

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Reserved on: 14.09.2017
Delivered on: 10.10.2017
+ **CRL.A.977/2015**

JAGBIR SINGH Appellant

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Advocates who appeared in this case:

For the Appellant: Mr. P.Vinay Kumar and Mr.B.K.Mishra.
For the Respondent: Ms. Rajdipa Behura, SPP with Ms.Kriti Handa and Mr.Vignaraj Pasayat.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. Jagbir Singh, the appellant has been convicted by judgment dated 05.08.2015 passed by the learned Special Judge (P.C.Act) and CBI-03, South-West District Dwarka Courts, New Delhi in CBI Case 5/2012 (RC No.S19 2006 E 0005) for the offences under Sections 218 and 417 IPC and Section 13(2) read with Section 13(1)(d) of the P.C Act, 1988. By order dated 11.08.2015, he has been sentenced to undergo RI for one year, to pay a fine of Rs.25,000/- and in default of payment of fine, to suffer SI for one month for the offence under

Section 218 IPC; RI for six months, a fine of Rs.25,000/- and in default of payment of fine to undergo SI for one month for the offence under Section 417 IPC; and RI for one year and six months, fine of Rs.50,000/- and in default of payment of fine, to undergo SI for two months for the offence under Section 13(2) read with Section 13(1)(d) of the P.C Act, 1988.

2. A bench of Delhi High Court on 20.04.2006 passed an order in W.P(Crl) No.4582/2003 (Kalyan Sansthan Social Welfare Association vs. Union of India & Ors) directing the CBI to register a preliminary enquiry against such engineers and officials of the MCD, who by their negligence, apathy and connivance had caused large scale unauthorized construction and further directed to probe their nexus with their seniors in the engineering department, builders as well as political leaders (bosses). The Court had directed that the enquiry be conducted by a task force headed by a person not below the rank of a Joint Director.

3. Pursuant to the aforesaid order of the Delhi High Court, referred to above, a preliminary enquiry No.2/2006 EOW-VII was registered on 10.05.2006 against one R.P.Dabas, the then Executive Engineer

(Building), MCD, Najafgarh Zone, New Delhi. Thereafter FIR/RC No.S19 2006 E0005 dated 27.07.2006 was registered under Sections 120B/193 IPC and Section 13(2) read with Section 13(1)(d) of the P.C.Act, 1988 against R.P.Dabas, Jagbir Singh (the appellant) who at the relevant time was junior Engineer (Building), MCD, Najafgarh zone, New Delhi and M/s Uppal Orchid Hotel, Samalkha.

4. During the investigation, it was revealed that the Deputy Commissioner of MCD, Najafgarh zone, on information through some source, issued instructions on 11.01.2005 for finding out whether there were any unauthorized construction/deviation by the management of Uppal Orchid Motel. The aforesaid Motel was inspected on the next day i.e. on 12.01.2005 by one B.S.Yadav, Assistant Director and the appellant. The appellant is said to have lodged FIR No.5/B/UC/NG/05 alleging unauthorized construction at the said Motel. The FIR by the appellant disclosed that the management of the Motel had unauthorizedly covered areas in excess of the permissible limits. As such, a show cause notice was issued to the Motel. Since there was no reply, another notice directing the management of the Motel to demolish the unauthorized construction was issued at the instance of

Sh.B.S.Yadav, Assistant Engineer (Building). On the report of the appellant on 01.02.2005 that no demolition action had taken place in the Motel, a demolition order, as per the policy of the Delhi Municipal Corporation, was passed.

5. Investigations further revealed that some attempts were made by the appellant to have the unauthorized construction at the Motel demolished but those attempts could not succeed. On some occasions, unauthorized construction could not be demolished because of non-availability of police force and on other occasions there was shortage of time for the MCD officials to complete the demolition process.

6. However, on 07.06.2005, as has been alleged, a report was submitted by the appellant indicating that he had gone to the Motel for demolition along with police and demolition staff and partially demolished the room and toilet/bath at the ground floor. As opposed to the aforesaid report, the beldars of the Central squad, Building Department, MCD, Headquarters, Town Hall and Building Department, Najafgarh zone did not confirm the aforesaid demolition. Later, it was found that on 07.06.2005, the appellant along with the team had overseen the demolition action at Rajiv farmhouse only,

which fact also was confirmed by the owner of the Rajiv Farm House namely Rajiv Sharma. However, as per the plan, the appellant along with the staff had to go to Pushpanjali and Uppal Orchid Motel for demolition.

