

13 February 1979

Cr.A. No. 202 of 1974.

The Judgment was delivered by: FAZAL ALI, J.

1. This appeal by special leave is directed against the judgment of the Delhi High Court dated February 11, 1974 upholding the conviction and the sentence imposed on the appellant. The appellant was convicted u/s. 5(2) of the Prevention of Corruption Act and S. 161 IPC, read with S. 34 and was sentenced to two years' RI under each of the sections and a fine of Rs. 200 in default two months' RI. The sentences were to run concurrently. The facts of the case have been detailed in the judgment of the High Court and that of the Special Judge and it is not necessary for us to repeat them over again.

2. It appears that a FIR was registered at P. S. Panipat against Prem Nath Sharma and his companions under Sections 363, 366, 342 and 376 IPC on the statement given by Meena Kumari aged about 19 years. The case was investigated by Davender Singh S.I. alongwith P.I. Ram Narain and Suraj Mal who were attached to Police Station, Panipat. These three persons came to Delhi and are alleged to have met Prem Nath Sharma and demanded bribe of Rs. 2000 for helping them in the case and trying to get them acquitted. It is stated that as the complainant expressed his inability to pay such a huge amount the deal was ultimately struck at Rs. 1000 out of which Rs. 350 was to be paid on September 1, 1969 and the rest after some time. According to the prosecution case out of the sum of Rs. 350, Rs. 150 was to be paid to Davender Singh and Rs. 100 each to Ram Narain and Suraj Mal appellant. After the final parleys regarding the payment of the bribe had been settled, the complainant Prem Nath Sharma contacted D.S.P. Katoch and informed him of the circumstances under which the bribe was demanded by the three accused persons. We might mention here that all the three accused persons viz. Davender Singh, Ram Narain and the appellant, were tried by the Special Judge but Ram Narain was acquitted on the ground that there was no sufficient evidence against him and was given benefit of the doubt. The appellant and Davender Singh were sentenced by the Special Judge as indicated above.

3. The High Court, however, acquitted Davender Singh on the ground that the sanction was not valid. It appears that the three accused persons had accepted bribe at House No. 16/1, Arya Samaj Road, New Delhi and the payment of bribe was witnessed by PWs 6, 8 and 9 i.e. Shiv Narain Gupta, Prem Nath Sharma and Sham Sunder. In the Court all these witnesses appear to have resiled from the statement which they made in their examination-in-chief and all of them stated that Ram Narain refused to accept the bribe. The defence of the appellant was that he was falsely implicated and nothing was recovered from him nor did he make any demand for bribe. The Special Judge on the basis of the evidence led before the Court held that the evidence was extremely shaky and unconvincing and was not sufficient to convict Ram Narain but nevertheless the trial Court convicted the appellant on that very evidence. In upholding the conviction of the appellant the High Court completely overlooked the fact that the very evidence on which the conviction of the appellant was based, had been rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case failed.

4. In other words, the position was that while PWs 6, 8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the recovery of the money, regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. For these reasons, therefore, when the Special Judge disbelieved the evidence of PWs 6, 8 and 9 in regard to the complicity of Ram Narain, it was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for which the said evidence was disbelieved regarding the complicity of Ram Narain. If the witnesses draw no distinction in the examination-in-chief regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could not be believed with respect to the other.

5. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible. Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mal. Although, in his statement at page 71 of the paper-book, the complainant has clearly stated that all the three accused including the appellant had met him and demanded bribe of Rs. 20

00, the appellant having demanded Rs. 100, yet in the report which he lodged before Mr. Katoch, there is no mention of the fact that the appellant at any time demanded any bribe at all. Even the presence of the appellant at the time when the demand was made by Davender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the S.H.O. Davender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly from the complainant.

6. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not understandable why this fact was not mentioned in the report which the complainant submitted to the D.S.P. Katoch and which is the FIR constituting the evidence. We have perused the statements of PWs 6, 8 and 9 and we find that while in the examination-in-chief they have tried to implicate all the three accused persons equally without any distinction, in their cross-examination, they have tried to save Ram Narain and made out a different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the appellant. Mr. Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bushshirt of the appellant and that by itself is sufficient for the conviction of the accused.

7. In our opinion, mere recovery of 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. Moreover, the appellant in his statement u/s. 342 has denied the recovery of the money and had stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement under Section 342, CrPC. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal, set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds.

Appeal allowed.