

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-1865-SB of 2003

Date of Decision: July 22, 2015

Santokh Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. D.V. Sharma, Senior Advocate, with Ms. Shivani Sharma, Advocate, for the appellant.

Mr. Deepak Garg, Assistant Advocate General, Punjab.

Mr. Namit Sharma, Advocate, Amicus Curiae.

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Jaspal Singh, J

1. The instant appeal has been preferred by Santokh Singh against judgment of conviction and order of sentence dated September 26, 2003 passed by the Judge, Special Court, Faridkot, in case FIR No.23 dated June 9, 2000, under Sections 7 & 13(2) of Prevention of Corruption

Act, 1988 (for short, 'Act'), Police Station, Vigilance Bureau, Ferozepur, whereby he has been convicted and sentenced under Section 7 of the Act, to undergo RI for a period of one year, fine to the tune of ₹ 1,000/- and in default of payment of fine to undergo RI for three months. The appellant has been further sentenced under Section 13(2) of the Act to undergo RI for a period of two years, fine to the tune of ₹ 2,000/- and in default of payment of fine, to further undergo RI for a period of six months. Both the substantive sentences have been ordered to run concurrently.

2. Briefly stated, the facts of the case are that complainant – Sewak @ Sewa Singh son of Mehnga Singh, resident of village Pindi Balochan, own 9 acres of agricultural land in village, out of which 3 acres is located across the canal and remaining 6 acres is located on the side of village. He wanted to shift a tubewell connection, earlier installed by his father in the land measuring 3 acres, to the another part of 6 acres land, for which, sanction was accorded and two poles & wire weighing 45 kgs, issued by Punjab State Electricity Board, were lying in his house. On June 7, 2000, complainant met Santokh Singh, Junior Engineer concerned and requested him to shift his connection but he demanded ₹ 2,000/- from the complainant as illegal gratification. The deal was settled for ₹ 1,000/- and complainant was asked to come on June 9, 2000. On June 8, 2000, complainant visited Faridkot city where he disclosed his plight to his friend Barma Nand, who advised him to inform the matter to Vigilance Department.

3. On June 9, 2000 at about 10/11 AM, complainant alongwith Barma Nand visited Vigilance Bureau, Faridkot and met DSP

Mehal Singh Sidhu. Complainant told DSP about the demand of accused who recorded his statement Ex.P5 which was read over to him and after admitting the same as correct, he put his signatures. Complainant handed over to him 10 currency notes each of ₹ 100/- denomination. DSP recorded the numbers of currency notes and applied Phenolphthalein power. DSP handed over the said currency notes to complainant through memo Ex.P6, attested by Sewak Singh and Barma Nand. DSP asked the complainant to hand over the currency notes to accused on demand and Barma Nand was asked to hear the conversation between the accused and complainant, and to give signal to the police party when bribe is handed over to accused. DSP prepared solution and demonstrated to complainant and Barma Nand as to how the Phenolphthalein powder, when comes in contact with sodium carbonate solution, turns pink. DSP sent ruqa Ex.P5 to Police Station on the basis of which formal FIR Ex.P13 was recorded by MHC Sukhbir Singh.

4. Thereafter, on the way to office of accused, police party associated PWs Om Dutt and Yash Pal, SDO and JE, respectively, of the Office of Public Health. They were introduced with the complainant and Barma Nand. Complainant – Sewak Singh and Barma Nand were dropped outside the office of accused near Sadiq Chowk, followed by police party. On receipt of signal from the shadow witness, police party raided the office of accused. DSP Mehal Singh Sidhu introduced himself to accused. He prepared a solution of sodium carbonate in water and asked PWs Om Dutt and Yash Pal to dip their hands in it but colour of solution did not change. Thereafter, DSP asked the accused to dip his