7. Apart from the aforesaid alleged false report of 07.06.2005, the appellant is also alleged to have proposed imposition of demolition cost on the Motel, which proposal was accepted by the Assistant Engineer (Building) and an amount of Rs.15,750/- was recovered from Uppal Orchid Motel.

8. On the basis of the aforesaid investigation, charge sheet was submitted against the appellant and sanction also was obtained for his prosecution under Sections 218/417 of the IPC and Section 13(2) read with Section 13(1)(d) of the P.C.Act, 1988. With respect to the senior officers of the MCD including Sh.R.P.Dabas, the then Executive Engineer (Building) and the management of the Motel, there was, according to the investigating agency, no sufficient evidence.

9. The charge sheet against the appellant did not find favour with the learned Trial Court who directed for further investigation on 03.09.2009. The Court below was of the view that it was of utmost

importance to note as to who had received the notice for unauthorized construction on behalf of the Motel and who deposited the charges for demolition. Whether such a notice was challenged and whether any demolition had taken place or not was required to be investigated which could only have clarified whether there was any conspiracy angle to the whole process of so called demolition and recovery of the demolition charges. Thereafter, a supplementary charge sheet was filed on 24.02.2011. That also did not disclose the result of investigation carried out on the angle of conspiracy between the appellant and the proprietor of the Motel. Again, further investigation was directed. Thereafter, a second supplementary charge sheet (Exh.PW-49/D5 dated 26.09.2011) was filed which did not reveal any monetary trail so as to suggest any illegal/monetary transaction in favour of the appellant by a private party. The report further indicated that since the matter was six years old, no material regarding conspiracy between Uppal Orchid Motel and the appellant could be found.

10. Cognizance in the case was taken on 23.01.2012, whereas charges against the appellant were framed on 05.09.2012 under

Sections 218, 417 IPC and Section 13(2) read with Section 13(1)(d) of the P.C.Act, 1988.

11. The Trial Court, after examining 49 witnesses on behalf of the prosecution and 7 witnesses on behalf of defence convicted and sentenced the appellant as aforesaid.

12. Karan Singh (PW-1), Draftsman, Grade-III, MCD; Satya Kumar Sharma (PW-2), Office In charge, MCD; Pushkar Sharma (PW-3), Assistant Engineer (Building), MCD; S.K.Wadhwa (PW-4), Draftsman Grade-I, MCD; Yusuf Abbas Jafri (PW-5), Junior Engineer (South), In charge Demolition squad; Jagdish Dayani (PW-7), Assistant Engineer (Building); K.S.Mehra (PW-12), Commissioner, MCD; Rajinder Kumar (PW-15), LDC, Building Department; Sher Singh Mittal (PW-16), Architectural Assistant, MCD; M.S.Yadav (PW-20), Assistant Engineer, Works Division; Sanjay Sharma (PW-23), Junior Engineer, Vigilance Department and Ramesh Dahiya (PW-24), Junior Engineer, Building Department, MCD have deposed before the Trial Court on behalf of the prosecution. Their depositions before the Trial Court are vague in as much as PW-1 has only stated that he had not seen any damaged portion of the property or any repair

work in the said property. Likewise, PW-2 has stated that normally the police protection is always taken for assisting the demolition work. After the demolition order is passed and a programme is fixed, the file is given to Assistant Engineer on the day on which any particular demolition is to be conducted. PW-4 did not exactly remember as to whether he had seen any broken portion or any repaired portion in the Motel. Similar statements have been made, as stated above, by PWs-5 and 7. PW-12, the then Commissioner, MCD had not seen the demolition register of the year 2005 maintained in the police station, Kapashera. Thus all that the aforesaid witnesses have stated is that there is a process of demolition and the same has to be fulfilled before any unauthorized construction is demolished.

13. Twenty two (22) prosecution witnesses are beldars from Najafgarh zone, MCD and Headquarters, MCD. They are PWs.8, 13, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47. Out of the aforesaid beldars, Abdul (PW-13) has clearly stated in his cross examination that on 07.06.2005, he had gone to two places for demolition. The first place was at Bijwasan and the second at Samalkha. He also has deposed that apart from the appellant there

were others also. At Samalkha, the roof was punctured and a wall and toilet were demolished. Uppal Orchid Motel, incidentally is at Samalkha.

