

Parmanand Vs. C.B.i.

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Court : Delhi

Decided On : Jul-03-2013

Judge : Mukta Gupta

Appellant : Parmanand

Respondent : C.B.i.

Advocate for Def. : Mr. P.K. Sharma, Mr. Anil Kumar Singh

Advocate for Pet/Ap. : Mr. D.K. Singh, Mr. Divyang Thakur

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CrI. Appeal No. 132/2004
Reserved on:

22. d April, 2013 Decided on:

03. d July, 2013 % PARMANAND Through: Appellant Mr. D.K. Singh and Mr. Divyang Thakur, Advocate. versus C.B.I. Through: Respondent Mr. P.K. Sharma, Standing Counsel for the CBI with Mr. Anil Kumar Singh, Advocate.
CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA 1 The Appellant challenges the judgment dated 30th January, 2004 convicting him for offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 31st January, 2004 directing him to undergo Rigorous Imprisonment for a period of one year and

to pay a fine of Rs. 10,000/- under Section 7 of the PC Act and Rigorous Imprisonment for a period of two years and to pay a fine of Rs. 20,000/- for offence under Section 13 (2) of the PC Act.

2. Learned counsel for the Appellant contends that as per the Complainant PW7 Mustafa the alleged initial demand took place in the presence of one Srinivas Bhati on 21st September, 1998. However Srinivas Bhati was neither cited as a witness nor examined. Thus the Appellant was constrained to cite him as a defence witness. Srinivas Bhati DW1 belied the version of the Complainant which has not been considered by the learned Trial Court. It is the case of the prosecution that on 23rd September, 1998 at about 11.30 a.m. the bill was cleared with deduction of Rs. 50,000/- and was sent to the accountant Chaman Lal Gupta for preparation of the cheque. Chaman Lal Gupta was also neither cited as a witness nor examined by the prosecution. Instead one Shri Keshri Singh, Assistant Engineer appeared as PW4. Even he stated that on 23rd September, 1998 the bill was cleared by the Appellant at 11.30 a.m. with deduction of Rs. 50,000/- and thus there was no motive of the Appellant demanding the bribe amount at 7.30 p.m. in the evening. The case of the Appellant is that this deduction of Rs. 50,000/- from the bill at 11.30 a.m. annoyed the Complainant PW7 thus he lodged the complaint at 3.30 p.m. and a raid was conducted at 7.30 p.m. on the same day. The trap team allegedly consisted of PW7 the Complainant, PW6 Ajay Kumar, shadow witness, PW2 Brij Mohan, the recovery witness and four officers of CBI. Out of the four officers of CBI only one, that is, PW10 Inspector Azad the trap laying officer was examined. Though the prosecution had valid reason for not examining Inspector Ved Prakash, as he passed away before he was examined in the Court, however there is no explanation whatsoever as to why Dy. S.P. Shri S.K. Sharma and Inspector P. Balachandran were not examined. PW6 Ajay Kumar was directed by the Investigating Officer to accompany the Complainant when the Complainant enters the room however, as per both PW6 and PW7 the Complainant, Ajay Kumar did not enter the room of the Appellant and thus he witnessed neither the demand nor the acceptance of money. Thus the only witness for demand of bribe was PW7 the Complainant whose testimony is wholly contradictory. In his examination-in-chief, PW7 the Complainant stated that when he entered the room of the Appellant at 7.30 p.m.

on 23rd September, 1998 the Appellant stated paise laye ho however, in his cross-examination PW7/ Complainant stated that the Appellant demanded the money by gesticulation only. Further no money was recovered from the possession of the Appellant. The alleged recovery was made from the briefcase lying near the visitors table which was not locked. Though the case of the prosecution is that the money was taken out from the briefcase by PW6 the shadow witness however, PW6 the shadow witness denies taking out the money from briefcase and stated that the CBI officer had taken out money. The learned Trial Court held the offence to be proved against the Appellant only on the basis that the Appellant has not given an explanation as to how money came into his possession. It is well settled that mere recovery of money is not sufficient to hold a person guilty for offence under Sections 7/13 (2) of the PC Act. Reliance is placed on Surajmal vs. State (Delhi Administration) 1979 (4) SCC 725.C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala, 2009 (3) SCC 779.Banarasi Dass vs. State of Haryana, 2010 (4) SCC 450.G.V. Nanjundiah vs. State (Delhi Administration), 1987 Supl. SCC 266.State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, 2009 (15) SCC 20.and Meena (Smt) w/o Balwant Hemke vs. State of Maharashtra, 2000 (5) SCC 21.Further the alleged hand wash taken has also not been proved properly as PW2 the independent witness has stated that the official of the CBI held the hand of the Appellant from the fingers and dipped in the solution. Thus when fingers of the Appellant were caught and dipped then the fingers of the CBI officers were also dipped and admittedly the CBI officials had treated the GC notes with the chemical and the solution was bound to turn pink.

