

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. No. 679/2002**

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Reserved on: 21st February, 2013
Decided on: 30th April, 2013

BHUSHAN SHARMA Appellant
Through: Mr. S.P. Minocha, Mr. Gagan
Minocha, Advs.

versus

STATE (THRU C.B.I.) Respondents
Through: Mr. R.V. Sinha, Spl. PP with Mr.
A.S. Singh, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this appeal the Appellant challenges the judgment dated 12th August, 2002 convicting the Appellant for offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order dated 16th August, 2002 awarding the sentence of rigorous imprisonment for a period of two years and a fine of Rs. 3000/- and in default of payment of fine to undergo simple imprisonment for a period of six months for offence under Section 7 PC Act, and rigorous imprisonment for a period of two years and a fine of Rs. 3000/- and in default of payment of fine to undergo simple imprisonment for six months for offence under Section 13(1)(d) read with Section 13(2) of the PC Act.

2. Learned counsel for the Appellant contends that PW1 in his testimony has stated that he went to the Assistant Accounts Officer Jai Gopal who sent

him to the Appellant directing that the complainant PW1 should pay Rs. 1000/- to the Appellant which he will get and the bill will be rectified. Thus the Appellant has been erroneously charged and convicted for offence under Section 7 and 13 of the PC Act, though only a charge under Section 12 PC Act was made out. Even on confrontation in the cross-examination this witness states that money was demanded by Jai Gopal to be paid to the Appellant. Further DW2 with whose help PW1 approached the Appellant clearly stated that PW1 wanted installments. The bill had already been corrected on 7th June, 1993 and thus alleged demand on 14th June, 1993 could not have been made. Further the main accused Jai Gopal was never been summoned as an accused. PW1 had in fact gone to the CBI to make a complaint against Jai Gopal, however the complaint was dictated by the inspector of CBI and instead of Jai Gopal, the Appellant had been made the accused. Further to a Court query PW1 clarified that before going to the CBI he had come to know that the bill had already been corrected. Since the bill had already been corrected before payment of the alleged bribe, the entire prosecution story on the face of it is false. PW2 J.K. Sinha, the shadow witness has not supported the prosecution case. He has been put leading questions by the learned APP which are impermissible in view of the decision in *Varkey Joseph Vs. State of Kerala 1993 Crl.L.J. 2010 (SC)*. Despite number of people being present, none was joined as a public witness. The version that the entire proceedings were conducted at the spot is belied by the contrary versions of the prosecution witnesses. PW2, the shadow witness has stated that he did not hear the talk between the PW1 and the Appellant. There is non-application of mind by the sanctioning authority as he neither recollected which papers were sent to him and how long was

the file kept before granting sanction. He was not even aware whether the bill in question had been rectified before the demand was made. There are material contradictions in the testimony of witnesses. Hence the Appellant be acquitted of the charges framed. Reliance is placed on *Sunil Kumar Sharma Vs. State (CBI) 2007 (2) JCC 1315(D)* and *Banarsi Dass Vs. State 2010 (2) CCC (SC) 181*.

3. Learned Special PP for the CBI on the other hand contends that witness Jai Gopal could not be examined as he had died before he could be examined before the Court. It was the duty of the Appellant to correct the bill as he was working as a bill clerk and he demanded money for the correction of the bill. The bill was recovered from the possession of the Appellant at the time of raid. Further since tainted trap money was recovered from the Appellant, the onus under Section 20 PC Act having been discharged by the prosecution, thereafter the onus shifted on the Appellant/ accused to discharge. The version of the witnesses is supported by the CFSL report which says that the solution turned pink. It is further stated that in case acceptance is proved then the demand may not be necessarily proved. Reliance is placed on *M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691*; *Krishna Ram Vs. State of Rajasthan 2009 (11) SCC 708*; *B. Noha Vs. State of Kerala and Anr. (2006) 12 SCC 277*; *Girja Prasad (Dead) by LRs. Vs. State of M.P. (2007) 7 SCC 625*; *Baliram S/o Irrappa Kamble Vs. State of Maharashtra (2008) 14 SCC 779*; *Tarsem Lal Vs. State of Haryana (1987) 2 SCC 648* and *Bhagwan Singh Vs. The State of Haryana (1976) 1 SCC 389*.

4. I have heard learned counsel for the parties. PW1 in his testimony before the Court stated that during 1992 he received a bill of electricity for Rs. 10,574/-. Since he was not in a position to pay such a huge bill, he went to DESU office at Punjabi Bagh to get the same rectified. The officials of Punjabi Bagh office told him that he will have to deposit the amount of Rs. 10,574/-. He was told to meet Jai Gopal Sharma at Punjabi Bagh Office who was the Accounts Officer. PW1 requested Jai Gopal Sharma to correct his bill according to the reading to which Jai Gopal Sharma stated that he should meet Bhushan Sharma, Bill Clerk and should give him Rs. 1000/-. He further stated that he will take money from Bhushan Sharma and correct the bill. Jai Gopal further told that if he paid Rs. 1000/- to Bhushan Sharma his bill will be corrected and a bill of Rs. 5455/- will be issued to PW1. He gave Rs. 1000/- to Bhushan Sharma but he did not get the bill rectified. Thus he went to the CBI office where he gave his complaint Ex.PW1/O written in his own hand-writing on the dictation of the CBI official. The panch witnesses were called. PW1 gave Rs. 1000/- in the form of 10 currency notes of Rs. 100/- each to the Inspector, numbers of which were noted down and then some powder was applied to those notes. Thereafter the currency notes were given to PW1 who kept the notes in his left upper pocket of shirt. Mr. Sikka was directed to remain close to PW1 and give signal by moving his hand on his head when the money was accepted by the accused. The raiding party then went to DESU office, Punjabi Bagh where the PW1 met Bhushan Sharma who was standing downstairs outside DESU office. The Appellant asked if he brought the money to which he told him that he had brought the money and gave the money to the Appellant who took the same in his hand, counted it with both the hands and kept the money in the right side pocket of