14. Om Prakash (PW-26) has also confirmed the fact that at Samalkha, demolition had taken place where the roof was punctured. Similar statements have been made by Lekh Ram (PW-29) and Man Singh (PW-34). Other beldars have, however, not supported the prosecution version.

15. Constable Sunita (PW-6); Inspector Rajinder Pal (PW-9), Additional SHO, Kapashera police station; ASI Krishna (PW-10); SI Nanak Chand (PW-11); ASI Jai Kishan (PW-17); Constable Dharampal (PW-21); HC Ravinder Singh (PW-22); WSI Rajesh Devi (PW-25) and WSI Sheila (PW-27) are the persons who were employed in Kapashera Police Station. Out of the aforesaid police witnesses, Inspector Rajinder Pal (PW-9) has stated that in June, 2005 he was posted as Additional SHO at Kapashera police station. On 07.06.2005 he was on duty along with MCD staff for Pushpanjali and Uppal Orchid. He has also clearly stated that on 07.06.2005, the appellant had told him that he and PW-9 and others had to go to Uppal Orchid

but PW-9 did not go there. However, before the Court, he was not sure whether the appellant along with other MCD staff had gone to Uppal Orchid or not.

16. Nanak Chand (PW-11) has stated that he along with others stayed at Rajiv Farm till about 4.50 pm on 07.06.2005. The appellant had mentioned to PW-9 during lunch time that he was to go to Uppal Orchid for demolition. However, he does not claim to have gone to Uppal Orchid but also is not categorical whether the appellant had gone to Uppal Orchid along with beldars and other persons from the MCD for the purposes of demolition.

17. Thus, there is no direct evidence about the police party having gone to Uppal Orchid for the purposes of demolition and similarly there is no direct evidence also with respect to the appellant not having gone at Uppal Orchid for demolition.

18. There are some of the witnesses namely Ran Singh (PW-30); Ram Prasad (PW-31); Jarman Singh (PW-33); Ganesh Beldar (PW-35); Satish Kumar (PW-36); Bhagwan Dass (PW-38) and Satya Narayan (PW-39) etc, who have stated that the appellant went from Rajiv farm house along with beldars on 07.06.2005 around lunch time.

19. On behalf of the appellant, it has been argued that there was no evidence of any money transaction between the appellant and the management of Uppal Orchid. It has further been argued that some of the witnesses who were named in the first and second charge sheet have inexplicably been dropped and not brought before the Court. It was asserted that the appellant had correctly recorded in his report dated 07.06.2005 (Exh.PW-2/D6) that part demolition was carried out at Uppal Orchid. This report, it has been stressed, finds support from the deposition of Abdul (PW-13), Om Prakash (PW-26); Lekh Ram (PW-21) and Man Singh (PW-34), all of whom are stated to have taken part in the demolition at the second place i.e at Uppal Orchid Motel. Other witnesses have also testified to the fact that from Rajiv Farmhouse, the appellant had moved to another site. It has further been argued that only because the police party had not accompanied the appellant, that by itself would not render the report about demolition doubtful. Demolition can also be carried out, it has been argued, without the police force, which procedure also has been testified to by some of the witnesses.

20. The other limb of argument on behalf of the appellant is that the

report of the concerned persons which forms part of the investigation papers completely establishes the fact that demolition had taken place at Uppal Orchid and that the defence witnesses, which include a PRO of Uppal Group of Companies have testified that demolition had taken place.

21. Thus, what has been stressed upon on behalf of the appellant is that no direct evidence has been led by the prosecution to establish that no demolition had taken place at Uppal Orchid on 07.06.2005 and that the appellant was not, while being examined under Section 313 of the Code of Criminal Procedure, confronted with the question as to why did he say that he had gone to Uppal Orchid for demolition along with the police party. It has been argued that the appellant was all through of the view that he was to defend himself against the charge of preparing a false report only. Thus the aforesaid material regarding majority of the witnesses from Kapashera Police station not testifying to the fact of their having gone at Uppal Orchid, cannot be used/pressed to the disadvantage of the appellant.

