IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: October 24, 2007

CRL.MB.No.1414/2007 in Crl.Appeal.No.649/2007

Madhu Sankhla ... Appellant

Through: Mr. Dinesh Mathur, Sr. Advocate with Mr. Ashok Chhikara, Advocates.

Versus

State Through CBI ... Respondent

Through: Mr. R.M. Tiwary, Advocate

CORAM: JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the reporter or not ? Yes

3. Whether judgment should be reported in Digest ? Yes

ORDER:(Oral)

1. This application has been made by the appellant for suspension of sentence. The appellant has been convicted by the Trial Court under Section 7 and 13(2) read with Section 13(1)(d) of Prevention and Corruption Act, 1988. The appellant was working in Delhi Police as Sub Inspector and posted in CAW Cell Amar Colony. She was investigating FIR No. 997/98 PS Sriniwaspuri lodged by PW 2 Mr. Ratan Kumar Modi. The complainant found that investigation of the case was not being done and charge-sheet was not being filed in the case and when he contacted the Investigating Officer i.e. the appellant, a demand of Rs.50,000/- as bribe was made from him. A report was made by him to CBI in respect of this demand of bribe and a trap was laid. In his complaint he reported demand having been made by ACP Smt. Praveen Dutt, Inspector Shashi Punj and the appellant and out of total demand of Rs.50,000/- the appellant had to pay first installment of payment to the police officials on 1.10.1999. He took Rs.5,000/- each for the appellant and Ms. Shashi Punj, Inspector, and Rs. 10,000/- for Ms. Parveen Dutt, ACP. However, the evidence shows that entire amount of Rs.20,000/- bribe was received/obtained by Ms. Madhu Sankhla, SI (Appellant). After she received this amount a signal was given to raiding party and recovery of amount was made from a file/file cover on the table of the appellant. The trap team/raiding party seized the amount. Hand wash of the Appellant was taken on the spot in presence of other police official present in the room and sodium carbonate solution turned pink. That other police official appeared as a witness and testified about the recovery of the amount as well as of taking of hand wash and Sodium Carbonate solution turning pink because of the presence of Phenolphthalein powder on the hands of appellant. The appellant was arrested and investigation started. Though the complainant had named Inspector Shashi Punj and ACP Parveen Dutt also as bribe demanders but the charge-sheet filed by the CBI placed them in column no. 2 on the ground that no evidence could be found against them. After conclusion of the trial, the appellant was convicted by the Trial Court and sentenced to undergo RI for 02 years and a fine of Rs.25,000/- under Section 7 of Prevention of Corruption Act and RI for 03 years and fine of Rs.25,000/- under Section 13(2) read with Section 13(1)(d) of the Prevention and Corruption Act, 1988.

2. It is argued by the counsel for the applicant that PW 8 and PW 9 are two police officers, who were placed in column 2 of charge sheet and they could not have been examined as prosecution witnesses. This itself knocks out the case of the prosecution. Since the accused have been examined as prosecution witnesses. The other plea taken is that the complainant was given a micro recorder in order to record the conversation between him and the appellant. This conversation was recorded, but the recorded conversation was not produced in the Court and an adverse inference has to be drawn against the prosecution that the recording conversation, if produced would have gone against the

prosecution. The Trial Court in its judgment did take the view that if the recorded conversation had been produced, it may have gone against the prosecution, but still, convicted the appellant. The conviction was bad.

3. It is submitted by the learned counsel that the demand of bribe has not been established and unless the demand of bribe was proved, the acceptance of bribe or obtaining bribe stands nowhere. Reliance has been placed on the evidence of other witnesses to plead that demand of bribe was not proved. It is also submitted by Mr. Dinesh Mathur, Sr. Advocate that the appellant was no longer in the department on the day raid was conducted. She was already transferred from CAW Cell on 28th September, 1999 itself, so she could not have done any favour to the complainant in the case and could not have filed challan. He also relied upon the fact that the panch witness had not heard the conversation that went on between complainant and the appellant, since he was sitting outside the gate and he only saw the complainant coming out from the room and giving signal to the trap team, thereafter he entered the room along with trap team.