his pant. The panch witness gave the signal and the CBI officials reached there and apprehended the Appellant. Money was recovered from the right side pocket of the pant worn by the Appellant and the electricity bill of PW1 Ex.P-1 was recovered from the left upper pocket of the shirt of the accused which the Appellant had given for correction to Jai Gopal Sharma. AFO was called. Thereafter numbers of currency notes were tallied with the handing over memos and were found to be the same. Pant wash and hand wash of the Appellant was taken which turned pink and kept in separate bottles. PW1 was also cross-examined by the learned APP.

5. PW2 J.K. Sikka, Deputy Architect in DGHS, Nirman Bhawan, New Delhi stated about the pre-trap proceedings and that when they went to the DESU office they found the Appellant at the ground floor outside the office building. The Appellant asked the complainant if he had brought Rs. 1000/- on which the complainant showed and stated that he had brought the money and complainant asked him if his work had been done. The Appellant stated to the complainant that his bill has been amended and on the Appellant asking for money, the complainant gave the tainted G.C. notes to the Appellant. The Appellant took the G.C. notes, kept the same in the right hand side pocket of the pant and gave the amended bill to the complainant after showing the necessary correction. Thereafter, PW2 gave the signal and the Appellant was caught by the wrist.

6. Learned counsel for the Appellant has pointed that there are material improvements and contradictions in the testimony of the witnesses. He states that though the prosecution case is that the complainant Surjit Singh met AFO who directed him to meet Clerk Bhushan Sharma, however in

Court he stated that Jai Gopal told him to meet Bhushan Sharma and complainant should pay him Rs. 1000/- which he will take from Bhushan Sharma and correct the bill. In the complaint PW1 stated that he did not want to pay the bribe, however before Court he stated that he had already paid a sum of Rs. 1000/- to the Appellant. On cross-examination by APP he again changed his version and stated that he had not paid any money to the Appellant before going to CBI office. PW1 stated that the bill Ex.P-1 was recovered from the left upper pocket of the shirt whereas J.K. Sikka PW2 stated that the bill was recovered from the pocket of the pant of the Appellant. Further PW1 stated that he met the Appellant who was standing downstairs outside the DESU office whereas PW2 stated that the Appellant was standing at a distance of 70 feet from the gate of the DESU office and PW4 R.N. Gaurkar stated that PW1 brought the Appellant down to the ground floor backside of the office. PW1 stated that he signed the recovery memo Ex.PW1/C in CBI office after they had gone back whereas PW2 stated that he signed the documents after 15 days and PW7 Inspector R.V.S. Lamor stated that he did not get any document signed from the complainant or witnesses after return to office. PW2 stated that PW4 recovered the money whereas PW4 stated that the Appellant took out the money himself from his pant pocket and gave it to PW7.

7. No doubt PW1 has initially deposed that he gave Rs. 1000/- to Bhushan Sharma but did not get his bill, however in cross-examination by the learned APP he has clarified that he had not paid the money to the Appellant prior to the CBI raid being conducted. Learned counsel for the Appellant has assailed the evidence of PW2 relying on *Varkey Joseph*

(supra). In Varkey Joseph it was held that prosecutor cannot be permitted to put leading questions to its witnesses except when, with the permission of the Court witness is declared hostile and cross-examination is directed thereafter in that behalf. In the present case PW2 was cross-examined by the learned prosecutor with the permission of the Court. Thus, no illegality can be attributed thereto. The variation in the statement regarding role of AFO (Jai Gopal) would at best have the effect qua Jai Gopal not being made an accused. It does not affect the complicity of the Appellant who demanded bribe and accepted the same whether for himself or his superior Jai Gopal. Further the discrepancy with regard to recovery of the bill from the left upper pocket of the pant between PW1 and PW2 is also not material. Minor variations in the statements of the witnesses that the Appellant was standing downstairs outside the DESU office whereas PW4 R.N. Gaurker stated that he was coming down from his office to the ground floor are immaterial. Further the statement of R.N. Gaurker PW4 that after the raid they all went to the CBI office and remained there for 4-5 hours also needs to be rejected in view of the testimony of all other witnesses who have stated that proceedings took place at the spot. In the present case the testimony of PW1 and PW2 proves the demand and subsequent acceptance beyond reasonable doubt and thus I find no infirmity in the impugned judgment.

8. Appeal is dismissed. The bail bond and surety bond of the Appellant are cancelled. The Appellant to undergo the remaining sentence.

(MUKTA GUPTA)

APRIL 30, 2013
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