hands in the same solution, whereafter, the colour of solution changed to light Pink. The solution was poured into a Nip, duly sealed by DSP with seal bearing impression 'MSS', over which, signatory slip of Om Dutt and Yash Pal was pasted and Nip was taken into possession vide memo Ex.P8 signed by Om Dutt, Yash Pal, Sewak Singh and Barma Nand. On personal search of accused,, from the left front pocket of the shirt worn by him, the tainted currency notes were recovered and their numbers were tallied with the help of Om Dutt and Yash Pal. The said notes were taken into possession vide memo Ex.P9, attested by the aforesaid PWs. On further personal search of accused, currency notes of ₹ 1,700/- from the purse alongwith Identity Card and Ball Point Pen were recovered which were taken into possession vide memo Ex.P10. DSP took the shirt of accused and reversed the pocket. DSP prepared a solution of sodium carbonate in water and got the hands of official witnesses dipped but colour of solution did not change. Then, he dipped the pocket of said shirt in the solution repeatedly and the colour of solution changed to light Pink. The said solution was poured into a Nip, duly sealed by DSP with his seal bearing letters 'MSS' over which signatory slip of Om Dutt and Yash Pal was affixed, and Nip alongwith shirt was taken into possession vide memo Ex.P11. On the asking of DSP, accused got recovered the documents consisting of job order etc. from the dicky of his scooter, claimed to be owned by him, which were taken into possession vide memo Ex.P12. DSP prepared rough site plan Ex.P14 and recorded the statements of witnesses. On return to the Police Station, he deposited the case property with MHC Sukhbir Singh. The Nips were sent to Forensic

Science Laboratory for analysis and after receipt of report of Chemical Examiner Ex.P28 and according sanction, the accused was challaned.

5. Copies of documents as required under Section 207 Cr.P.C. were supplied to accused, free of costs. Finding a prima face case, accused was charge-sheeted under Sections 7 and 13(2) of the Act, to which, he pleaded not guilty and claimed trial.

6. In order to prove the charge, prosecution examined as many as 12 witnesses. Incriminating circumstances were put to accused in his statement under Section 313 Cr.P.C. Accused denied all the allegations of prosecution, pleaded innocence and false implication. Accused examined one DW in his defence.

7. After hearing counsel for the parties, accused was convicted and sentenced, as detailed above, vide the impugned judgment and order.

8. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that same are absolutely against the evidence available on file and settled canons of law. Mis-appropriation of evidence as well as legal proposition applicable to the facts of the case has resulted into miscarriage of justice. Infact, prosecution has miserably failed to establish the ingredients which constitute an offence under Sections 7 & 13(2) of the Act.

9. First and foremost contention advanced by learned counsel for the appellant challenging the conviction and sentence awarded to the appellant is that there is no evidence to establish the

demand of any amount as illegal gratification and the acceptance thereof voluntarily by the appellant – accused, especially in the circumstances that PW-8 Barma Nand who is alleged to have been associated with the raiding party as Shadow Witness did not toe the line of the prosecution and nothing fruitful could be elicited from him. There is nothing in his statement that bribe money was demanded and accepted by the appellant – accused in his presence nor he clearly heard the conversation between the complainant and the accused. Thus, palpably, his testimony strikes a death knell to the prosecution case.

10. The next ground of argument raised by learned counsel for the appellant is that Investigating Officer, DSP Mehal Singh (PW-10) did not offer his own personal search to the accused before conducting the search and recovery of alleged tainted currency notes from him. This omission on the part of the Investigating Officer also renders the entire process of raid illegally. It is obligatory upon the police officer to offer his personal search to the accused before making latter's personal search. It is only to be seen that search inspires confidence which is lacking in this case. To buttress this contention, learned counsel for the appellant has placed reliance upon the various judgments captioned as Resham Singh vs. State (U.T. Chandigarh), 1981 PLR 402; State of Punjab vs. Kushal Singh Pathania, 2004(4) R.C.R. (Criminal) 498; Karnail Singh vs. State of Punjab, 2009(1) R.C.R. (Criminal) 403; Naunihal Singh vs. State (thourgh CBI/ACB Punjab) Chandigarh, 2009(2) R.C.R. (Criminal) 360; Sushil Kumar vs. State of Punjab, 1974 Chandigarh Law Reporter 193; and Karambir vs. State of Haryana, 2010(4) CCR 174.