4. This Court need not go into a detailed analysis of the evidence and decide about the credibility and reliability of each witness while deciding this application. In fact that would dispose of the appeal itself. However, court has to address the issues raised at this stage. PW8 and PW9 were not charged by the Court. They were not facing trial. Their testimony is not hit by Article 20(3) of the Constitution, nor the case of prosecution can be thrown out on this ground. The panch witness who was part of the trap team categorically deposed about seizure of the currency notes lying on the table of appellant and appellant's hand wash turning pink. That only shows that currency notes were accepted from complainant in her own hands then placed in a file lying on table. The other witness i.e. PW 5 who was a colleague of the appellant and sitting in the same room has categorically stated that hand wash of the appellant turned pink and the pink solution was seized by CBI. The currency notes were recovered from table of appellant from a file/file cover. The non production of tape recorded version was not material. Complainant has deposed about the conversation during his testimony. He deposed that same conversation as deposed by him in court was also in the tape seized. Laxity on the part of CBI in not making audio tape as part of material cannot be a ground for acquittal when primary evidence i.e. the complainant has deposed in the court.

5. I consider that it is not a case where Trial Court convicted the appellant without there being any evidence or the evidence not being sufficient or credible. Finding faults with the judgment by appellant's counsel is nothing new. Any judgment given by a Trial Court or by a High Court can be attacked, finding faults. Finding fault is always easy. I have yet to see a perfect judgment written by a judge which cannot be criticized or attacked. A judge has to give verdict on the basis of available evidence. He has to put his own experience and appreciate the evidence considering all aspects. His appreciation of the evidence can always be found fault with by the side attacking the judgment.

6. Learned Counsel relied upon AIR 1956 SC 476 Ram Krishan and Anr. v. State of Delhi State to argue that the word 'obtain' as appearing in Section 5(1) (d) of Prevention and Corruption Act, 1947 envisaged that there has to be a demand, and demand is to be proved. A perusal of judgment shows that Hon'ble Supreme Court observed that word 'obtains' does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. If a man obtains a pecuniary advantage by the abuse of his position as public servant, he will be guilty under sub-clause (d) of Section 5(1). One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion in each case he obtains a pecuniary advantage by abusing his position as a public servant. If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under sub-clause (d). It is enough for an offence under Section

(1) (d) if by abusing his position as a public servant a man obtains for himself any pecuniary advantage entirely irrespective of motive or reward for showing favour or disfavour.

7. In the present case, the appellant was working in police department. Police is the first organ of criminal justice system. Public at large has first brush with criminal justice system at Police Station. Corrupt Police Officials at Police Stations make a kill of the Criminal Justice System and shake the faith of the public. Police is considered protector of people and society. Corruption cannot be considered as a trivial crime, more so, when officials in police department indulge in corruption even for doing investigation.

8. It is argued that the appellant was not in that department on the day when she accepted the bribe. The evidence shows that she was posted out on 28th September, 1999 and the bribe was accepted on 1st October, 1999. There is no evidence that complainant was aware of her posting out from the department. Moreover, if she was posted out on 28th October, 1999 she had no business to be there in CAW Cell. Her presence there itself shows that she had come to the office of CAW Cell only for the purpose of obtaining bribe. Even if she was not working as investigating officer, she took advantage of ignorance of the complainant that she was no more investigating officer and still accepted the bribe. I, therefore, consider that in such a case where police official, and those who are responsible for proper running of criminal justice system , indulge into the corruption, the Court should take serious view. Considering all facts I do not find it a fit case where the sentence of the appellant be suspended. The application is hereby dismissed. Nothing observed herein shall prejudice the decision of appeal on merits.

9. Copy of this order be given dasti to both the parties under the signature of Court Master.

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Fix this appeal for final hearing on 16th April, 2008.

SHIV NARAYAN DHINGRA, J.

October 24, 2007