

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

+ **CRL.A. 261/2003**

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Reserved on: 14th March, 2013
Decided on: 20th May, 2013

K.LAL

..... Appellant

Through Mr. Pramod Kr. Dubey, Mr. Amit
Singh Rathore, Mr. Hemant Shah, Mr.
Rohit Gupta, Mr. Suksham Chauhan,
Mr. Shiv Chopra, Mr. Sourabh, Advs.

versus

C.B.I.

..... Respondent

Through Mr. P.K. Sharma, SC with Mr.
A.K.Singh, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant impugns the judgment dated 26th April, 2003 convicting the Appellant for offence punishable under Section 12 of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 28th April, 2003 directing him to undergo rigorous imprisonment for a period of five years with a fine of Rs. 20,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

2. Learned counsel for the Appellant contends that malafide prosecution has been lodged against the Appellant to wreck vengeance as the Appellant had made complaint against one DSP of CBI namely Shri M.S. Bisht for demanding Rs. 10 lakhs as bribe, which fact has been duly proved by DW14

Inspector D.S. Chauhan. A perusal of evidence on record shows that the case of the prosecution is highly improbable and absurd. PW1 the complainant has categorically stated that the complainant used to often go to Shimla to the house of the Appellant in relation to investigation and there was no offer of bribe when he went to the house of the Appellant. According to the learned counsel for the Appellant it defies all logic that the Appellant did not offer bribe to the complainant PW1 when he came to his house but offered the same while sitting at the CBI Headquarters, CGO complex, Delhi. It is the case of the prosecution that in March 1996 one Amar Jeet approached the complainant and offered him a bribe to help Ms. Shashi Prabha Sharma in the case and the investigation going against him, however no FIR has been registered against the said Amar Jeet Singh and has instead been cited as a witness in the present case as PW19 in the charge-sheet though never examined before the Trial Court. The motive alleged is wholly unbelievable as it is stated that the Appellant was offering money to PW1 so as to link the alleged properties in the name of Ms. Sharma in the case against her regarding disproportionate assets to the Appellant, especially when Ms. Shashi Prabha Sharma had already owned the said properties by filing an application before the CBI Court.

3. It is further contended that the allegations against the Appellant are that on 10th April, 1996 he made a phone call and repeated the offer which conversation was duly tape-recorded and he again sought help to link the properties in the name of Ms. Sharma to be owned by the Appellant. The said tape-recorded conversation has neither been proved to be in the voice of the Appellant nor it has been proved that there was no interpolation/

tampering with the tape-recorded version. As per the evidence on record on 8th May, 1996 the investigating officer along with the other witnesses went to Tihar Jail to take the sample voice and finger prints of the Appellant. However, the Appellant refused to give the same and stated that he would consult his lawyer before giving the samples. Though PW13 has stated that he had again visited Tihar Jail on 9th May, 1996 when the Appellant refused to give the sample voice and finger prints on the same ground, however no memo of the refusal on 9th May, 1996 has been prepared. Thus, it is evident that the investigating officer did not visit Tihar Jail on the 9th May, 1996. As regards refusal of 8th May, 1996 no adverse inference can be drawn as the Appellant had stated that he would like to consult his lawyer before giving the samples which was both his statutory and constitutional right. PW8 the Senior Scientific Officer, CFSL who examined the tape-recorded conversation has nowhere stated that there was no interpolation/ tampering in the cassette, hence the tape-recorded version cannot be looked into. Even assuming that the tape-recorded version is looked into, from the same it is clearly evident that the Appellant has never offered a bribe and the said offer is in fact coming from PW1 the complainant.