11. The next submission made by learned counsel for the appellant is that the link evidence is incomplete in this case and this fact has been ignored and disbelieved by learned trial court while convicting the appellant without assigning any cogent reason. As per the case of prosecution, DSP Mehal Singh (PW-10) deposited the case property with HC – Sukhbir Singh (PW-1) consisting of sample seals duly sealed with seal impression ‘MSS’ and signed chit of Om Dutt alongwith sample seal. But when HC Sukhbir Singh (PW-1) was subjected to cross examination, he has categorically stated that if the sample seal impression would have been deposited by the investigating officer with him, he must have mentioned this fact in his statement Ex.DA. His attention was drawn to his statement Ex.DA wherein there is no reference of depositing of sample seal. He has further stated that words “Samet Namuna Mohar” i.e. “alongwith sample seal impression” Marked A to A1 in Ex.DA might have been incorporated subsequently by Investigating Officer which is entirely in different ink and hand. Even, C – Surinderjit Singh (PW-4), who was deputed to hand over the samples and the sample seal impression to the office of Forensic Science Laboratory, Chandigarh, has also stated in his cross examination that words ‘Samet Namuna Mohar’ were added lateron with some different ink which does not find the initials of any officer. Thus, when no sample seal was prepared or deposited with MHC, the question of handing over the same to C - Surinderjit Singh does not arise at all. It creates a serious doubt regarding the case of prosecution. Similarly, these witnesses are also discrepant with regard to the signatory chit of Om Dutt and are not

specific about any signatory chit of Yash Pal, another official witness. Since the link evidence is incomplete, the entire case of prosecution falls to the ground.

12. It has been next argued by learned counsel for the appellant that there was also no occasion for the appellant – accused to have put-forth the demand of an illegal gratification, especially in the circumstances that the entire work was done & verified by accused without any demand. Only the connection was to be shifted. The job number had been issued. In this regard, the testimony of PW-12 Kendar Kumar, Store Keeper, is relevant who was posted as Store Keeper during the year 2000 in the Central Store of PSEB, Kotakpura. He has given a detailed description and has proved the various documents. He has categorically stated that the entry for issuance of material(s) to the accused was made on Page No.70 of the material control register maintained by him, copy of which is Ex.P36. Similarly, gate pass was issued and the material was handed over to appellant – accused on June 6, 2000, copy of which is Ex.P37. If any demand was to be raised by Santokh Singh, JE, he could not have raised the said demand at the time of forwarding his application for shifting the electric connection or when he made verification thereon. It was only on the verification of the accused, the matter was materialised for shifting of the electric connection. Moreover, demand is alleged to have been raised on June 7, 2000 but the complainant remained tight lipped till the raid was conducted on June 9, 2000.

13. Lastly, it has been argued by him that even as per the version of complainant – Sewak Singh @ Sewa Singh (PW-7), one Pritam Singh was present at the time the trap was laid, who has been examined by the appellant – accused in defence. He can be termed to be an independent witness. While appearing in the witness box, he has deposed in clear words that complainant put a sum of ₹ 1,000/- forcibly in the pocket of the appellant – accused. At that time, accused had grappled with Sewak Singh @ Sewa Singh, complainant and on that score, the money fell on the ground which was subsequently lifted by DSP Mehal Singh. This plea of the appellant also finds corroboration from the testimony of Barma Nand PW-8 as well as that of the testimony of Pritam Singh, DW-1. The statement of Pritam Singh DW-1 is to be treated at par with the official witnesses, especially in the circumstances that his presence at the spot has been admitted by complainant – Sewak Singh @ Sewa Singh.