3. Per contra learned Standing Counsel for the CBI contends that PW7 the Complainant has proved beyond reasonable doubt the recovery and acceptance. On the Complainant giving the signal the trap team entered the room of the Appellant and apprehended him. The briefcase from where the currency notes were recovered was seized vide Ex.PW2/C on the pointing out of the Appellant. This recovery of the briefcase with the tainted currency notes is admissible under Section 27 of the Indian Evidence Act. Further the facts stated in recovery memo Ex. PW2/C are also relevant. The version of PW6 Ajay Kumar, the shadow witness was duly supported by the PW10 qua counting of the money. The number of currency notes recovered tallied with the number of currency notes mentioned

in the handing over memo Ex. PW2/A. PW10 the trap laying officer fully supported the prosecution case and thus conviction can be based on the sole testimony of PW10. The Appellant simply denied the questions put to him under Section 313 Cr.P.C. and gave no explanation as to how he came into possession of the currency notes. Ex. PW5/A CFSL report proves that the hand wash solution turned pink thus corroborating the ocular version on record. PW1 the sanctioning authority has stated that she had gone through the documents of SP, CBI and the statement of the witnesses before granting sanction. Reliance is placed on Narayana vs. State of Karnataka, 2010 (14) SCC 453. It is thus contended that since the recovery is proved, in view of the presumption under Section 20 of PC Act the conviction can be safely based upon the said evidence.

4. I have heard learned counsel for the parties.

5. The brief exposition of facts as per the statement of PW7 the Complainant is that he was working as a contractor for P.W.D. and used to take the work of whitewashing the buildings maintained by P.W.D. for the last ten to twelve years. He was awarded contract for whitewashing the staff quarters in Kalyanvaas for a sum of Rs. 5 lakhs approximately. Part payments had been received on completion of work and the final bill which amounted to Rs. 2.50 lakhs was due and pending with the P.W.D. for 2 months. For this work, he met the Appellant who stated that since there was deviation in the work resulting in extension of work, the bill could not be passed. On 21st September, 1998 the Complainant PW7 met the Appellant who stated that he would take Rs. 10,000/- for getting the bill passed. In the cross-examination, the Complainant admitted that when he met the Appellant on 21st September, 1998 one Shri Bhati a contractor was also present and the alleged demand of Rs. 10,000/- was made by the Appellant. He was asked to come on 23rd September, 1998 at 7.00 p.m. Since he did not want to pay the amount he went to the office of CBI on 23rd September, 1998 and gave his complaint in writing Ex. PW7/A. The officer enquired from him about the complaint and called two persons who were N.D.M.C. employees. He admitted that he reached CBI office at about 2.00-2.30 p.m. and when the complainant was taken to another CBI officer he asked to bring bribe amount of Rs. 10,000/- so that the same can be treated. The Appellant brought money. The pre-trap formalities

