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DASHRATH SINGH CHAUHAN

v.

CENTRAL BUREAU OF INVESTIGATION

(Criminal Appeal No. 1276 of 2010)

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OCTOBER 09, 2018

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

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Prevention of Corruption Act, 1988 – ss.7 and 13(2) r/w 13(1) (d) – Conviction under – When not proper – Complainant (PW-1) lodged FIR against the appellant and co-accused, both employees of Delhi Electricity Supply Undertaking (DESU) complaining that appellant demanded bribe – The bribe money was not accepted by the appellant, who asked complainant to give it to the co-accused – Trial court acquitted both the accused of the charge of conspiracy u/s.120-B, IPC however, convicted the appellant for offences u/ss.7 and 13(2) r/w s.13(1)(d) of the 1988 Act – High Court affirmed the judgment of the Trial Court – On appeal, held: When the charge against both the accused in relation to conspiracy was not proved and both the accused were acquitted from the said charge which resulted in acquittal of the co-accused from all the charges under the 1988 Act, a fortiori, the appellant too was entitled for his clean acquittal from the charges under the PC Act – Prosecution failed to prove the factum of acceptance of bribe money by the appellant from the complainant as per the charges framed against him – In order to attract the rigors of ss.7, 13(2) r/w 13(1)(d) of the 1988 Act, the prosecution was under legal obligation to prove the twin requirements of “demand and acceptance of bribe money by the accused”, the proving of one alone but not the other was not sufficient – Appellant entitled for acquittal from the charges framed against him under the PC Act too – Impugned judgment set aside – Conviction and the sentence awarded to the appellant u/ss.7, 13(2) r/w s.13(1)(d) of the 1988 Act by the Courts below set aside.

Allowing the appeal, the Court

HELD: 1.1 The Trial Court, on appreciation of the evidence, held that the prosecution failed to prove the charge of conspiracy under Section 120-B IPC against the appellant and the co-accused

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and accordingly acquitted both of them from the said charge. The co-accused was acquitted from all the charges framed under the Prevention of Corruption Act, 1988. The State neither challenged the clean acquittal of the co-accused and nor challenged the part acquittal of the appellant in the High Court by filing any appeal. This, therefore, attained finality. [Para 23] [920-F-G]

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1.2 When the charge against both the accused in relation to conspiracy was not held proved and both the accused were acquitted from the said charge which, in turn, resulted in clean acquittal of the co-accused from all the charges under the PC Act, a *fortiori*, the appellant too was entitled for his clean acquittal from the charges under the PC Act. It is not the case of the prosecution that the appellant had conspired with another person and even though the identity of the other person was not established, yet the appellant was held guilty for the offence under Section 120-B IPC. [Paras 25, 26] [921-B-D]

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1.3 Once the co-accused so also the appellant stood acquitted in respect of the charge of conspiracy and further the co-accused was also acquitted from the charges under the PC Act, the charges against the appellant must also necessarily fall on the ground. Even assuming that despite the appellant being acquitted of the charge relating to conspiracy and notwithstanding the clean acquittal of the the co-accused from all the charges, the prosecution failed to prove the charge against the appellant under Sections 7, 13(2) read with Section 13(1)(d) of the PC Act. [Paras 27, 28] [921-E-F]

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1.4 It is for the reason that in order to prove a case against the appellant, it was necessary for the prosecution to prove the twin requirement of “demand and the acceptance of the bribe amount by the appellant”. It was the case of the prosecution in the charge that the appellant did not accept the bribe money but the money was accepted and recovered from the possession of the co-accused. In such circumstances, there is no evidence to prove that the appellant directly accepted the money from the Complainant. Since the plea of conspiracy against the appellant and the co-accused failed, it cannot be held that money (Rs.4000/-) recovered from the possession of the co-accused was

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A as a fact the bribe money meant for the appellant for holding him
guilty for the offences punishable under Sections 7, 13(2) read
with 13(1)(d) of the PC Act. It is more so when the benefit of
such acquittal from the charge of conspiracy was given to the
co-accused but was not given to the appellant. [Paras 29, 30]
B [921-G-H; 922-A-B]