22. Lastly, it was argued that the file of Uppal Orchid was never closed and even if the demolition had not taken place on that day, it

would have some day been demolished. There was no gain to the Motel and no corresponding gain to the appellant. Admittedly, no money trail between the appellant and the Motel could be established. Consequently, offence under Section 218 of the IPC which provides for punishment to a public servant for framing incorrect record or writing with intent to save person from punishment or property from forfeiture, is not made out. Similarly, no offence can at all be said to have been made out under Section 417 of the IPC as nobody has been cheated. For establishing the offence of cheating, senior officers like B.S.Yadav and others, had necessarily to be brought to the witness box by the prosecution so as to bring home charges of cheating/inducement. Since no money trail or telephonic call could be established between the appellant and the management of the Motel, the offence under Section 13(2) read with Section 13(1)(d) of the P.C Act, 1988 can also conclusively be stated to have not been made out.

23. The prosecution, it has been argued, failed miserably and the Trial Court was not justified in convicting and sentencing the appellant.

24. On behalf of the CBI, Ms.Rajdipa Behura, submitted that there

was no dispute with respect to an unauthorized construction made at Uppal Orchid Motel, Samalkha. What is in dispute is the correctness of the report dated 07.06.2005 (Exh.PW-2/D6) given by the appellant that part demolition of the Motel had taken place. It was submitted that during the trial, the appellant had taken a contradictory stand that he had gone along with few beldars from Rajiv farmhouse to Uppal Orchid for demolition and had not taken police force with him. It was also pointed out by the CBI that the appellant had admittedly recorded his notings on several dates that demolition action at Uppal Orchid Motel could not take place because of non-availability of police force. It was, therefore, questioned by the CBI that under what circumstances, the appellant did not consider the importance of the police force on 07.06.2005 for carrying out demolition. It was further contended that the police officers from the Kapashera police station have clearly deposed before the Trial Court that on 07.06.2005, demolition proceedings had been conducted only at one place namely Rajiv Farmhouse at Bijwasan road. Most of those witnesses from the police station have also deposed that the appellant remained present throughout the demolition at Rajiv farmhouse till about 5 pm. This, it

has been argued, renders the report dated 07.06.2005 of the appellant absolutely false. Most of the beldars who have been cited as prosecution witnesses have also unequivocally stated that demolition proceedings had taken place only at Rajiv farm house, Bijwasan, New Delhi on 07.06.2005.

25. From the conspectus of the entire records, it appears that the FIR was registered on the basis of a preliminary enquiry which was initially directed against one R.P.Dabas, Executive Engineer (Building), MCD, Najafgarh zone, New Delhi. The enquiry ultimately led to the registration of the FIR against three persons but only the appellant was put on trial. The ground taken by the CBI for not sending up the other two viz. the Executive Engineer referred to above and the management of the Uppal Orchid Motel is that there was no material against them for their prosecution. It does not appear to be probable that the Executive Engineer would not have known that there had not been any demolition at Samalkha i.e. at the Uppal Orchid Motel. The other aspect which strikes the Court is that the notice of demolition was received by the management of the hotel and in fact the demolition charges also were paid. It could be argued that with the

proposal of demolition and payment of demolition charges of a lesser amount, the gaze of the MCD would have been diverted for any further demolition or action at the hotel but to jump to such a conclusion, necessary/positive evidence were required to be pitched in by the prosecution. Admittedly, the file of the Uppal Orchid Motel has not been closed. The prosecution case against the Motel was initiated on the report of the appellant only. Several attempts were made, according to the evidence, by the appellant to have the unauthorized construction demolished but such attempts did not succeed. It appears rather curious and not clearly understandable as to why on 07.06.2005, no resistance was met by the appellant in demolishing the structure. It also is, in a way, obtuse that the appellant did not consider necessary to take the police force with him at the Motel for the demolition when in the past such attempts at demolition could not succeed because of the non-availability of the police force. But that cannot be the sole basis for taking a view that no demolition had taken place at the Motel and the report forwarded by the appellant on 07.06.2005 was a false report. If it were a false report, it ought to have been with the approval of the superior staff of the MCD or else the report would not have

been accepted. The fact that the entire issue was raked up by the appellant; the file of the Motel was not closed after partial demolition and; the report about partial demolition give an impression that perhaps some demolition action had taken place at the Motel.