such as writing down the number of notes, and the treatment of the notes with the powder were completed. The GC notes were kept in the right pocket of the pant of the Complainant and one of the employees of NDMC was directed to accompany him as shadow witness however, the Complainant refused to take him along as he apprehended that on seeing the shadow witness the Appellant would not accept the money. A tape recorder was arranged with a blank cassette. The raiding party reached the office of the Appellant at about 7.00-7.15 p.m. and the Complainant went to the room of the Appellant. PW6 Ajay Kumar, who accompanied him stood outside the room along with the other members of the party who were at a distance. On entering the room of the Appellant, the Complainant wished him namaste on which the Appellant asked whether he had brought the money paise laye ho. The Complainant gave the Appellant Rs. 10,000/- and asked him to count. The Appellant took the GC notes from the Complainant and after looking at them, kept in the brief case lying on the side table. Thereafter the Appellant passed on the bill and the accompanying documents and two red MB books to the Complainant and told him to give the bill and the book to Chaman Lal. The Appellant came out of the room and handed over the books and bill to Om Prakash, peon standing outside the room of the Appellant and requested him to give them to Chaman Lal who was the dealing clerk and simultaneously gave signal to the members of the raiding party. On this the members of the raiding party including PW6 Ajay Kumar and PW2 Brij Mohan entered the room. CBI officer introduced himself to the Appellant by giving his introduction and challenged the Appellant that he had accepted Rs. 10,000/- from him. The Appellant pointed towards the brief case where he had kept the currency notes. PW6 Ajay Kumar picked up the currency notes from the briefcase and the numbers on the notes were compared and the same tallied. The Complainant handed over the tape recorder to the CBI officer which was played wherein voices had been recorded. Thereafter the accused was asked to dip his left and right hands in the two solutions which turned pink. A paper was also recovered from the briefcase on which the currency notes had been placed and the same was also washed which also turned pink. He exhibited the MB books as Ex. PW3/A and PW3/B, filed relating to the bill Ex. PW3/C and three letters in the file.

6. At the outset since the tape recorder could not give any discernible voice during the trial, the evidence of the tape recorded version was rejected. The other evidence in the present case is the evidence of PW7 and the other members of the raiding party. As regards the demand of money on 23 rd September, 1998 at the time of raid admittedly as per the Complainant and PW6 Ajay Kumar, Ajay Kumar did not go inside the room and the Complainant alone went. Thus PW6 is not the witness to either the demand or acceptance. The prosecution is, therefore, left only with the testimony of the Complainant regarding demand and acceptance. The Complainant in his examination-in-chief has stated that when he entered the room the Appellant was sitting alone and he wished him. Thereafter the Appellant asked him whether he had brought the money pasie laye ho on which he gave Rs. 10,000/- to the Appellant and told him to count. However, in his crossexamination the Complainant did not support this version and stated that the Appellant demanded the money by gesticulation and not by uttering words. This is a material contradiction in the testimony of the only witness with regard to demand. Hence the prosecution has not been able to prove the demand at the time of raid beyond reasonable doubt.

7. With regard to the acceptance, the Complainant has stated that the Appellant accepted Rs. 10,000/- and kept them in the briefcase which was lying on the side table. No evidence has been led by the prosecution to prove that the briefcase from which the money was recovered belonged to the Appellant. The contention of learned counsel for the CBI that there was recovery of tainted G.C. notes from the briefcase at the pointing out of the Appellant, hence admissible in evidence under Section 27 Evidence Act, is misconceived. The fact that G.C. Notes were kept in the briefcase were in the knowledge of the complainant. Thus there is no discovery of fact not in the knowledge of the investigating agency pursuant to the disclosure of the accused. The only corroborative evidence to the version of the Complainant is the hand wash. In this regard PW2 Brij Mohan, the independent witness has stated that two CBI officials participated in the process of taking the respective hand washes and the paper wash. On both the occasions the hands of the Appellant were held from his fingers and then dipped in the sodium carbonate solution. Thus the hands of the Appellant were not held from the wrist but from the fingers and in case they were held from the fingers then the fingers of the official

holding them were also liable to be dipped in the solution. It may be relevant that no other witness has spoken with regard to the manner in which the hands of the Appellant were caught and dipped in the solution.

8. Further the statement of PW7 the Complainant is also contrary to the extent that on the one hand he states that after he came out of the room and handed over the books and bills to Om Prakash, the peon standing outside the room, he requested him to give them to Chaman Lal who was the dealing clerk and gave signal to the members of the raiding party, however, PW8 Om Prakash has stated that after the Complainant gave him the documents including the measurement book and the bill, he took them to Chaman Lal Gupta in the Accounts Branch, and the Complainant followed him there. According to PW8, he and the Complainant were in the office of Chaman Lal Gupta for 15 minutes. Thus the presence of the Complainant after he gave the signal when recovery was made is thus doubtful. Further PW8 has not been cross-examined by the learned APP on this aspect. This is further evident from the cross-examination of the Complainant wherein he states that he does not remember about the various aspects of the proceeding after he gave signal as he did not know how was the hand of the Appellant caught, who caught hold of the hands, who made recovery from the briefcase etc.

