

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-448-SB of 1999

Date of Decision : March 11, 2015

Sampat Ram (since deceased)
through his LRs

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Ms. Bindu Goel, Advocate
as Legal Aid Counsel for the appellant.

Mr. Randhir Singh, Additional A.G., Haryana.

T.P.S. MANN, J.

The appellant was tried under Sections 7 and 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). Vide judgment and order dated 28/29.4.1999, learned Special Judge, Gurgaon convicted him for the aforementioned offences and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for three months. Hence, the present appeal.

The case of the prosecution, in nutshell, is that complainant Jeet Ram had agricultural land situated in village Bissar Akbarpur and the appellant was the Patwari of that area. On 8.10.1991, the complainant approached the appellant for obtaining copy of Jamabandi of his land. The appellant told him that in the revenue record, less land was recorded in his name and if he wanted

to get the record corrected, he should pay him Rs.5,000/-. The complainant was not having the said amount. Accordingly, he approached Lakhi Ram, who advanced him Rs.5,000/-. The complainant paid the said amount to the appellant, who did not issue any receipt but promised to do the needful. The complainant again approached the appellant for the above mentioned purpose but was told by the appellant that he had since been transferred and, accordingly, assured to return the amount to him. When the appellant did not return the amount, despite several requests, the complainant submitted complaint to the Deputy Commissioner, Gurgaon on 1.5.1992, who referred it to the Sub Divisional Magistrate, Nuh for enquiry and report. After conducting the fact finding enquiry, the Sub Divisional Magistrate, Nuh submitted report dated 16.6.1992 to the Deputy Commissioner stating therein that the appellant had received a sum of Rs.3,500/- from the complainant as bribe and the said amount stood returned by the appellant to the complainant. Accordingly, initiation of action against the appellant as well as the complainant was recommended. The Deputy Commissioner vide letter dated 19.8.1992 directed the Sub Divisional Magistrate to get a criminal case registered against the appellant and the complainant. Accordingly, FIR No.155 dated 28.11.1992 was registered at Police Station Tauru.

During the investigation of the case, the appellant was arrested and after completion of investigation, final report under Section 173 Cr.P.C. was submitted against him. The appellant was,

subsequently, charge sheeted under Sections 7 and 13 of the Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined eight witnesses. PW1 Inspector Hari Chand deposed that he had prepared challan against the appellant. PW2 SI Karan Singh testified that he recorded formal FIR. PW3 Jeet Ram, complainant deposed on the lines of the prosecution case. PW4 Lakhi Ram deposed that the complainant informed him about the appellant demanding a sum of Rs.5,000/- from him for making correction in the revenue record. Accordingly, he paid a sum of Rs.5,000/- to the complainant on interest at the rate of 2% per month. He then accompanied the appellant to Patwarkhana in village Tauru, where the appellant and his Munshi met them. While he and the Munshi remained inside, the complainant and the appellant went out of the office and on their return, the complainant told the witness that his work had been done. He further testified that the complainant, later on, told him that his work had not been done, despite the fact that he had paid money to the appellant. The witness further stated that after some days, he was summoned by the Sub Divisional Magistrate, Tauru where the appellant offered to settle the matter and at the intervention of the brotherhood, the appellant agreed to return Rs.3,000/- as principal amount and Rs.480/- as interest, which amount was duly paid. PW5 Shri Rajbir Singh, the then Sub Divisional Magistrate, stated that he had made enquiry in relation to payment of illegal gratification by the complainant to the appellant. He proved his report Ex.PB and also

the statements Ex.PB/1 of the appellant. Ex.PB/2 of Jeet Ram, Ex.PB/3 of Lakhi Ram, Ex.PB/4 of Lakhpatt, Sarpanch, Ex.PB/5 of Karan Singh, Patwari, Ex.PB/6 of Deep Chand, Girdawar and, supplementary statement Ex.PB/7 of the complainant. PW6 Gutar deposed that in his presence the appellant returned a sum of Rs.3,500/- to the complainant. PW7 Ved Parkash, who was Deputy Superintendent of Police, Nuh testified that he partly investigated the case and recorded statements of various witnesses. PW8 Shri R.C. Mishra, the then ASP, Nuh stated that on 11.10.1993, he formally arrested the appellant and on 20.11.1993, recorded statement of the complainant and, thereafter, the file was handed over to the Station House Officer for preparing the challan.