4. There is no eye-witness to giving of currency notes by the Appellant to PW1 the complainant. Even as per the prosecution case, the acceptance was to be made in the restaurant where other witnesses were present, however PW1 stated that he took the money in the parking lot. The site plan does not show where the acceptance took place and only reveals the place where the alleged recovery took place from the briefcase of PW1 inside the restaurant. The actual spot of incidence was the parking place which has not

been shown in the site plan. PW3 the then Constable G.C. Dutta has been introduced as an eye-witness purportedly standing on the gate of the restaurant, however in the site plan his presence has also not been shown. It is thus evident that this witness has been introduced later on. Further one witness states that the envelope was of white colour and the other witness does not identify the envelope. The prosecution itself has given different version of the trap. In the remand application filed, the complainant's case is that the Appellant was apprehended inside the restaurant while offering the bribe whereas in the affidavit of the complainant Ex.PW1/DB before the High Court of Himachal Pradesh it was stated that he caught him red-handed while giving the money and in the Court another story has been put up. PW1 has been duly confronted with all these documents which clearly show material contradictions. In case remand itself is sought on wrong facts, entire investigation is illegal and the fruits of said investigation are liable to be set aside. Constable G.C. Dutta PW3 and Constable Sukhpal have not signed the pre-trap memo due to which a doubt is cast on their presence. Further Constable Sukhpal has also not been examined before the Trial Court as a witness. PW1 has clearly stated that the site plan was not prepared at his instance and it is thus not clear at whose instance the site plan was prepared. Further the story regarding motive is also contradictory. In the application filed for cancellation of bail of the Appellant Ex.DG the stand taken by PW1 was that he offered bribe to influence PW1 with regard to the case of disproportionate assets pending against him. No independent person from the hotel or the parking lot including its care taker were associated. PW2 states that the number of GC notes were not noted, however PW3 who was exaggerating the case on every point says that the

numbers were noted. No such document was exhibited in the Court, hence the version of PW3 is belied on all counts. PW2 V.K. Mittal stated that his statement was recorded on the same day i.e. 10th April, 1996, however there is no statement on record of PW2 of 10th April, 1996 and the statement supplied to the Appellant is dated 16th April, 1996. The presence of PW3 G.C. Dutta at the spot is belied as he has neither signed the envelope nor signed a single document. No document shows the presence of PW3 on the spot. There is no evidence on record to prove the charges framed against the Appellant and thus he be acquitted of the charges framed. In the alternative, it is prayed that Appellant has been awarded maximum sentence and same be reduced. Reliance is placed on *Peoples Union for Civil Liberties Vs. Union of India* (1997) 1 SCC 301; *K.L.D. Nagasree Vs. GOI* AIR 2007 AP 102; *Yusufali Esmail Vs. State of Maharashtra* AIR 1968 SC 14; *Ram Singh Vs. Col. Ram Singh* AIR 1986 SC 3 Crl.J. 484; *Nilesh Dinkar Paradkar Vs. CBI* (2011) 4 SCC 143; *Nepal Singh Ravat Vs. CBI* 2011 (3) JCC 2278; *Banarasi Dass Vs. State of Haryana* (2010) 4 SCC 450; *Roshan Lal Saini Vs. CBI* 2011 (1) JCC 102; *Bhagwan Singh Vs. State of Rajasthan* (1976) 1 SCC 15 and *Prem Raj Meena Vs. CBI* CRL.A. 963/2008 decided by this Court on 21st February, 2011.

5. Learned Spl. PP for the CBI submits that since the Appellant refused to give the voice sample on 8th May, 1996 and 9th May, 1996 and in the absence of voice sample, the voice of the Appellant has been identified by PW9 Shri Liak Ram Sharma who was working as the stenographer of the Appellant and was thus conversant with his voice. Due to the refusal to give voice sample and finger prints, adverse inference is required to be drawn

against the Appellant. As regards interpolation in the cassettes, since PW8 the expert has not been cross-examined on this aspect and even though he has not stated anything in his examination-in-chief and the report, it will be presumed that the Appellant has not challenged the genuinity of the tape-recorded conversation. As regards the trap, the evidence of PW1 is duly corroborated by PW3 who is the other eye-witness. The prosecution has proved the motive behind the bribe. In case the Appellant was innocent then he would not have come to either the CBI office or met the complainant PW1 outside the restaurant. Version of PW1 is fully corroborated by the transcript. PW2 has also supported the version of PW1 with regard to recovery proceedings in the hotel. There is no discrepancy with regard to the colour of the envelope. PW4 Shri M.C. Joshi DSP the Trap Laying Officer has explained why the site plan of the hotel only was prepared. PW11 has corroborated the version of PW1 to the effect that Appellant came to the CBI office on 9th April, 1996. In view of the fact that there is sufficient evidence on record and the prosecution has proved its case beyond reasonable doubt, the appeal be dismissed.

