

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

C.R.A. No. 260 of 2007

The Central Bureau of Investigation
Vs.
Joydeb Ghatak & Anr.

Present : The Hon'ble Justice Siddhartha Chattopadhyay

For the C.B.I./Appellant	:	Mr. Md. Ashraf Ali, Mr. Anup Kumar Manna.
For the Respondents	:	Mr. Jayanta Narayan Chatterjee, Mr. Apalak Basu, Mr. Amit Biswas, Mr. Dwaipayan Biswas, Mrs. Moumita Pandit, Mr. Tirthankar Dey, Ms. Priyanka Ghosh Chowdhury, Mr. Najir Ahmed, Mr. Rupam Chatterjee, Mr. Supreem Naskar, Mr. Abhradeep Jha.
C.A.V. on	:	07 .12.2017.
Judgment Delivered on	:	19.12.2017.

Siddhartha Chattopadhyay.:

Challenging the legal pregnability of the judgement and order of acquittal dated 27.09.2016 passed by the learned Judge 3rd Special Court, C.B.I., Kolkata in Case No. 8 of 2003, the appellant C.B.I. has preferred this appeal on the ground that the learned trial Court failed to appreciate the factual aspects and also did not consider the evidence of the prosecution witnesses in its proper perspectives.

2. Learned Counsel appearing on behalf of the respondents/opposite parties submitted that the learned trial Court has meticulously gone

through the evidence of the prosecution witnesses and has come to a correct conclusion which does not warrant any interference.

3. Factual scenario is now required to be visualised. The prosecution case in a capsulated form is such that on 02.07.2003, the complainant lodged the written complaint before the S.P., C.B.I., Anti-Corruption Branch, Kolkata claiming that the present respondent Nos. 1 and 2 demanded illegal gratification for not implicating him in a false case of operating a racket engaged in sale of computerized railway reservation tickets in connivance with the middle man. He did not agree to bribe them. Pursuant to the written complaint lodged by him the C.B.I. authority has laid pre-trap plan. The C.B.I. authority in presence of independent witnesses and after observing necessary formalities had given them a demonstration regarding the reaction of phenolphthalein powder with sodium carbonate on currency notes, which would be handed over. The complainant is supposed to pay the same to the respondents at the fixed place. Two separate packets were prepared for two respondents. Therefore, they contacted the respondents. The respondent Joydeb Ghatak asked the complainant to meet them at 'Amber Hotel'. Another respondent Suman Chandra came to the second floor of the said hotel. The C.B.I. officials and the complainant entered into the second floor of that hotel and occupied a table. The respondent Joydeb Ghatak told the complainant to pay of Rs.3,000/- per month for purchase tickets in bulk. The complainant had given 1,500/- and 1,000/- to Joydeb Ghatak and Suman Chandra respectively and instantly the C.B.I. officers

prepared the seizure list and post-trap memo was conducted. Their hands were washed out with the solution and it turned pink.

4. The case was registered accordingly and after completion of investigation, the Investigating Officer has submitted charge-sheet, under Section 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

5. In order to substantiate the allegation, the prosecution has produced seven witnesses from their gallery. The prosecution has been able to prove the documents which are marked Exbt. 1 to 42/1. These exhibits includes written complaint, signature of complaint, pre-trap memo, signature of the persons present at the time of raid, post-trap memo, seizure list and signatures of all concerned present, and the sanction order. This apart, prosecution has been able to produce the documents which are marked Exbt. (i),(ii) and (xiii). In this case the respondents also adduced evidence under the style of D.W.'s.

6. Now this Court is to consider whether the finding made by the learned trial Court is justified or not.

7. At this stage, the entire prosecution evidence are placed before the judicial operation theatre for dissection. The P.W. 1, in his evidence has given a detailed account as to how the respondents demanded bribe from him and thereafter what he has done which includes his lodging of complaint before the C.B.I. authority, preparation of pre-trap memorandum, entire episode that took place at Amber Hotel, seizure list of the currency

notes and envelope and the solution. The Defence Counsel appeared before the trial Court had challenged entire part of his evidence very meticulously. The learned Counsel appeared on behalf of the respondent has tried to impress this Court saying that in one occasion Suman Chandra searched the de-facto complainant and raised allegation having substance and for which the de-facto complainant was transferred to Bally Railway Station. On perusal of the evidence of P.W. 1, I find that Suman Chandra really searched him but that does not mean only for that reason de-facto complainant has laid such trap. It was contended by the learned Counsel that out of animosity, Suman Chandra has been falsely implicated. It may be that there was previous grudge by and between the respondents and the de-facto complainant but this Court cannot afford to miss the presence of Suman Chandra at Amber Hotel along with Joydeb Ghatak and the money was delivered to them in presence of C.B.I. officers and witnesses. The manager of the said hotel has also proved the story of taking bribe and the seizure list to that effect. The said manager of the hotel does not have any axe to grind. After considering the argument of the learned Counsel appearing on behalf of the respondents as well as after going through the evidence at least it may be inferred that the de-facto complainant responded to the call of giving bribe to the respondent to take revenge.