1.5 The prosecution, therefore, failed to prove the factum
of acceptance of bribe money of Rs.4000/- by the appellant from
the Complainant as per the charges framed against him. Since in
order to attract the rigors of Sections 7, 13(2) read 13(1)(d) of
C PC Act, the prosecution was under a legal obligation to prove
the twin requirements of “demand and acceptance of bribe money
by the accused”, the proving of one alone but not the other was
not sufficient. The appellant is, therefore, entitled for acquittal
from the charges framed against him under the PC Act too. The
conviction and the sentence awarded to the appellant under
D Sections 7, 13(2) read with Section 13(1)(d) of the PC Act by the
Courts below are set aside and the appellant is set free from the
said charges. [Paras 31-33] [922-C-F]

Bhagat Ram v. State of Rajasthan (1972) 2 SCC 466 :
[1972] 3 SCR 503; *M. K. Harshan v. State of Kerala*
E (1996) 11 SCC 720 – relied on.

Case Law Reference

[1972] 3 SCR 503	relied on	Para 27
(1996) 11 SCC 720	relied on	Para 32

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1276 of 2010

G From the Judgment and Order dated 20.07.2009 of the High Court
of Delhi at New Delhi in CrI. Appeal No. 447 of 2001.

Rishi Malhotra, Adv. for the Appellant.

Ms. Geeta Luthra, Sr. Adv., P. K. Dey, T. A. Khan, Ujjwal Jain,
Arvind Kumar Sharma (for Mukesh Kumar Maroria), Advs. for the
Respondent.

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The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 20.07.2009 passed by the High Court of Delhi at New Delhi in Criminal Appeal No.447 of 2001 whereby the High Court dismissed the appeal filed by the appellant herein and upheld his conviction and sentence awarded by order dated 31.05.2001 passed by the Special Judge, Delhi in C.C. No.53 of 1995 acquitting him of the charge under Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and convicting him for the charges under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PC Act") and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.40,000/- under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act cumulatively, in default of payment of fine, he shall further undergo simple imprisonment for six months.

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2. In order to appreciate the issues involved in this appeal, few facts need mention hereinbelow.

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3. In short, the case of the prosecution is that the appellant was an employee of Delhi Electric Supply Undertaking (DESU). At the relevant time, he was working on the post of Inspector.

4. On 28.03.1995, the complainant-Arun Kumar (PW-1) lodged an FIR under Section 7 read with Section 13(2) of the PC Act against the appellant and another employee of DESU namely, Rajinder Kumar complaining *inter alia* that in January 1995, he applied for installation of an electric connection for his factory and for that purpose he met the appellant in his office where he demanded from him Rs.4000/- for doing the abovesaid work and told him that unless he pays a sum of Rs.4000/- as bribe to him, it is not possible to install the electric connection.

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5. On the basis of the said FIR, the CBI through its Inspector-Mr. Kaul (PW-6) formed a raiding party on 29.03.1995 to implicate the appellant and then reached to his office with one shadow witness Mahinder (PW-2).

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6. On reaching the office, the Complainant told the appellant that he has brought Rs.4000/- as demanded by him. The appellant, however, told the Complainant to give the said money to Rajinder Kumar, who accepted the money from him. No sooner Rajinder Kumar accepted the

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A money, than PW-2 and PW-6 entered in the room and caught Rajinder Kumar with the bribe money.

7. This led to initiation of the prosecution of the appellant and co-accused Rajinder Kumar for commission of the offences punishable under Sections 7, 13(2) and 13(1)(d) of the PC Act read with Section 120-B of IPC in the Court of Special Judge Delhi. The prosecution examined their witnesses to prove the three charges framed against both the accused. The appellant also adduced defense evidence.

8. By judgment dated 31.05.2001, the Trial Court (Special Judge) held that the prosecution failed to prove the case of any conspiracy between the appellant (A-1) and co-accused Rajinder Kumar (A-2) in relation to the offences in question and, therefore, the charge of conspiracy against them under Section 120-B IPC was held as not made out. Both the accused were, therefore, acquitted of the charge of conspiracy under Section 120-B IPC.