When examined under Section 313 Cr.P.C., the appellant denied the prosecution allegations and while pleading innocence, took the following stand :-

"I intervened between Girdawar Deep Chand and complainant Jeet Ram. I also told the Girdawar that work as desired by the complainant was not able to be done. I also compromised between Jeet Ram and Girdawar. Due to these reasons, the accused made this false complaint against me. I am innocent and have been falsely implicated in this case. I did not receive any bribe money from the complainant as I was transferred from that place on the date of alleged complaint."

In his defence, the appellant examined DW1 Rajbir Singh, who deposed that the appellant had convened a Panchayat as the complainant had paid money to Deep Chand Girdawar for getting Girdawari corrected in his favour. The appellant refused to oblige the Girdawar as the work was illegal. He further stated that the money was taken by Deep Chand from the complainant and not by the appellant. The Panchayat had asked the appellant to bring money from Deep Chand Girdawar and hand over the same to the Panchayat. The Panchayat finally returned the money to the complainant, who executed affidavit Ex.DA on 13.5.1992. It was also testified that no money was taken by the appellant from the complainant and the appellant had only intervened between the complainant and Girdawar.

After hearing learned counsel for the parties and going through the evidence led by both the parties and the material circumstances of the case, the trial Court accepted the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above.

It may not be out of place to mention here that during the pendency of the appeal, the appellant passed away on 19.6.2005 leaving behind his wife Murti and sons Rajinder Singh and Mohinder Singh, besides three daughters. Vide order dated 10.2.2010, the Court brought the aforementioned wife and sons of the appellant on record as his legal representatives, being his nearest relatives. The

said three near relatives of the appellant are now continuing the appeal.

This Court has heard Ms. Bindu Goel, Advocate, who was appointed as Legal Aid Counsel for the appellant on account of non-appearance of the appellant's counsel and Mr. Randhir Singh, Additional Advocate General, Haryana and with their able assistance, minutely scanned the evidence brought on the record.

It is the case of the prosecution itself that the appellant, who was posted as Patwari and the village of complainant Jeet Ram falling within his area, had demanded a sum of Rs.5,000/- from complainant Jeet Ram so as to get the area, as mentioned in the revenue record, corrected. As the complainant did not have that much money with him, he met PW4 Lakhi Ram, who advanced him a sum of Rs.5,000/-. The complainant, while accompanied by Lakhi Ram, went to the Patwakhana, where the appellant and his Munshi were present. While Lakhi Ram and the Munshi of the appellant remained inside the Patwarkhana, the appellant and Jeet Ram went out and after some time when they returned, Jeet Ram apprised Lakhi Ram about having paid the bribe money to the appellant. Apparently, Lakhi Ram had not seen the demand and acceptance of the bribe amount by the appellant. He only depended upon the information which he received from complainant Jeet Ram. Position would have been different if Lakhi Ram himself had seen demand and acceptance of the bribe money by the appellant and then in that situation the Court would have first hand evidence regarding demand

and acceptance of the bribe money. Thus, there remains the evidence of complainant Jeet Ram only as regards the demand and acceptance of the bribe amount by the appellant.

In case the appellant had demanded bribe from complainant Jeet Ram, the latter was under a duty to inform the vigilance or police authorities and then could have got a raid conducted so that the appellant could be caught red handed while accepting the bribe. Complainant Jeet Ram did not feel the necessity of informing the authorities. Instead, he willingly agreed to part with the bribe amount by giving it to the appellant, which made him responsible for committing the illegal act of giving of bribe. So much so, that pursuant to the enquiry conducted by the Sub Divisional Magistrate, the Deputy Commissioner had directed registration of criminal case against the complainant Jeet Ram also, besides, the appellant. It is another thing that upon completion of the investigation, the investigating agency did not present any challan against complainant Jeet Ram. Instead, only the appellant was challaned. During the trial of the case, the appellant had filed an application under Section 319 Cr.P.C. for summoning complainant Jeet Ram also as an accused, being the bribe giver and, that too, unhesitatingly. It is another thing that the said application was dismissed by the trial Court. Merely because the appellant did not take up the issue, thereafter, is not sufficient to conclude that the complainant could not have been proceeded against, being the bribe giver.