14. While concluding his arguments, it has been submitted by learned counsel for the appellant that all the above narrated factors coupled with each other shatters the basic version of the prosecution. As such, appellant – accused deserves the benefit of doubt by way of acceptance of the instant appeal.

15. On the other hand, learned State counsel has refuted the various submissions and contended that in the present case, prosecution was able to prove that complainant gave ₹ 1,000/- (ten currency notes of the denomination of ₹ 100/-) to DSP Mehal Singh which were returned to him after applying Phenolphthalein powder. Those currency notes were

subsequently recovered from the possession of appellant – accused. The recovery of currency notes from the possession of appellant is one of the glaring circumstances that the amount was demanded and accepted by the appellant. In such a situation, presumption under Section 20 of the Act can also be drawn without any hesitation. Learned trial court has rightly come to the conclusion that demand of money as alleged by prosecution at two stages is proved: firstly, at the initial stage when complainant approached the accused for shifting of tubewell connection; and secondly, when the amount was handed over by the complainant to accused which was subsequently recovered from the latter. The mere fact that shadow witness has turned hostile, the testimony of complainant and official witnesses cannot be brushed aside.

16. While parting with his arguments, it has been submitted by learned State counsel that even if the shadow witness has turned hostile, the factum of recovery of tainted money is proved by the complainant and official witnesses. It is well settled that testimony of an official witness cannot be disbelieved, discarded or brushed aside simply due to his official colour or status. They are as good witnesses as others, especially when there exists no animosity or ill will in between the appellant and Investigating Officer, and other official witnesses who enjoy official gazetted status. Thus, so far as the conviction and sentence awarded by the trial court are concerned, they do not call for any interference by this Court. Instant appeal being devoid of merits is liable to be dismissed.

17. After bestowing due consideration to the rival submissions made by learned counsel for the parties, appraisal of the evidence and scrutinising the impugned judgment of conviction, this Court is of the considered view that prosecution has miserably failed to bring home the guilt of accused under Section 7 read with Section 13(2) of the Act for the reasons to be recorded hereinafter.

18. It is settled canon of criminal jurisprudence that conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt, either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of an accused. The prosecution has to lead cogent and convincing evidence in that regard.

19. The principal ingredients to constitute an offence under Section 7 read with Section 13(2) of the Act are demand of an amount as illegal gratification and acceptance thereof voluntarily, and further that, said demand & acceptance of money is for doing a favour in discharge of official duties. In the case in hand, it can be said without any hesitation that neither the demand nor acceptance could be established by the prosecution. PW-8 Barma Nand, who was associated in the raiding party as a shadow witness, did not support the case of prosecution and while appearing in the witness box, he has rather categorically stated that neither any demand was raised nor amount was accepted by the accused. He also did not hear any conversation between the parties, meaning thereby that neither the payment nor acceptance of the money is

established. As per the version propounded by the prosecution, the accused had demanded and accepted a sum of ₹ 1,000/- in the presence of shadow witness whose evidence clearly indicates neither he accompanied complainant Sewak Singh @ Sewa Singh nor the bribe money was demanded and accepted in his presence, nor he clearly heard the conversation between the complainant and accused. When Barma Nand PW-8 was subjected to cross examination by learned Special Public Prosecutor and confronted with his statement under Section 161 Cr.P.C., he denied the same. Rather the plea taken by the accused – appellant and the statement of PW-8 Barma Nand further find corroboration from an independent witness Pritam Singh DW-1 whose presence has been admitted at the spot even by the complainant. The testimony of PW-8 Barma Nand coupled with that of DW-1 Pritam Singh falsifies the entire story put-forth by the prosecution. Even otherwise, the trap witnesses are most interested witnesses, therefore, some independent corroboration from an independent witnesses ought to have been made on the part of raiding party. In the absence of independent witness, the prosecution case becomes doubtful.

