

K.L. BAKOLIA

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v.

STATE THROUGH DIRECTOR, C.B.I.¹¹⁴

(Criminal Appeal No. 797 of 2015)

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MAY 15, 2015

[T. S. THAKUR AND R. BANUMATHI, JJ.]

Prevention of Corruption Act, 1988: s.7 and s.13(2) r/ w s.13(1)(d) – Demand and acceptance of illegal gratification – Conviction of accused-appellant – Justification – Held: In view of concurrent findings of the courts below that there was evidence to show that there was a demand and the complainant paid the bribe amount to the appellant who accepted the same, interference with the conviction order not called for – However, since the incident took place 19 years ago and the appellant being 74 years old and having undergone the agony of criminal proceedings for all these years, sentence imposed upon him reduced from 4 years RI to 1 year RI in the interest of justice – Sentence / Sentencing.

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Partly allowing the appeal, the Court

HELD:1. For coming to the finding of guilt for the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988, firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused received illegal gratification. Courts below recorded concurrent findings that there was evidence on record to substantiate the fact that there was a demand and the complainant paid the bribe amount to the appellant who has accepted the same. Courts below also recorded concurrent findings that there is no reason to discredit the testimony of the complainant (PW4) and

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A Inspector of Police (PW7). Defence plea of the accused that the currency notes were put under the sofa without his knowledge was rightly rejected by the courts below. Conviction of the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of
B Corruption Act, 1988 is unassailable. [Para 9] [205-H; 206-A-C]

2. In this appeal, notice was issued only limited to the question of sentence. The appellant was sentenced
C to undergo rigorous imprisonment for four years on each count of conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of
D Corruption Act, 1988 and the sentence imposed was ordered to run concurrently. The incident had taken
E place in the year 1996 about nineteen years ago and for all these years the appellant has undergone the agony of criminal proceedings. Keeping in view the passage of time and that the appellant is now aged seventy four years, while upholding the conviction of the appellant,
interest of justice would be met by reducing the sentence of rigorous imprisonment of four years to one year rigorous imprisonment. [Para 10] [206-D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal
F Appeal No. 797 of 2015.

From the Judgment and Order dated 11.07.2013 of the High Court of Delhi at New Delhi in CrI. Appeal No. 207 of 2003.

G Vibha Datta Makhija, Suirender Kumar Gupta, Mayank Yada, Disha Singh for the Appellant.

Dhruv Sheoram, M. Khairati, Kumar Parimal, B. V. Balaram Das for the Respondent.
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The Judgment of the Court was delivered by A

R. BANUMATHI, J. 1. Leave granted.

2. This appeal assails the correctness of the judgment passed by the High Court of Delhi in Criminal Appeal No.207/2003 dated 11.7.2013, in and by which, the High Court confirmed the conviction of the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and the sentence imposed on him. B

3. Shamsher Singh-complainant (PW4) is the sole proprietor of M/s. Colonel's Security Services working on contract for providing security staff to Indian Agricultural Research Institute (IARI), Pusa, New Delhi on annual basis from 1.03.1993 which was subsequently renewed from year to year basis upto 31.03.1996 and the contract was due for renewal on 1.04.1996. Complainant stated that on 2.04.1996 when he contacted the appellant for renewal of his contract and payment of his outstanding dues, the appellant demanded Rs.50,000/- as a bribe for renewal of contract and when complainant stated that he was not in a position to pay Rs.50,000/-, the bribe amount was reduced to Rs.20,000/- and the complainant was asked to meet the appellant on 3.04.1996 and pay the bribe amount. Complainant was not interested in paying the bribe and on the same day he went to CBI office and narrated the facts. The complainant was asked to come on the next day with Rs.20,000/- by CBI officer. In the evening of 3.04.1996, the appellant rang up the complainant and inquired him as to why he did not contact him on the said date, for which, the complainant replied that he would come to the residence of the appellant on the next day between 1.00 to 2.00 p.m. C
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4. On 4.4.1996, the complainant visited CBI office and he was asked to submit his complaint in writing. Based on the H

