IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.S-767-SB of 2000

DATE OF DECISION: 6.1.2015

Pawan Kumar

.....Appellant

versus

State of Punjab

….…Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr.APS Deol, Senior Advocate with
Mr.Vishal Rattan Lamba, Advocate for the appellant.
Mr.D.S.Virk, AAG, Punjab.

DAYA CHAUDHARY,J.

Accused Amrik Singh Duggal, Pawan Kumar (the present appellant) and Kulwant Rai faced trial in case FIR No.70 dated 16.6.1994 under Sections 13(1) and 13(2)of the Prevention of Corruption Act, 1988 and Sections 120-B, 201,217 IPC registered at Police Station City Mansa and they were convicted and sentenced by the Special Judge, Mansa vide judgment dated 17.8.2000. The present appeal has been filed by accused appellant Pawan Kumar to challenge the judgment of conviction and order of sentence by the trial Court by raising various grounds.

Briefly, the facts of the prosecution story are that accused Amrik Singh Duggal and Pawan Kumar accepted a sum of Rs.10,000/- other than legal remuneration from Kulwant Rai, who was proprietor of M/s Kissan Sale Agencies Mansa for doing favour by not sending sample of 50% Butaclore taken from his premises for analysis. Both the accused abused their position being public servants. The sample of 50% Butaclore taken from the premises of Kulwant Rai was destroyed. It was done with an intention to save Kulwant Rai from punishment for a consideration of bribe money. Amrik Singh Duggal was working as Assistant Cotton Extension Officer and Pawan Kumar was working as Insecticides Inspector in the office of Block Agricultural Officer, Mansa.

On 28.6.1991, the accused took sample in the presence of Paramjit Singh Sandhu, Land Testing Officer and Nandpal Singh, Agricultural Development Officer, Agriculture Department, Bathinda took four samples of Butaclore 50% from the agency of the complainant and other firms. The responsibility of sending the samples to the office of Chief Agricultural Officer was of the Insecticides Inspector of the Block Office, Mansa. Both the accused sent the samples without making any entry in the sample register and without enclosing any covering letter. An inquiry was conducted by Deputy Superintendent of Police, Punjab Vigilance Bureau, Bathinda wherein the accused were found guilty and on the basis of that report an FIR was registered against them. It was also found in the inquiry that the proprietor of firm paid illegal gratification to the accused for having favour from them. The sample sent by them was destroyed with a view to cause wrongful gain to the firm.

Accused Amrik Singh Duggal and Pawan Kumar were charged for offence under Sections 7 and 13(2) of Prevention of Corruption Act, 1988 and also under Sections 201 and 217 IPC, whereas, Kulwant Rai was charge sheeted under Section 12 of the Act.

The prosecution examined as many as ten witnesses in support of its case. Statements under Section 313 CrPC were recorded wherein they pleaded innocence and false implication.

In defence, the accused examined Bhupinder Singh, Chief Agricultural Officer as DW1, Karam Singh, Clerk office of Chief Director Vigilance Bureau, Punjab as DW2.

On appreciation of evidence and documents available on record, the trial Court convicted the accused appellant and sentenced as mentioned above.

Learned counsel for the appellant submits that the trial Court has not considered the delay in reporting the matter to the police as the incident of acceptance of bribe was of 28.6.1991 and it was reported to the Vigilance Department after a delay of two years and three months. It was a case of false implication as the trial Court has convicted the accused only on the basis of statements of interested witnesses who were facing criminal proceedings. Learned senior counsel also submits that there is no evidence to show that money was accepted by appellant from Kulwant Rai, the proprietor of the firm. The only allegation against the appellant is that he threw a paper on a vacant place near the office of Amrik Singh which was picked up by Darshan Kumar as he was coming towards the road along with Kulwant Rai. Even no offence is made out under Section 201 IPC against the appellant as there is nothing on record to show that the sample was destroyed by the appellant. Learned senior counsel also submits that the trial Court has not taken into consideration the defence evidence as it was specifically mentioned in the statement under Section 313 CrPC that Pawan Kumar filed a complaint against DSP, Vigilance Department and due to having a grudge in the mind, the appellant has been implicated. Learned senior counsel also submits that the accused-appellant was found innocent in the departmental inquiry. Only co-accused Paramjit Singh Sandhu (PW9) and Nandpal Singh were charge sheeted. Said Paramjit Singh Sandhu and Nandpal Singh became the prosecution witnesses.

Learned State counsel submits that the judgment of the trial Court is well reasoned which is based on proper appreciation of evidence and no interference is required by this Court.

Heard arguments of learned counsel for the appellant as well as learned State counsel and have also perused the statements of the witnesses and other record of the trial Court.

During the pendency of appeals, two accused Amrik Singh Duggal and Kulwant Rai died and their Crl. Appeals Nos.778-SB and 782-SB of 2000 stand abated vide order dated 26.11.2010.