6. Heard learned counsel for the parties. Briefly the exposition of facts is that the Appellant an officer of Indian Administrative Services is facing trial under Section 13(1)(e) read with 13(2) of the PC Act being RC No. 3(A)/90-ACU-II-CBI-ND. During the search certain documents relating to the properties were found in the name of one lady Ms. Shashi Prabha Sharma Manager, Punjab National Bank posted at Ahmedabad at the relevant time. Since CBI suspected the said Ms. Shashi Prabha Sharma to be also in possession of assets disproportionate to the known sources of her income,

another FIR vide RC No. 1(A)/95-ACU-II-CBI-ND was registered against her under Section 13(2) read with 13(1)(e) of the PC Act. The case of the prosecution against the Appellant in the present appeal arising out of RC (1)(A)/96-ACU-IX/N.Delhi is that the complainant PW1 Inspector V.M. Kumar was the investigating officer in the case of disproportionate assets against Shashi Prabha Sharma. In March-April 1996 when he went to Shimla for investigation, the complainant was contacted by one Amarjit Singh a property dealer by profession to accept some money and write a report so as to save Ms. Sharma from the allegations. PW1 did not show any interest and rather made it clear that he would work in accordance with law. It is further alleged that about a week before 10th April, 1996 the Appellant made a telephonic call to PW1 asking him to meet outside the office stating that he had something to communicate to him. The complainant is stated to have asked him to come to the office, however the Appellant left his phone number to contact later. On 8th April, 1996 the Appellant again made a call to PW1 and stated that he should meet him outside. The Appellant came on 9th April, 1996 and asked PW1 to close the case of disproportionate assets of Ms. Shashi Prabha Sharma and prepare the supplementary report in such a manner. The Appellant asked him to come outside the office, called PW1 outside the room and stated that he has brought some money for him. As per the prosecution case PW1 declined the offer and the Appellant left his phone number and informed that he was in Delhi up to 15th April, 1996. It is at this stage that the PW1 made a complaint and on 10th April, 1996 he called up the Appellant wherein he again repeated the offer of money which conversation was tape-recorded by PW1. A trap was laid by PW4 DSP M.C. Joshi the Trap Laying Officer wherein he requisitioned two witnesses V.K.

Mittal PW2 and M.M. Kumar. When the trap laying party reached the Sujata Restaurant the place fixed, the TLO along with two independent witnesses and other officers of CBI entered the restaurant at about 6.30 PM and they all occupied different seats distributing themselves on three tables. The case of PW1 is that he noticed the Appellant outside the parking area itself. The Appellant went to him where Appellant offered the money. Though initially PW1 resisted, however then he accepted and kept it in the briefcase and came inside the restaurant with the Appellant. They both occupied a table and thereafter PW1 gave the pre-appointed signal when the Appellant was apprehended and the envelope containing Rs. 30,000/- was recovered from the briefcase of PW1.

7. The contention of learned counsel for the Petitioner merits consideration and no adverse inference can be drawn against him for non-providing of the voice sample. It is the case of the prosecution that on 8th May, 1996 when the investigating officer along with the other witnesses went to Tihar jail to take the sample voice and finger prints of the Appellant, he refused to give the same and stated that he would consult his lawyer before giving the samples. The Appellant only sought to avail his constitutional right and thus no adverse inference can be drawn for the refusal on 8th May, 1996. Though PW13 has stated that he again visited Tihar Jail on 9th May, 1996 when the Appellant refused to give the sample voice and finger prints on the same ground, there is no material placed on record that in the meantime access to legal aid was given to the Appellant while in custody. Further no memo of refusal dated 9th May, 1996 has been prepared. No other witness has deposed about the refusal of the Appellant to

