced age and had also suffered loss of his son, the sentence of the appellant is reduced from two years to one year imprisonment with fine of Rs.5,000/- on each count of the offences under which he was convicted.

14. The appeal stands disposed of with above modification in sentence of appellant. The bail bond and surety bond of appellant are hereby cancelled. He be taken into custody to serve the sentence awarded.

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