A perusal of statement of Dalbir Singh (PW-7) shows that he was recalled for cross-examination on behalf of accused-Pawan Kumar. He has stated that his statement was recorded by the police during the course of investigation of the case. He further stated that entire responsibility was of the team of the officers but he did not remember whether any sample has been deposited or not on 28.6.1991. It has been stated that the team went to Mansa for drawing sample on 26.6.1991 and was allowed to draw sample. Paramjit Singh sent a letter to him which was bearing the signatures of Prithipal Singh, Amrik Singh Duggal, Pawan Kumar and Surjit Singh. It has also been stated that the said persons were working under him and he had identified their signatures. The letter was received in his office on 27.6.1991. It has also been mentioned that in the document exhibited as Ex.DK that there was no metallic seal on form J and it cannot be said to be a genuine document. Similarly, PW8-Sukhdev Singh has stated in his statement that on 28.6.1991 a party came from Bathinda and drew samples from his shop. Pawan Kumar and Amrik Singh Duggal were members of the team. A sample of Butaclore pesticides was drawn from his shop. The person who was incharge of the party came to his shop and drew a sample but he did not know his name. It has also been stated that the official who took the sample also signed the bill but I did not know the names of the shop from where samples were taken. It has also been stated that after taking sample copy of form No.12 was supplied to him by the accused and his statement was recorded by the police. In cross examination he has stated that at the time of taking sample, the accused signed in the register maintained by him and an entry was also made in the register. The bill was signed by the members of the team from Bathinda. Paramjit Singh Sandhu (PW9) has stated that four samples were retained by Pawan Kumar and Amrik Singh along with form No.12. Samples drawn by Inspector insecticide Mansa were returned by them. After taking samples and completing formalities, they went to Bathinda. In cross examination, it has been stated that three samples were taken which were received in the office of Chief Agriculture Officer on 29.6.1991. As per register maintained, no sample was drawn from M/s Kissan Sales Agency on 28.6.1991. In cross examination he has stated that he cannot tell as to how many bills were there in the bill book, by whom they were filled up and how many bills were lying vacant. He has also stated that he cannot tell as to how much price was paid for purchasing the fertilizers from Kulwant Rai on that day. He does not remember as to how much the stock of Butaclore was lying with Kulwant Rai. Ex.PC was written by Nand Pal Singh. Amrik Singh Duggal signed the form as a witness and there is no metallic seal affixed on document Ex.PC. The stock register of M/s Kissan Sales Agency was not shown to him on the last date of hearing. The Insecticides Inspector who drew the sample signed the stock register of the licence. He has also stated that he cannot say as to whether the stock register was signed by the Insecticides Inspector or not. The departmental inquiry was initiated against him and Nandpal. The charge sheet was also served upon them. A special team was constituted and he was incharge of that team but he did not submit any written report to the Chief Agriculture Officer, Bathinda that on 28.6.1991 four samples were drawn at Mansa but it was told orally. He also stated that being incharge of the team he did not sign the stock register of M/s Kissan Sales Agency.

On perusal of statements of the prosecution witnesses, it has been proved that the sample of 50% Butaclore was drawn from M/s Kisaan Sales Agency but the same was not sent for analysis. The signatures of accused-Pawan Kumar (the present appellant) and Amrik Singh Duggal were also duly proved by Paramjit Singh Sandhu (PW-9) and Gurdita Singh (PW-2). Said Paramjit Singh Sandhu (PW-9) was thoroughly cross-examined but his statement was not shattered to prove that no sample was drawn from M/s Kissan Sales Agency. It has also been proved from the statement of Gurdita Singh (PW-2) that sample was taken by present appellant and Amrik Singh Duggal on 28.6.1991 but entry was not made in the sample register. The statement of Gurdita Singh (PW-2) finds corroboration with the statement of Paramjit Singh Sandhu (PW-9). It has also been proved from statement of Sudama Aggarwal (PW-3) and Darshan Kumar (PW-4) that an amount of ₹ 10,000/- was accepted as bribe by both the accused including the present appellant. Ex. PC was the carbon copy of form No. 12, which bears signatures of Pawan Kumar and Amrik Singh Duggal and it shows that sample of 50% Butaclore was drawn from M/s Kissan Sales Agency.

The argument of learned counsel for the appellant that the present appellant has falsely been implicated because of the past enmity cannot be accepted as the case is based on documentary evidence, whereby, it has been proved that sample was drawn and form No. 12 was duly signed by present appellant and his co-accused but the same was not sent for analysis. The delay in lodging FIR is also not relevant as the FIR was registered after conducting an enquiry on 16.6.1994 by DSP Vigilance, wherein, it was found that both the accused accepted bribe for not sending samples for analysis. It has also been proved that Paramjit Singh Sandhu and Nandpal came from Bathinda to assist the present appellant and Amrik Singh Duggal in drawing the samples but the same was not sent for analysis after it is being drawn.

In view of what has been discussed above, it is proved on record that sample was drawn but was not sent for analysis. The motive has also been proved that the co-accused of the present appellant i.e. Kulwant Rai, who is proprietor of M/s Kissan Sales Agency was benefitted by not sending the samples for analysis.

Accordingly, I am of the considered view that the prosecution has proved its case beyond reasonable doubt and as such there is no merit in the contentions raised by learned counsel for the appellant and the appeal being devoid of any merit is hereby dismissed.

6.1.2015 (DAYA CHAUDHARY)
KD/pooja JUDGE