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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd May, 2019

+ Crl. Appeal no. 251/2002

JAGAN NATH

..... Appellant

Through: Mr. Sumer Sethi & Ms. Dolly
Sharma, Advs.

versus

STATE C.B.I.

..... Respondent

Through: Mr. Nikhil Goel, SPP for CBI
with Mr. Aniruddha Deshmukh
& Mr. Dushyant Sarna, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant was an employee of Municipal Corporation of Delhi (MCD) posted as *munshi* of a cattle pound in Malviya Nagar during the relevant period. Jeet Ram (PW-1) was a local resident and would maintain cattle including a cow which had been impounded by the municipal officials. The cow had been taken and kept at the cattle pound where the appellant was the person incharge, he being assisted by a *chowkidar* Dharam Singh (DW-1). On 26.07.1991, PW-1 lodged a complaint (Ex.PW-1/A) with Anti Corruption Branch of Central Bureau of Investigation (CBI) that the appellant, when approached on 26.07.1991 for release of his cow, had demanded Rs. 250/- as illegal gratification. First information report (FIR) was registered (vide Ex.PW-6/A) on the said complaint and a trap was laid in which two

independent witnesses – Narender Kumar Dudeja (PW-3) and Naresh Kumar Khanna (PW-4) – were joined. It has been the case of CBI that on 26.07.1991, during the trap, the appellant reiterated the demand of bribe and accepted, from PW-1 (the complainant), bribe money in the form of two currency notes of Rs. 100/- each (Ex. P-1 & P-2) and one currency note of Rs. 50/- denomination (Ex.P-3), the said amount of money having been later recovered from the inner pocket (ticket pocket, as described by some of the witnesses) of his trousers. The currency notes in question had been treated with phenolphthalein powder in the pre-trap preparatory proceedings. It is the case of the prosecution that washes of the hands of the appellant, along with that of inner pocket of his trousers (Ex.P-4), were taken and upon analysis in Central Forensic Science Laboratory (CFSL) by Mr. N.K. Prasad (PW-7), the senior scientific officer, the same had given positive test for presence of phenolphthalein powder this corroborating its case of acceptance of money.

2. The appellant was brought to trial (in criminal case no. 284/1994) in the court of Special Judge on the basis of accusations to the above effect, founded on the evidence that had been gathered during the course of investigation into the above mentioned FIR. The appellant stood trial on charge for offences under Sections 7 and 13 of Prevention of Corruption Act, 1988 which were framed against him. The trial court, by its judgment dated 28.02.2002, held the appellant guilty as charged. By subsequent order passed on the same date, sentence of rigorous imprisonment for one year with fine of Rs. 250/-

on each count was awarded. Both substantive sentences were directed to run concurrently.

3. The appeal at hand was presented to assail the above-mentioned judgment and order on sentence. It was admitted and the appellant was released on bail, the sentence having been suspended by order dated 09.04.2002.

4. The trial court record had been requisitioned by the registry and added to the file of the appeal. It is stated that the said record went missing from the registry. It may be mentioned here that similar loss of record in more than one hundred criminal appeals has been reported by the registry, such loss having been subjected to inquiries made but with no one being held accountable or responsible. Pursuant to the directions of the Chief Justice, endeavour was made to re-construct the missing record. It has been partially re-constructed and placed before the Court to the extent possible. The appeal thus has come up for consideration before this Court along with the partially re-constructed record, it being conceded by both sides that the contentions have to be examined primarily on its basis, summary of evidence being available as set out in the impugned judgment.

5. Having heard the counsel for the appellant and the additional public prosecutor for the State and having gone through the record with their respective assistance, this Court is of the view that benefit of doubts will have to be extended to the appellant and, thus, the impugned judgment and order on sentence are liable to be set aside. The reasons may be set out hereinafter.

6. In the FIR, the complainant (PW-1) had indicated a meeting with the appellant on 26.07.1991, when the demand of illegal gratification had been made. While deposing in the court, he majorly contradicted his own complaint by denying having met the appellant in the morning on the said date. It is upon acceptance of the said version that the trial Judge in (para 21 of) the impugned judgment concluded that the demand of bribe prior to the raid was doubtful. This, to my mind, turns the very foundation of the case leading to the trap being laid on its head.