In support of its case that the appellant had demanded and, thereafter, received illegal gratification for correcting entries in the revenue record, the prosecution relied upon the testimonies of complainant Jeet Ram, who appeared as PW3 and PW4 Lakhi Ram, who had advanced an amount of Rs.5,000/- to the complainant on interest so as to enable him to pay the illegal gratification. It is also the prosecution case that when the appellant was transferred and he could not correct the record, he returned a sum of Rs.3,480/- to the complainant. PW3 Jeet Ram, during his cross-examination, testified that he had executed affidavit Ex.DA. A perusal of the said affidavit makes out that the complainant had no grievance against the appellant and the entire matter stood amicably resolved. He also stated that he did not want any action to be taken against the appellant. The affidavit was signed/thumb-marked by eight persons as witnesses. It was also testified by PW3 Jeet Ram that about 50 persons were present when the affidavit was given. Under these circumstances, the explanation of the complainant in order to wriggle out of the same was that the affidavit was executed under pressure, cannot be accepted. The affidavit was attested by Executive Magistrate, Tauru on 13.5.1992. Complainant Jeet Ram had stepped into the witness-box more than four years later, i.e. on 8.7.1996. In these four years, the complainant did not take any step from which it could be concluded that he had not willingly executed the affidavit. Thus, his explanation of the affidavit having been executed under pressure cannot be believed.

According to PW3 Jeet Ram, he had paid the bribe amount to the appellant in the Patwarkhana, while in the presence of Lakhi Ram. However, Lakhi Ram, when he stepped into the witness-box as PW4, testified that he, alongwith Jeet Ram, reached Patwarkhana in village Tauru where the appellant and his Munshi met them. While Jeet Ram and the appellant went out of the office, PW4 Lakhi Ram himself and the Munshi remained inside Patwarkhana. Thereafter, the complainant and the appellant returned back to the Patwarkhana. Thus, it cannot be said that PW4 Lakhi Ram was witness to the demand and acceptance of illegal gratification by the appellant from Jeet Ram. So much so, PW4 Lakhi Ram admitted in his cross-examination that Jeet Ram had not paid the amount to the appellant in his presence.

According to the appellant, the complainant had given bribe amount to Deep Chand, who was posted as the Girdawar and not to him. In support of his plea, the appellant examined DW1 Rajbir Singh, who testified that the appellant had convened a Panchayat as the complainant had paid bribe money to Deep Chand Girdawar for correcting Girdawari entries. Further, the appellant refused to become party as the work was illegal. It was also testified that in the Panchayat, it was decided that the money was taken by Deep Chand and not by the appellant and, accordingly, the Panchayat asked the appellant to bring money from Deep Chand and hand over the same to the Panchayat. Afterwards the Panchayat returned the amount to complainant Jeet Ram, who executed the affidavit in that regard.

Finally, he stated that the appellant had only intervened in between complainant Jeet Ram and Deep Chand Girdawar. In cross-examination DW1 Rajbir Singh deposed that he had intervened in the matter and got the same compromised between Jeet Ram and the appellant.

From the statement of DW1 Rajbir Singh, it is shown by the defence that it was not the appellant but Deep Chand Girdawar, who was recipient of the bribe money and pursuant to the decision of the Panchayat, it was the appellant who went to the house of Deep Chand from where he brought the amount of illegal gratification, which was, thereafter, returned by the Panchayat to complainant Jeet Ram. On receipt of the said amount, the complainant executed an affidavit. At the same time, it would be worthwhile to refer to the testimony of PW5 Shri Rajbir Singh, Sub Divisional Magistrate, who had conducted enquiry in relation to the payment of illegal gratification and it was recommended that case be also registered against the bribe giver, i.e. complainant Jeet Ram. He also testified that at that time Deep Chand was posted as Kanungo and his statement was also recorded during the enquiry as some reference had come which required recording of his statement. If Deep Chand had nothing to do with the case, he would not have been called for associating himself in the enquiry. The plea of the appellant that he had no role to play in the giving or taking of the illegal gratification, rather it was Deep Chand Girdawar, who had accepted the illegal gratification, cannot be said to be ill-founded. Possibility cannot be

ruled out that the appellant was made a scapegoat as he refused to act as per the wishes of Deep Chand and it was only the latter, who may have accepted the bribe amount and not the appellant.

According to the prosecution, the appellant had demanded a sum of Rs.5,000/- as illegal gratification from complainant Jeet Ram and as said Jeet Ram was not in possession of the said amount, he borrowed it from PW4 Lakhi Ram and handed over the same thereafter to the appellant as illegal gratification. However, subsequently, the money shown to have been returned by the appellant is Rs.3,480/-, i.e. Rs.3,000/- as principal and Rs.480/- as interest thereupon. There is no material on the file to show as to why the return of the remaining amount was not insisted upon by complainant Jeet Ram.

In view of the above, the impugned judgment of conviction and sentence passed by the trial Court cannot be sustained. Under these circumstances, extending the benefit of doubt to the appellant would be in order.

Resultantly, the appeal is accepted, impugned order of conviction and sentence is set aside and the appellant is acquitted of the charges against him.

March 11, 2015
satish

(T.P.S. MANN)
JUDGE