8. It was suggested to the P.W. 1 that there is an internal vigilance of railway authorities and without informing them why the de-facto complainant approached the C.B.I. authority is a matter to be explained. It is true that from the evidence P.W. 1 it appears that there is an internal

organization i.e. vigilance department in their establishment. It is the choice of the de-facto complainant to whom he shall approach for his redress. There is no pre-condition that before motivating C.B.I. one has to go to the internal vigilance department. On perusal of the evidence of sanctioning authority clubbing together the evidence of other witnesses, the respondents attempted to convince the trial court that the sanction order is defective and the competent authority has not issued any sanction to prosecute. On perusal of the entire evidence in this regard I find that the Chief Security Commissioner has given sanction and according to him, he was the competent authority to accord sanction. Learned Counsel, this time pointed out that P.W. 6, Shri Amarendra Mahanti stated that he was Security Commissioner and P.W. 3 was a confirmed Senior Security Commissioner working as ad hoc D.I.G. In this connection there was also a writ petition filed by P.W. 3 against Union of India wherein this Hon'ble Court disposing of the writ petition bearing No. 13966(w) of 2004 held that P.W. 3 was in charge of D.I.G. on an ad hoc basis and he was also given additional assignment for looking after the duties of the post of Chief Security Commissioner/Easter Railway. Indicating the finding of Hon'ble Court, the respondent herein challenged that the P.W. 3 had no power to accord sanction. This Court does not find that P.W. 3 did not have any power to accord sanction because it is in evidence that up to the level of Inspector of Railway Protection Force, Chief Security Commissioner, who is also empowered to act as D.I.G. in addition to his own work, certainly had the right to accord sanction. Even if we assume that P.W. 3, does not have the power to accord sanction in that case also complexion of the prosecution

case would remain unchanged. The sanction is required when a person is accused of an offence purporting to have been done in discharge of his official duties. If the so called bribe was given in the office premises of Koilaghata Street in that cash such argument would have some basis. But ultimately the money was transacted at Amber Hotel in presence of C.B.I. Officers and manager of that hotel is also one of the signatories to the seizure list. Therefore, such act of taking bribe in another premises does not come within the purview of the spirit “purporting to have been done in discharge of his official duties”.

9. After discussing the evidence in regard to pre-trap memorandum, post-trap memorandum, seizure list matters and sanction order, the learned Counsel appearing on behalf of the respondent contended that since relevant witnesses were not examined by the prosecution, so quite rightly the learned trial Court has passed an order of acquittal. On perusal of the impugned judgment I find that the learned trial Court in his judgment at page 26 considered the same as one of the factors for giving acquittal from the time immaterial it is accepted by the courts in India, that quality of the evidence is the urgent desideratum and not the quantity. In view of spirit of Section 231 of Cr.P.C. the prosecution is to produce the witness “in support of prosecution.” Therefore, if the public prosecutor concerned things that some of the witnesses may not support the prosecution, he has the liberty to not to produce that witness before the court. It was also argued that de-facto complainant and others made the chamber of the respondent at Koilaghata and thereafter why they had chosen to go to Amber Hotel for monetary

transaction is mysterious. This is not at all a sound logic and only on that score the respondent cannot get acquittal. During office hours or in evening in office premises the respondents did not like to take the bribe lest, they were caught red handed by their own colleagues. To save themselves from the eyes of the colleagues they had given a proposal to go to Amber Hotel. Presence of the respondents at Amber Hotel is not denied because they were arrested from that Amber Hotel. Question of enmity was also raised by the respondents. There may be animosity between the de-facto complainant and the accused, but merely for that reason why the C.B.I. officers would implicate them unless they did not find any substance. Therefore, the argument advanced by the respondents is as good as a sailor on a horse back.

10. The learned Counsel appearing on behalf of the appellant contended that in the judgment passed by the learned trial court at page 30 the trial court did not like to put it on record what was the submission made by the C.B.I. officers before him. The learned trial court mentioned “the conducting the learned Public Prosecutor of the C.B.I. has tried to rebut the aforesaid contention of that defence but it is in my opinion not convincing.” So what was the argument of C.B.I. that was not at all reflected in the impugned judgment.

11. After going through the entire evidence on record this court is of the view that learned trial Court arrived at a conclusion without any basis and he was mainly motivated by surmise and conjecture. Had the evidence been properly scrutinized in that case decision would be reversed.

Accordingly, this Court has no option left with except to set aside the impugned order passed by the learned trial court and to convict the respondents. It is true that the respondents are facing the trial before the trial court as well as before this Court for more than a decade and they had to face agonies and ordeal for a considerable period. Considering that aspect and also the quantity of bribe, I am of the view that a imprisonment for one year each and also to pay a fine to the tune of Rs.5,000/- each in default to suffer rigorous imprisonment for one month each, for the offence under Section 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988 and for the offence committed under Section 120B of I.P.C. the respondents are to suffer imprisonment for one year and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for three months more. Both the sentences shall run concurrently. The period of detention already undergone shall be set off accordingly. The respondents are hereby directed to surrender before the trial court within two weeks from the date of this order for serving out the sentence otherwise trial court shall take effective steps for implementation of order of this court. Accordingly it is allowed in part.

12. Let a copy of this judgment and LCR be sent to the learned Court below at once for information and taking necessary action.

13. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SIDDHARTHA CHATTOPADHYAY, J.)

Later:

After the judgment is delivered, learned Counsel appearing on behalf of the respondents Joydeb Ghatak and Suman Chandra, has prayed for stay of operation of this judgment because they want to file SLP before the Hon'ble Apex Court.

Accordingly, there will be an order of stay of this judgment for a period of four weeks from this date and thereafter the learned Magistrate shall take action in accordance with law, if there is no stay order from the Hon'ble Apex Court.

(SIDDHARTHA CHATTOPADHYAY, J.)

A.F.R./N.A.F.R.