7. Be that as it may, PW-1 did testify about he having gone to the cattle pound, accompanied by PW-3, who had been deputed by the trap laying officer (TLO), Inspector R.S.V. Lohmore (PW-6), as the shadow witness. He spoke about the demand of money and it being tendered and accepted by the appellant and put in the pocket of his trousers and thereafter having called upon the *chowkidaar* (DW-1) to release the cow. He spoke about he himself untying the cow and taking it out of the cattle pound and tethering it to a tree nearby immediately whereafter, upon signal, the TLO and the other members of the raiding party including recovery witness (PW-4) converged on the scene, the appellant having been apprehended and the bribe money statedly recovered upon search of his trousers. The shadow witness (PW-3) also speaks about the appellant having asked the complainant, in his presence, if he had brought the money.

8. Noticeably, PW-3 would not talk of the nature of money which had been asked about by the appellant. In fact, he did not speak of any

conversation about the demand of bribe or money other than the legal charges being asked for. He simply spoke about inquiry as to money.

9. In above context, it is pertinent to note that the evidence of prosecution also shows that at the cattle pound certain records were kept, and maintained, the same including a register (Ex.PW-5/B), a detention book (Ex.PW-5/A), a fine receipt book (Ex.PW-5/C) and cattle release application (Ex.PW-5/D), besides attendance register (Ex.PW-5/E). Though these documents were produced in evidence by D.R. Ahuja (PW-5), primarily to explain the procedure of impounding of cattle by the municipal staff, and also about their release, in which context, certain municipal charges were levied, there is no clarity in the summary of evidence set out in the impugned judgment as to whether any witness clearly deposed if the cow of the complainant had been formally recorded as impounded by municipal staff. It is clear that it is the appellant who had impounded the cow or had brought it to the cattle pound for detention. It appears that the duties of the appellant were to look after the cattle brought to the pound by other municipal staff and to release them upon municipal charges being deposited.

10. The evidence on record, as noted at some length in the impugned judgment, also shows that the amount of Rs. 250/- (Ex.P-1 to P-3) was not the only money which was recovered from the appellant. The TLO says that during his personal search an amount of Rs.2978/- was also recovered, this admittedly representing the municipal charges collected by him as part of his official duties at the

pound. There is a whole a lot of confusion as to whether the three currency notes (Ex.P-1 to P-3) had been recovered along with rest of the money (Rs.2978/-) or such recoveries were effected separately, one after the other. It is in this context that some contradictions assume significance. While the TLO would say that the three currency notes (Ex.P-1 to Ex.P-3) were recovered from the ticket pocket (the inner pocket) of the trousers of the appellant, the rest of the money having been found during subsequent personal search, PW-1 expressed ignorance on this issue. PW-3, the shadow witness was also not clear about the recovery of the money during personal search. It appears unnatural that the first search would reveal possession of only the bribe money and after such recovery had been effected, the personal search (for the purpose of arrest) would bring out larger amount of money. The sequence of events, as set out in the prosecution case, evoke uneasy feeling as to its credibility, particularly when two crucial witnesses mentioned above are not very sure about the two separate recoveries. This discrepancy is of import as the larger money concededly represented official collections.

11. There is no doubt that it was part of official duties of the appellant to collect the municipal charges respecting the cattle which had been impounded prior to release to their rightful owner. The trial judge seems to have proceeded on the assumption that the detention of the cow itself was illegal. If so, the appellant cannot be held responsible for such act as it would be municipal official that had brought the cow to the cattle pound for detention who would be

accountable. No effort has been made to investigate the case from this perspective. Be that as it may, it was part of the duty of the appellant to demand the deposit of municipal charges at the time of release of the cattle. The possibility that the money which was demanded by the appellant, as spoken about by PW-3, being the municipal charges cannot be ruled out. The reference to the presumption under Section 20 of the Prevention of Corruption Act, 1988 by the Special Judge in the impugned judgment, in these circumstances, is erroneous because it is based on the unfounded inference that the money received was other than what could be legally asked for.

12. For the foregoing reasons, the impugned judgment and order on sentence are set aside. Benefit of doubts are given to the appellant. He is acquitted. The appeal is disposed of accordingly.

R.K.GAUBA, J.

MAY 23, 2019

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