A complaint, FIR was registered in RC No.24(A)/96-CBI/ACB/N.Delhi under Section 7 of the Prevention of Corruption Act, 1988. Raiding party was constituted and pre-trap proceedings were conducted and Rs.20,000/- consisting of forty currency notes of rupees five hundred denomination each treated with phenolphthalein powder were given to complainant. As the complainant alone was supposed to go and contact the appellant, a two piece recorder consisting of recorder and mic-cum-transmitter along with audio cassette was put in the pocket of the complainant. A further direction was given to the complainant to give signal to the trap party by saying '*Gin Leejiye*'. -

5. The complainant and the trap party went to Pusa Complex at about 1.45 p.m. The complainant after switching on the mic-cum-transmitter went inside the house of the appellant who welcomed him. The appellant inquired from the complainant '*Laye Ho*' and the complainant replied in the affirmative. When complainant gave the bribe amount of Rs.20,000/- to the appellant, he raised the cushion of the sofa and asked the complainant to keep the money under the cushion of the sofa. As the complainant insisted that the money should be handed over in the hand, the complainant took the tainted money in his right hand and kept it under the cushion of his sofa. The complainant gave the signal '*Gin Leejiye*' where after the CBI officials rushed into the drawing room of the appellant and questioned him about the bribe money and the appellant was perplexed and kept mum. On instructions from the officer, PW6 lifted the cushion of the sofa and the trap money was recovered. Wash of both the hands of the appellant in the sodium carbonate solution turned pink. Trap laying officer prepared the seizure memo and completed other formalities of trap proceedings. After completion of investigation, chargesheet was filed against the appellant under Section 7 and Section 13 (2) read with Section 13 (1) (d) of the Prevention

of Corruption Act, 1988 (for short 'the Act'). A

6. To bring home the guilt of the accused, the prosecution has examined ten witnesses. Upon consideration of the evidence, learned Special Judge convicted the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act and sentenced the appellant to undergo rigorous imprisonment for a period of four years on each count with a fine of Rs.500/- each with default clause. Aggrieved by the conviction, the appellant filed appeal before the High Court of Delhi and vide impugned judgment, the High Court confirmed the conviction of the appellant and also the sentence and the fine imposed on him. This appeal assails the correctness of the same. B C

7. We have heard Ms. Vibha Dutta Makhija, learned Senior Counsel for the appellant, who submitted that the initial demand was not proved by the prosecution which is evident from the self-contradictory version of the complainant and in the light of contradictory statement of witnesses, recovery has become highly doubtful and the courts below erred in convicting the appellant for the alleged receipt of illegal gratification. The learned counsel *inter-alia* submitted that the occurrence was in the year 1996 and the appellant is now aged seventy four years and prayed for leniency. D E

8. Per contra, learned counsel for the respondent contended that the prosecution has proved the demand and acceptance of the illegal gratification by the appellant and upon appreciation of evidence, courts below rightly convicted the appellant and the concurrent findings warrant no interference. F G

9. For coming to the finding of guilt for the offence under Section 13(1)(d) of the Act, firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused received illegal gratification. Courts below recorded H

A concurrent findings that there was evidence on record to substantiate the fact that there was a demand and the complainant paid the bribe amount to the appellant who has accepted the same. Courts below also recorded concurrent findings that there is no reason to discredit the testimony of the complainant (PW4) and Inspector of Police-A.K. Kapoor (PW7). Defence plea of the accused that the currency notes were put under the sofa without his knowledge was rightly rejected by the courts below. Conviction of the appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act is unassailable.

10. In this appeal, notice was issued only limited to the question of sentence. The appellant was sentenced to undergo rigorous imprisonment for four years on each count of conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act and the sentence imposed was ordered to run concurrently. The incident had taken place in the year 1996 about nineteen years ago and for all these years the appellant has undergone the agony of criminal proceedings. Keeping in view the passage of time and that the appellant is now aged seventy four years, in our view, while upholding the conviction of the appellant, interest of justice would be met by reducing the sentence of rigorous imprisonment of four years to one year rigorous imprisonment. Application for exemption from surrendering was allowed by the Chamber Judge on 20.09.2013, which was subsequently continued until further orders by this Court's order dated 25.11.2013. Necessary steps be taken forthwith to take the appellant into custody to serve out the remaining part of the modified sentence. Judgment of the High Court is accordingly modified and this appeal is allowed in part.

Bibhuti Bhushan Bose

Appeal partly allowed.

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