give voice sample on 9th May, 1996. Thus, there is no evidence on record to show that the investigating officer visited Tihar Jail on 9th May, 1996 besides his own statement. Further PW8 Dr. Rajender Singh, Senior Scientific officer, Physics, CFSL does not say that on the cassette marked as Ex. 2 there was no interpolation and the same was intact. Thus even if PW9 Liak Ram Sharma who was working as the stenographer of the Appellant and identified his voice, the tape-recorded conversation cannot be considered in evidence. In *Ram Singh & Ors. v. Col. Ram Singh 1985 (Supp) SCC 611* it was held-

“32. Thus, so far as this Court is concerned the conditions for admissibility of a tape-recorded statement may be stated as follows:

- “(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.
- (2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence — direct or circumstantial.
- (3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
- (4) The statement must be relevant according to the rules of Evidence Act.
- (5) The recorded cassette must be carefully sealed and kept in safe or official custody.

- (6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.”

8. A perusal of the evidence on record shows that the only eye-witness to the transaction was PW3 besides PW1 the complainant. PW1 the complainant in the present FIR states that on 9th April, 1996 when the Appellant came and requested that the assets shown in the name of Shashi Prabha Sharma be shown in his name, two of his colleagues Shri A.B. Chaudhari and Shri Suman Kumar both Inspectors were present in his office room. However, these witnesses have not been examined to corroborate the version of PW1 with regard to the initial offer made. PW1 in his statement has clearly stated that after the trap was laid his pocket was checked and it was found to contain cash of Rs. 90/- only. In the briefcase his personal diary, telephone book and key chain were available. The memo in this regard was prepared as Ex.PW1/C, though the memo did not bear his signature. When he reached Sujata hotel, he noticed the Appellant waiting in the hotel by the side of his car in the parking. Seeing the Appellant, he took deviation and proceeded towards the Appellant. Other members of the raiding team went inside the Sujata restaurant. In the parking area, PW1 and the Appellant exchanged wishes. The Appellant was looking circumspect and looking around. The Appellant went to his car, opened the left front door of the car and took out one white envelope and came to PW1. When the Appellant extended the envelope to him, PW1 asked him to wait and suggested that they should go inside the hotel and have tea. On this the Appellant stated that they could discuss the matter and in case PW1 could help him he may pay otherwise not. The Appellant further stated that he had

to go somewhere and he did not wish to go inside the restaurant. On the Appellant asking PW1 to take the money, PW1 took the same and when the Appellant was about to leave he asked him to stop and kept the envelope in the briefcase. Thereafter PW1 told the Appellant “*Now you believe me, I have taken the money, come inside the restaurant*”. He went inside restaurant, sat with the Appellant and after taking a few sips of coffee, he gave the signal, when DSP Joshi and other team members came to the table and confronted the Appellant. On opening the briefcase white packet containing Rs. 30,000/- i.e. 60 GC notes of Rs. 500/- denomination were taken out which were seized as case property.

9. This version of PW1 is corroborated by PW3 H.C. G.C. Dutta. PW3 states that at around 6.30 PM the trap team along with two panch witnesses went inside Sujata hotel. Inspector V.M. Kumar was roaming around in the parking place. One red maruti car was already parked in the parking place. Inspector V.M. Kumar went up to that car where the Appellant was present. The Appellant opened the driver’s door of the car and took out one white envelope from the car. The Appellant extended the said envelope towards PW1, who was initially reluctant to take the same but after about one minute the Appellant managed to give the said envelope to PW1 who accepted the same with his right hand and kept it in his briefcase. Thereafter the Appellant and PW1 went inside the Sujata hotel and he stayed outside. PW3 H.C. G.C. Dutta was called inside after 15-20 minutes by Dheeraj Khetarpal when he along with Sukhpal Constable went inside. He noticed that the members of the trap team had apprehended the Appellant and in his presence Inspector V.M. Kumar took out one white envelope from his

briefcase and gave it to PW2. The contention that PW3 stated that numbers of G.C. notes were noted appears to be a typographical error because in his statement PW3 stated in my presence numbers of recovered GC notes were noted anywhere. The frame of the sentence itself shows that inadvertently the word 'not' after the word 'were' is missing. In cross-examination the testimony of this witness is sought to be discredited on the count that G.C. notes and recovery memo do not bear his signature. The recovery was witnessed by a number of witnesses. Thus, it was not required to be signed by each witness. Hence, the G.C. notes and recovery memos not bearing the signatures of the PW3 HC G.C. Dutta will not be fatal to the prosecution case.