D 9. The finding on this issue recorded by the Trial Court in Paras 14 and 16 reads as under:-

E **“14. In the case before us, there is not even slightest evidence about the existence of a criminal conspiracy between A-1 and A-2. Once this had been established, only then we could have read the statement of both the accused, not only against each one of them, but against the other of them and also for proving the existence of criminal conspiracy as such.**

F **16. There is no such situation before us. There are certain statements only. In any case, once conspiracy is not established, even the statement, made by A-1 against A-2 are vice-versa, cannot be read in evidence.”**

G 10. The Trial Court then disbelieved the evidence of the Investigating Officer-Mr. Kaul (PW-6) on the ground that he himself was of a doubtful integrity because the High Court, in one case, had directed registration of a bribe case against him and, therefore, his evidence in this case cannot be relied on (See Para 17 of the judgment of the Trial Court) but the Trial Court believed the evidence of shadow witness (PW-2 - Mahinder Lal) for holding the appellant guilty of the offences punishable under the PC Act.

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11. The Trial Court accordingly acquitted Rajinder Kumar (A-2) from all the charges but convicted the appellant(A-1) for the offences punishable under Sections 7 and 13 (2) read with 13(1)(d) of the PC Act. A

12. The State, however, accepted the judgment of the Trial Court and did not file any appeal against the acquittal of Rajinder Kumar nor even file any appeal against the acquittal of the appellant from the offence under Section 120-B IPC. B

13. The appellant (A-1), felt aggrieved by his conviction and sentence under the PC Act, filed criminal appeal in the High Court at Delhi. By impugned order, the High Court dismissed the appeal and affirmed the judgment of the Trial Court which has given rise to filing of the present appeal by way of special leave by the appellant(A-1) in this Court. C

14. Heard learned counsel for the parties.

15. Mr. Rishi Malhotra, learned counsel appearing for the appellant (A-1) while assailing the legality and correctness of the impugned order mainly argued two points. D

16. In the first place, learned counsel contended that the Trial Court as well as the High Court having rightly acquitted both the accused (A-1 and A-2) insofar as the offence of conspiracy under Section 120-B is concerned and further having rightly acquitted Rajinder Kumar (A-2) from all the charges under the PC Act but erred in not acquitting the appellant(A-1) from the offences under Sections 7, 13(2) read with Section 13(1)(d) of the PC Act. E

17. It was his submission that once the charge of conspiracy under Section 120-B IPC was held as “not proved” against the appellant(A-1) and the co-accused Rajinder Kumar(A-2) and further its benefit was rightly extended to Rajinder Kumar (A-2) for his clean acquittal from the charges under the PC Act, the same benefit should have been extended to the appellant(A-1) as well. F

18. In the second place, the learned counsel contended that the appellant’s conviction is based only on the evidence of a shadow witness (PW-2) whereas the evidence of the Investigation Officer, Mr. Kaul (PW-6) was not believed due to his doubtful integrity. G

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A 19. It was his submission that the basic requirements in such a case, namely, proving of “demand of bribe and its acceptance by the appellant” was not proved much less beyond reasonable doubt. It was urged that at best what the prosecution was able to prove was the “demand” of bribe made by the appellant to the Complainant but not “its acceptance” because the evidence, in clear terms, established coupled
B with the findings of the Courts below that the appellant did not accept the money but it was accepted and recovered from the possession of Rajinder Kumar(A-1).

C 20. It was, therefore, urged that since the acceptance of bribe money was not proved *qua* the appellant and nor it was proved that Rajinder Kumar accepted it for and on behalf of the appellant, the appellant’s conviction under any of the provisions of the PC Act much less under Sections 7, 13(2) read with Section 13(1)(d) was not legally sustainable and hence it deserves to be set aside.

D 21. In reply, learned counsel for the respondent (CBI) supported the reasoning and the conclusion arrived at by the two Courts below and contended that no case for any interference in the impugned judgment is made out and hence the appeal be dismissed.

E 22. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellant.

