

Darshan Lal vs The Delhi Administration on 20 November, 1973

Equivalent citations: AIR1974SC218, 1974CRILJ307, (1974)3SCC595, 1974(6)UJ36(SC), AIR 1974 SUPREME COURT 218, (1974) 3 SCC 595, 1974 SCC(CRI) 73, 1974 2 SCJ 236, 1974 MADLJ(CRI) 486, 1974 CURLJ 198

Bench: S.N. Dwivedi, Y.V. Chandrachud

JUDGMENT

Dwivedi, J.

1. It is an appeal against the judgment of the Delhi High Court affirming the judgment of the Special Judge. By his judgment the Special Judge has convicted the appellant under Section 5(2) of the Prevention of Corruption Act and Section 161 I.P.C. and sentenced him to 1 1/2 years rigorous imprisonment under each count. The two sentences are to run concurrently.

2. Broad facts of the case are these; The appellant is a police constable. At the relevant time he was working in the Tees Hazari Police Post. Niranjana Lal, complainant, then was working as a stamp vendor in the nearby court-compound. Some complaints were made against him for overcharging his customers on the sale of stamps. These complaints were made in the Tees Hazari Police Post. In that connection the appellant had recorded some evidence. Niranjana Lal complained to Sri Harnaik Singh, Deputy Superintendent of police, Anti-corruption Branch, that the appellant was demanding from him a bribe of Rs. 100/-. Sri Harnaik Singh decided to lay a trap to catch the appellant red-handed. So Anand Behari and Satish Chandra Kwatra were sent for by him to serve as witnesses. They were employed as clerks in the Deputy Commissioner's Office, Niranjana Lal gave a currency note of Rs. 100/- proposed to be handed over to the appellant as bribe. The Deputy Superintendent of Police noted its number in the presence of the witnesses and gave certain directions to them. The appellant went to Niranjana Lal at 4.30 p.m. and inquired from him whether he has arranged for the money. When Niranjana Lal replied in the affirmative, he said that he would take the money from him while returning from duty. He came again at 5.30 p.m. and asked Niranjana Lal to accompany him to the Bus stop at the Kashmere Gate. There the currency note of Rs. 100/- was given to him by Niranjana Lal. Satish Chandra gave a signal to the police. On smelling a police raid the appellant threw away the note from the right pocket of his pant. Satish Chandra picked up the note from the ground and handed it over to the Deputy Superintendent of Police. The note was seized under recovery memo.

3. The appellant has denied that he received any note from Niranjana Lal. He added that "while he was going from the police post to the Bus Stop, Niranjana Lal met him near the tank in front of the Central Hall. On the way he tried to pass the bribe money, but did not succeed. When we reached the Bus stop, Niranjana Lal threw the currency note on the ground."

4. The prosecution examined Niranjana Lal, Anand Behari Lal, Satish Chand Kwatra and Sri Harnaik Singh, Deputy Superintendent of Police to prove the acceptance of bribe by the appellant from Niranjana Lal. The Special Judge has relied On their evidence and has held that the appellant did accept the currency note of Rs. 100/- from Niranjana Lal. On appeal, the High Court has also relied on the evidence of the said witnesses and has agreed with the findings of the Special Judge.

5. Normally this Court does not interfere with the concurrent finding of facts recorded by the courts below. But counsel for the appellant has drawn our attention to certain important aspects of the case which have either escaped the attention of the courts below or have not received due emphasis. Admittedly, the note was not recovered from the person of the appellant. According to the prosecution the appellant had thrown away the note on the ground after taking it out from the right pocket of his pant on his noticing the arrival of the Deputy Superintendent of police. Second, the courts below have overlooked an important statement in the evidence of Sri Harnaik Singh, Deputy Superintendent of Police,. In his cross-examination he said; "When I searched the person of the accused and found that he did not carry the currency note in question on his person, the punch witness produced the note before me which I took into possession. In his examination-in-chief he had said; "Satish Chandra gave me the signal and I reached there. I gave my identity to the accused and searched his person. The witness Satish Chander picked up the hundred rupee note from the ground, which was alleged to have been thrown by the accused, and I took it into possession. These two statements are suggestive of the following inference. (1) He did not witness the passing of the note from Niranjana Lal to the appellant: (2) it is doubtful that he saw the note lying on the ground; (3) as soon as he reached the place of occurrence, he started searching the person of the appellant. On search he did not find the incriminating currency note on his person; and (4) after he had finished the search, Satish Chandra produced before him the incriminating currency note. If the note were really lying on the ground, Satish Chandra would ordinarily point it out to the Deputy Superintendent of police and ask him to pick it up and seize it. Third, Satish Chandra has deposed "I made the signal and Deputy Superintendent of Police came to the spot. But before the person could be searched, the accused threw the note on the ground. I picked up the note and produced it before the Deputy Superintendent of police. He seized it. "This statement suggests that Satish Chandra had picked up the note from the ground and produced it before the Deputy Superintendent of Police before the search had finished. Fourth, according to the prosecution, an offer of bribe was made by Niranjana Lal at two places. At first it was offered at 4.30 p.m. at the place where he works as a stamp vendor. It was offered again at the Bus Stop. Evidence about the first offer consists of the statements of Niranjana Lal and Anand Behari Lal. But Anand Behari Lal was declared hostile. Niranjana Lal is a partisan witness. As stated earlier, complaints against him were being investigated by the appellant. He had recorded some statements in that connection. So Niranjana Lal must have borne a grudge against the appellant. The only other witness is Satish Chandra. He does not speak about the first offer at all. There is thus no independent reliable corroboration of the statements of Niranjana Lal and Anand Behari Lal as regards the first offer. Lastly, in this background, it was proper to look for unimpeachable evidence as to the passing of the currency note from Niranjana Lal to the appellant. We have already indicated certain important circumstances which cast doubt on that story.

6. Having regard to all these circumstances, we think it is a fit case where the courts below should have required independent and trustworthy corroboration of the evidence of Niranjana Lal and

Satish Chandra who had laid the trap. In *Ram Prakash Arora v. The State of Punjab* this Court, speaking about the evidence of trap witnesses, observed;

(They) were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same way as that of any interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.

As there is no such corroboration, the appellant should be given the benefit of doubt. So the appeal is allowed. The conviction and sentence of the appellant are sent aside. Bail bonds are discharged.