9. I find no merit in the contention regarding non-application of mind for grant of sanction. The testimony of PW1 is clear and cogent she had gone through the report of the SP, CBI, statement of witnesses as well, comments of the CPWD before granting sanction. Merely because a draft sanction order was received from the CBI will not vitiate the otherwise valid sanction granted after due application of mind.

10. In the present case the evidence on record neither proves demand and acceptance. Even the recovery has not been proved beyond reasonable doubt as the recovery is from an open briefcase which was lying on the side table. It has not been proved beyond reasonable doubt that the briefcase belongs to the Appellant. The contention of the learned counsel for the Respondent that since the briefcase was recovered at the pointing out of the Appellant the said recovery is admissible under Section 27 of the Evidence Act is also liable to be rejected. The fact that the

money was lying in the briefcase was within the knowledge of the Complainant hence there is discovery of no new fact. The contention of the learned Standing Counsel for the CBI that the Appellant admitting the briefcase to be his as noted in the recovery memo Ex. PW2/C is contrary to law. The recovery memo is not a substantive evidence. A statement made by the accused to the police officer is not admissible in evidence except to the extent it leads to discovery of a new fact. Further in Narayana (supra) relied upon the learned Standing Counsel for the CBI the Honble Supreme Court held that from the evidence on record in that case the recovery of the bribe amount was proved beyond reasonable doubt notwithstanding the fact that the Inspector had died and thus could not be examined as witness and thus a presumption under Section 20 of PC Act was required to be drawn. In Banarasi Dass (supra) the Honble Supreme Court while dealing with the earlier judgments of the Honble Supreme Court on this point held:

19. The above findings recorded by the High Court show that the Court relied upon the statements of PW 1. and PW 11. It is further noticed that recovery of currency notes, Exts. P-1 to P-4 from the shirt pocket of the accused, examined in light of Exts. PC and PD, there was sufficient evidence to record the finding of guilt against the accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error insofar as it has drawn the inference of the demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.

20. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, PW 1. and PW 1. were neither the eyewitnesses to the demand nor to the acceptance of money by the accused from Smt Sat Pal Kaur (PW 2).

23. To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused.

24. In *M.K. Harshan v. State of Kerala* [(1996) 11 SCC 72.:

1997. SCC (Cri) 283] this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para

8) 8. It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW 1. Since PW 1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW 1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable.

25. Reliance on behalf of the appellant was placed upon the judgment of this Court in *C.M. Girish Babu* [(2009) 3 SCC 779.(2009) 2 SCC (Cri) 1] where in the facts of

the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in paras 18 and 20 of the judgment held as under: (SCC pp. 784 & 785-86) 18. In *Suraj Mal v. State (Delhi Admn.)* [(1979) 4 SCC 72.:

1980. SCC (Cri) 159] this Court took the view that (at SCC p. 727, para

2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. *** 20. A three-Judge Bench in *M. Narsinga Rao v. State of A.P.* [(2001) 1 SCC 69.:

2001. SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para

24) 24. we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi v. State of Maharashtra* [(2000) 8 SCC 57.:

2001. SCC (Cri) 34] .) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (*Madhukar case* [(2000) 8 SCC 57.:

2001. SCC (Cri) 34] , SCC p. 577, para

12) 12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act. So the word

gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. ' In fact, the above principle is no way a derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case [(1979) 4 SCC 725.1980 SCC (Cri) 159] where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in Sita Ram v. State of Rajasthan [(1975) 2 SCC 227.1975 SCC (Cri) 491] where similar view was taken.

26. C.M. Girish Babu case [(2009) 3 SCC 77.: (2009) 2 SCC (Cri) 1] was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case.

11. In State vs. G. Premraj, 2010 (1) SCC 39.it was held that once the story of demand of bribe and acceptance of money by Respondent near the scooter stand became acceptable not being demolished in cross-examination and the amount of being substantial the presumption under Section 20 PC Act was raised. In the present case as discussed above, the demand and acceptance have not been proved beyond reasonable doubt and thus the factum of recovery which is also doubtful cannot be the sole basis for raising presumption under Section 20 PC Act

for convicting the Appellant. Since the prosecution has not been able to prove beyond reasonable doubt the demand, acceptance and recovery, the impugned judgment dated 30th January, 2004 and the order on sentence dated 31 st January, 2004 are set aside. The Appellant is acquitted of the charges framed. Bail bond and surety bond are discharged.

12. Appeal is disposed of. (MUKTA GUPTA) JUDGE July 03, 2013 vn

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