F 23. It is not in dispute that the prosecution had framed three charges against the appellant and co-accused-Rajinder Kumar and two out of the three charges, namely, Charge Nos. 1 and 2 were based on the conspiracy. It is also not in dispute that the Trial Court, on appreciation
G of the evidence, held that the prosecution failed to prove the charge of conspiracy under Section 120-B IPC against the appellant and Rajinder Kumar (A-1) and accordingly acquitted both of them from the said charge. It is also not in dispute that so far as co-accused-Rajinder Kumar (A-1) is concerned, he was acquitted from all the charges framed under the PC Act. It is also not in dispute that the State neither challenged the clean acquittal of Rajinder Kumar and nor challenged the part acquittal
of the appellant in the High Court by filing any appeal. This, therefore, attained finality.

H 24. In substance, the charges against both the accused were that the appellant entered into a criminal conspiracy with Rajinder Kumar to demand and accept illegal bribe money of Rs. 4000/- from the

Complainant-Arun Kumar as a motive or reward for showing him official favour in the matter of installation of electricity power connection and, in furtherance thereof, the appellant on 28.03.1995 as also on 29.03.1995 around 11.30 AM to 11.55 AM in the DESU office demanded Rs.4000/- from the complainant and directed him to pay the said money to Rajinder Kumar-co accused, who accepted the said money on his behalf.

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25. In our considered opinion, when the charge against both the accused in relation to conspiracy was not held proved and both the accused were acquitted from the said charge which, in turn, resulted in clean acquittal of Rajinder Kumar from all the charges under the PC Act, *a fortiori*, the appellant too was entitled for his clean acquittal from the charges under the PC Act.

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26. It is not the case of the prosecution that the appellant had conspired with another person and even though the identity of the other person was not established, yet the appellant held guilty for the offence under Section 120-B IPC. On the contrary, we find that the case of the prosecution was that the appellant conspired with one Rajinder Kumar to accept the sum of Rs.4000/- as illegal gratification from Arun Kumar-the complainant.

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27. Once Rajinder Kumar so also the appellant stood acquitted in respect of the charge of conspiracy and further Rajinder Kumar-co-accused was also acquitted from the charges under the PC Act, the charges against the appellant must also necessarily fall on the ground. (**See Para 15 Bhagat Ram vs. State of Rajasthan**, (1972) 2 SCC 466).

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28. Even assuming that despite the appellant being acquitted of the charge relating to conspiracy and notwithstanding the clean acquittal of Rajinder Kumar from all the charges, the prosecution failed to prove the charge against the appellant under Sections 7, 13(2) read with Section 13(1)(d) of the PC Act.

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29. It is for the reason that in order to prove a case against the appellant, it was necessary for the prosecution to prove the twin requirement of “demand and the acceptance of the bribe amount by the appellant”. As mentioned above, it was the case of the prosecution in the charge that the appellant did not accept the bribe money but the money was accepted and recovered from the possession of Rajinder Kumar-co-accused (A-1).

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A 30. In such circumstances, there is no evidence to prove that the appellant directly accepted the money from the Complainant. Since the plea of conspiracy against the appellant and Rajinder Kumar failed, it cannot be held that money (Rs.4000/-) recovered from the possession of Rajinder Kumar was as a fact the bribe money meant for the appellant for holding him guilty for the offences punishable under Sections 7, 13(2) B read with 13(1)(d) of the PC Act. It is more so when the benefit of such acquittal from the charge of conspiracy was given to Rajinder Kumar but was not given to the appellant.

C 31. In our view, the prosecution, therefore, failed to prove the factum of acceptance of bribe money of Rs.4000/- by the appellant from the Complainant on 29.03.1995 as per the charges framed against him.

D 32. Since in order to attract the rigors of Sections 7, 13(2) read 13(1)(d) of PC Act, the prosecution was under a legal obligation to prove the twin requirements of “demand and acceptance of bribe money by the accused”, the proving of one alone but not the other was not sufficient. The appellant is, therefore, entitled for acquittal from the charges framed against him under the PC Act too. (See **para 8 of M.K. Harshan vs. State of Kerala**, (1996) 11 SCC 720)

E 33. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned judgment is set aside. The conviction and the sentence awarded to the appellant under Sections 7, 13(2) read with Section 13(1)(d) of the PC Act by the Courts below are set aside and the appellant is set free from the said charges.

F 34. If the appellant is already on bail, it is not necessary for him to surrender.