10. The version of PW1 is further corroborated by PW4 Shri M.C. Joshi, DSP who conducted the recovery proceedings. The recovery memo bears the signature of PW4. He also identified the case property i.e. a white envelope Ex.P1 containing 60 G.C. notes of Rs. 500/- denomination Ex.P5 to P64. Merely because one witness has stated that envelope was white and the other stated that it was cream colour, the same would not belie the otherwise cogent testimony of the witnesses. Non-preparation of the site plan of the parking place where the Appellant handed over the money to the complainant would not affect the credibility of the prosecution case. The contention that PW3 H.C. G.C. Dutta has not been shown in the site plan is also fallacious as PW4 clearly stated that the site plan of the restaurant was prepared where recovery was made and PW3 G.C. Dutta in his testimony stated that he later on was called inside the restaurant.

11. Learned counsel for the Appellant has fought with the contradiction that in the remand application filed by the complainant it is stated that the Appellant was apprehended inside the restaurant while offering the bribe whereas in the affidavit of the complainant Ex.PW1/DB before the High Court of Himachal Pradesh it was stated that he was caught red-handed while giving money. A perusal of the remand application shows that in para 3 it was stated that on the complaint of Shri V.M. Kumar case was registered and the Appellant K. Lal was caught red-handed at Sujata Hotel Pragati Vihar, New Delhi while he delivered a sum of Rs. 30,000/- to Shri V.M. Kumar in the presence of two independent witnesses. Thus the word used is not 'inside the restaurant' but 'at Sujata restaurant' which would also include its parking place. Thus, there is no inconsistency or contradiction in the facts on which the remand was sought and thus the contention that the entire investigation is illegal and the fruits of the said investigation are liable to be set aside is fallacious. The contention that there are contradictions as to the stand taken by PW1 in the application for cancellation of bail inasmuch as bribe was offered to influence PW1 with regard to case of disproportionate assets pending against him is also liable to be rejected. Indirectly the Appellant was stating that the disproportionate assets shown in the name of Ms. Shashi Prabha Sharma be treated as his and they be included in his disproportionate assets. Thus in a way offer of the Appellant was with regard to his case as well.

12. Thus, even excluding the evidence of tape recorded conversation, the prosecution has been able to prove its case beyond reasonable doubt against the Appellant. The impugned judgment of conviction dated 26th April, 2003

convicting the Appellant under Section 12 of the PC Act is upheld. However, learned Special Judge has directed the Appellant to undergo Rigorous Imprisonment for a period of 5 years with a fine of Rs.20,000/- which in my opinion is erroneous. The facts of the case do not warrant maximum punishment as awarded by the learned Trial Court. The learned Trial Court failed to consider the mitigating circumstances. The Appellant is 70 years of age as he attained the age of superannuation in October, 2002 and is a heart patient, who has undergone angioplasty twice. In *B.C. Goswami v. Delhi Administration*, AIR 1973 SC 1457 it was held that too lenient as well as too harsh sentences lose their efficaciousness, while one does not deter and the other may frustrate thereby making the offender a hardened criminal. In *Surain Singh v. State of Punjab*, AIR 2009 SC 1397 after noting the menace of corruption, it was held that in the peculiar facts of the case the minimum prescribed custodial sentence would suffice. The fine has already been paid. Thus, interest of justice would be met by modifying the sentence of imprisonment for a period of six months, which is the minimum sentence prescribed.

13. The appeal is disposed of. The bail bond and surety bond are cancelled.

(MUKTA GUPTA)

MAY 20, 2013
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