26. What is even more surprising is that if deliberately false report was submitted and that was only for the purposes of helping the Motel, there was no reason for the CBI to have not sent up the management of the Motel for facing trial. If an act which is said to have been unauthorisedly done and it does not give any benefit to the person, then that act cannot be stated to be, for any gainful acquisition for the wrong doer. If Uppal Orchid Motel was not benefitted and was not put on trial, there would be no justification for trying and convicting the appellant who allegedly was trying to help the Motel. On this score alone, the prosecution case becomes doubtful. The charges against the appellant are under Section 218 and 417 of the IPC apart from Section 13(2) read with Section 13(1)(d) of the P.C Act, 1988. For bringing home charge of inducement/cheating, it was absolutely necessary for the prosecution to have brought the superior officers of the MCD as witnesses. Not having done so, the prosecution

has failed to put forth positive evidence regarding cheating/inducement. For the report to be held as false and for prosecution of the petitioner for forwarding such false report, it was necessary to try the management of the Motel also.

27. Section 218 of the IPC reads as under:-

218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

28. For the offence under Section 218 IPC to be established, it would be of extreme importance that the public servant who is being

prosecuted, ought to know that the report which is being forwarded is incorrect and that it is for the purpose of causing loss or injury to public or to save any person from illegal punishment or save a property from being forfeited. If there is no evidence on record brought forward by the prosecution that Uppal Orchid Motel was benefitted in any manner, then the prosecution under Section 218 must necessarily fail. If there would have been any gain to the Motel, it was necessary for the management of the Motel to have been tried for establishing whether the report dated 07.06.2005 enured in his favour and that it was deliberately done for helping the management of the Motel.

29. Similarly, this Court is at a loss to understand as on what material, the appellant has been convicted and sentenced under Section 13(2) read with Section 13(1)(d) of the P.C Act, 1988. Admittedly, there is no telephonic call or any evidence in support of any monetary gain by the appellant at the instance of the management of the Uppal Orchid Motel.

30. Way back in the year 1969, the Supreme Court in **Hanumant Vs. State of M.P.** AIR 1952 SC 343 held that in cases where the

offence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent with the hypothesis of the guilt of the accused. The Supreme Court went on to say that the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

31. The aforesaid view of the Supreme Court has been uniformly followed till date (refer to *Tufail (alias) Simmi vs. State of U.P.*: (1969) 3 SCC 198; *Ramgopal vs. State of Maharashtra*: (1972) 4 SCC 625 and *Shivaji Sahabrao Bobade vs. State of Maharashtra*: (1973) 2 SCC 793).

32. Thus what was held in the aforesaid cases was that there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

33. The Supreme Court in *Shivaji Sahabrao Bobade vs. State of Maharashtra* (Supra) has held as follows:-

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused

“सत्यमेव जयते”

34. In **Sharad Birdhichand Sarda vs. State of Maharashtra:** (1984) 4 SCC 116, the aforesaid five principles have been characterized as five golden principles, the *panchsheel* for the proof of a case on circumstantial evidence.

35. Section 13(2) and Section 13(1)(d) of the Prevention of

Corruption Act, 1988 read as hereunder:-

Section 13(1)(d) in The Prevention of Corruption Act, 1988

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

Section 13(2) in The Prevention of Corruption Act, 1988

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

36. For establishing the offence under the aforesaid sections, the ingredients of the public servant having abused his position and by abusing that position he has obtained for himself or any other person any valuable thing or pecuniary advantage, has to be proved.

37. In *C.Chenga Reddy vs. State of A.P.* (1996) 10 SCC 193, the

Supreme Court has held as under:-

“22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohammed Pagarkar v. State (UT of Goa, Daman and Diu) [Abdulla Mohammed Pagarkar v. State (UT of Goa, Daman and Diu), (1980) 3 SCC 110 : 1980 SCC (Cri) 546] , under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this

case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper.”

38. Thus tested on every count, the prosecution case seems to be faltering.

39. As such, the conviction and sentence of the appellant is set aside and the appellant is acquitted of all charges. His liabilities under the bail bonds are discharged.

40. The Trial Court records be sent back.

41. A copy of this judgment be communicated to the Superintendent of the concerned jail for information and record.

ASHUTOSH KUMAR, J

OCTOBER 10, 2017

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