10. This Court in **Gurdial Singh vs. State of Punjab**, 2010(2) RCR (Criminal) 663 has held as under:-

“14. The evidence further reveals that both Jarnail Singh and Balkar Singh are contradictory to their statements with regard to the placing of money. The complainant states that the accused received the money and put the same in the pocket and thereafter he took it from the pocket and started counting the same whereas Balkar Singh (PW4) states that the money was still in the hands of the accused when the police party apprehended him. DSP Sukhdev Singh did not get washed the shirt where the money is stated to have been put. Anyway, had the money been put in the pocket then it would have touched the currency notes to the tune of Rs.340/- which were recovered from his pocket, but the same were not dripped into the water so as to know that the said currency notes when dipped, the colour became pink.

Furthermore, the conduct of both Jarnail Singh and Balkar Singh is not above board. Both are interested witnesses in the success of the trap. Further the conduct of complainant was not of a bona fide complainant. He admits that a case was registered against him under Sections 354/326 I.P.C. He also admits that another case was registered against his son Iqbal Singh under Section 376 I.P.C. In such circumstances, when the trap witnesses are interested and inimical witnesses and they are qualitatively inferior in the testimonies then no reliance could be placed on such witnesses. Similar view was taken by this High Court in case *Amrik Singh v. State of Punjab 2005(4) RCR (Criminal) 310*, wherein it was observed as under:-

In *Sat Paul v. Delhi Administration, 1976 SCC (Cri.) 160*, it was held that trap witnesses are interested witnesses concerned with the success of the trap and qualitatively their testimonies are inferior to that of an ordinary interested witnesses. Besides, it was observed that corroboration of such interested witness from independent source is essential where witnesses have poor moral fiber with bad antecedents and have motive to remove the accused from their way. Corroboration of another trap witness, who was a police official was held not to be sufficient.”

11. Adverting to the facts of the case in hand, the shadow witness PW-8 Barma Nand could have been termed to be the independent witness who has not supported the case of prosecution and except Barma Nand, all other witnesses of the raiding party are interested in the success of the case, either being the official witnesses or the complainant. In the absence of independent corroboration, it cannot be safely concluded that the accused demanded the amount of ₹ 1,000/- as illegal gratification and voluntarily accepted the same from PW-7 Sewak Singh @ Sewa Singh (complainant).

12. Here it would be pertinent to mention that PW-8 Barma Nand has been subjected to a thorough and probed cross examination, and confronted with his statement recorded under Section 161 Cr.P.C., but no material favourable to the prosecution could be wrenched out. Since the principal ingredients of demand and acceptance of brine money

in this case are lacking, the presumption envisaged under Section 20 of the Act cannot be attracted.

13. In **V. Venkata Subbarao vs. State represented by Inspector of Police**, *A.P. 2007(1) Recent Criminal Reports (Criminal) 519*, the Hon'ble Supreme Court has laid down that "In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved".

14. In **Suraj Mal v. State (Delhi Administration)**, *1979(4) Supreme Court Cases 725*, the Apex Court took the view that "mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. This view has also been followed by the Hon'ble Supreme Court in **Banarsi Dass v. State of Haryana**, *2010(2) Recent Apex Judgments 471*. However, in **Satpal Singh (died) through L.Rs v. State of Punjab**, *2004(1) Recent Criminal Reports (Criminal) 830 (P&H)*, recovery of bribe money was proved. The accused was working as Patwari. He had demanded ₹ 200/- from the complainant for supply of copies of jamabandi but in the instant case, demand and acceptance thereof is not proved.

15. Reverting back, as per the case of prosecution, a trap was laid and a sum of ₹ 1,000/- was recovered from the appellant – accused. The shadow witness has stated that no demand was made in his presence. Thus, it can be safely concluded that essential ingredient under Section 7 read with Section 13(2) of the Act is missing as observed by the Hon’ble Supreme Court in case Meena (Smt.) wife of Balwant Hemke v. State of Maharashtra, 2000(2) Recent Criminal Reports (Criminal) 661. Mere recovery of the currency notes and positive result of phenolphthalein test is not enough to establish the guilt of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence. In Pritam Singh v. State of Haryana, 1992(3) Recent Criminal Reports (Criminal) 139 (P&H), also there was no evidence of shadow witness to the effect that the accused had made a demand. This Court held that the complainant was not truthful. In Banshi Lal Yadav v. State of Bihar, AIR 1981 SC 1235, in context of Section 4(1) of the Prevention of Corruption Act, 1947, the Supreme Court has held as under:-

“Before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than legal remuneration etc.”

16. It is also important to note here that investigation in this case was conducted by PW-10, DSP Mehal Singh. While subjecting to cross examination, he has admitted that he carried out the personal search of accused Santokh Singh and from front pocket of his shirt, tainted notes were recovered. He has nowhere stated that before he carried out the personal search of accused, he had offered his personal search to him.

17. In Kushal Singh Pathania's case (supra), it has been held that "if the police officer failed to offer himself for the search conducted by the accused, then the search conducted on the accused is apparently illegal and acquittal is bound to follow". Identical view was taken in Resham Singh (supra); Karnail Singh (supra); Naunihal Singh (supra); Sushil Kumar (supra); and Karambir (supra).

18. In the light of the rule laid down in the aforesaid authorities as well as keeping in view the fact that there is no evidence to the effect that before he made personal search of the accused, Investigating Officer has offered his own personal search to accused. Search conducted on the accused is palpably rendered illegal.

19. The matter in this case did not end here. The link evidence is also incomplete in this case and the statement of MHC Sukhbir Singh (PW-1), Investigating Officer, DSP Mehal Singh (PW-10) and C- Surinderjit Singh (PW-4) who took the sample to the Chemical Examiner, do not inspire confidence, rather Investigating Officer is guilty of making addition and alteration in the statement of MHC recorded under Section 161 Cr.P.C. by making addition of words "Samet Namuna Mohar". The omission in the statement of witnesses under Section 161 Cr.P.C. in this regard is suggestive of the fact that sample seal impression was not prepared at the spot nor it was deposited with MHC or that it has been prepared subsequently by the Investigating Officer as the seal after use remained for a considerable time in his custody before sending the samples to the FSL.

20. Even there is also sufficient evidence on record to show that there was no occasion for the appellant – accused to raise a demand of ₹ 1,000/- or acceptance thereof because from the testimony of PW-12 Kendar Kumar, it is clear that entire work was done by Santokh Singh, J.E. After submission of the application for shifting of electric connection, he was seized of the matter. He visited the spot and conducted verification. He got cleared the case for shifting of electric connection. He even collected the material(s) which was required for its shifting. But it appears that due to some ill-will, the appellant was got trapped. The recovery was also not effected from the possession of accused. Rather, the same stands belied, essentially in view of testimony of DW-1 Pritam Singh whose testimony cannot be disbelieved or disregarded simply on the ground that he has been examined in defence. The complainant tried to thrust the tainted currency notes into the pocket of the shirt of accused which was resisted by him. Rather, he grappled with him and during grappling, the tainted currency notes fell down which were stated to have been lifted from the ground by Investigating Officer, DSP Mehal Singh.

21. In the light of aforesaid discussion, this Court is of the considered view that conviction and sentence vide impugned judgment/order are not sustainable in the eyes of law. Rather, it can be safely concluded that prosecution has miserably failed to bring home the guilt of accused and to establish the basic ingredients which constitute an offence for which the accused has been chargesheeted, held guilty and convicted by the trial court. Consequently, the impugned judgment and

order of sentence dated September 26, 2003 are set aside by way of acceptance of the instant appeal. Consequently, appellant – accused stands acquitted.

July 22, 2015
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(Jaspal Singh)
Judge