**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S No.1117-SB of 2008
Date of decision: 4th November, 2015

Manmohan Singh

… Appellant

Versus

State of Punjab

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.K. Dogra, Advocate
for the appellant.

Mr. J.S. Brar, Asstt. Advocate General, Punjab.
for the respondent/State.

FATEH DEEP SINGH, J.

Under challenge in this criminal appeal by the convict appellant Manmohan Singh is the findings of the Court of learned Special Judge, Amritsar dated 07.06.2008 whereby the accused has been found guilty of commission of offences under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short, 'the Act') whereby he has been sentenced under Section 7 of the Act to undergo rigorous imprisonment for one year and to pay a fine of ₹1000 and in default of payment of fine to further undergo rigorous imprisonment for three months, and to a similar sentence under Section 13(2) of the Act.

The allegations of the prosecution are that the accused while posted as Patwari had demanded from the complainant Jasbir

Singh, a farmer, ₹1000 as bribe for giving him copy of jamabandi and khasra girdawari of his land when the actual fees was ₹450 and that upon the complaint to DSP Kashmir Singh, Investigating Officer of the Vigilance Bureau, a raid was planned in the presence of shadow witness Nirmal Singh, official witnesses R.P. Singh SDO and Balwinder Singh JE, whereby ten currency notes of the denomination of ₹100 each, in all totalling to ₹1000, were smeared in phenolphthalein powder after noting their numbers and upon undergoing necessary formalities, trap was laid. When the accused demanded the money and on its handing over, on signal by the shadow witness the vigilance team swooped upon the accused leading to recovery of tainted currency notes from the pockets of his pants, thus leading to prosecution of the accused and culminating into his conviction.

Heard Mr. M.K. Dogra, Advocate representing the appellant; Mr. J.S. Brar, Asstt. Advocate General, Punjab on behalf of the respondent/State and on perusal of the records.

The contentions that the very element of demand by the accused of illegal gratification and its acceptance are not at all established by the prosecution, certainly could not be controverted on behalf of the State.

The complainant Jasbir Singh, who has been examined as PW1, nowhere states that it was on the demand of the accused he had handed over to him the tainted currency notes and thus, was declared hostile on the State request and put to cross-examination and rather has contradicted the prosecution version to hold that the shadow witness Nirmal Singh was not present at the time of the alleged occurrence and has even failed to detail anything about the official/shadow witnesses. Rather in his cross-examination by the defence has clearly stated that Manmohan Singh never demanded or accepted any bribe from him and that he had kept the tainted money in the office from where it was recovered and that he only put his thumb impression on the documents at the asking of the DSP, and to the similar effect is the deposition of PW2 Nirmal Singh shadow witness who too was declared hostile and cross-examined. Though it is well settled principle of law that evidence of hostile witnesses is not to be thrown over-board and can be used to corroborate the prosecution version if so necessitated, but as has been argued on behalf of the appellant side, the very element and evidence of demand by the accused as well as its acceptance could not be brought about and proved through cogent, reliable and substantial evidence. Since the complainant and the shadow witness are two witnesses of this demand and acceptance, who having resiled and not having supported the prosecution story, creates a material void in the prosecution version and though as is argued on behalf of the State recovery of the tainted currency notes has been brought about by PW4 R.P.Singh SDE, PW5 Balwinder Singh JE as well as Investigating Officer PW6 DSP Kashmir Singh, but the very factum of demand and acceptance could not be established and even the learned State counsel has readily acceded to this position on the record.

The Hon'ble Supreme Court in **'B. Jayaraj v. State of A.P.' 2014 (2) RCR (Criminal) 410,** have elaborated in depth and interpreting the very requirements of Section 7 of the Act, have held that demand of illegal gratification is sine-qua-non to constitute the offence and mere recovery of currency notes cannot constitute the offence under Section 7 of the Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe and whereas in this case nothing concrete has come forth. Since the very offence under Section 7 of the Act has not been established, it will not be fair to hold as far as offence under Section 13(1)(d) and Section 13(2) of the Act are concerned, as in any event, only under Section 7 of the Act there can be a presumption of acceptance of illegal gratification in terms of Section 20 of the Act that it was received for doing or forbearing to do an official act. Thus, holding that the proof of acceptance of illegal gratification can follow only if there is proof of demand and which is materially lacking in the present case.

Even in a recent view in **'P. Satyanarayana Murthy v. The Dist. Inspector of Police and another'** (Criminal Appeal No.31 of 2009, decided on 14.09.2015), the Hon'ble Apex Court has laid down the principle as follows:

> *"20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise."*

Even in similar situations law has been settled, reference of which can be taken note of the ratios in **'C.M. Sharma v. State of A.P.' 2011(1) RCR (Criminal) 183;** and **'C.M. Girish Babu v. C.B.I.' 2009(2) RCR (Criminal) 134.**

Learned trial Court failed to appreciate this vital aspect of the case in the correct perspective. More so, as per the procedure which is conceded to even by the learned State counsel, a person to facilitate getting a copy of a revenue record needs to apply with deposit of charges and that nothing tangible has been brought on the record that the complainant ever moved any such application for facilitating copy of the jamabandi/khasra girdawari. The learned trial Court has even failed to put material evidence as to the pants from where the alleged tainted money has been recovered and which was sent to laboratory for analysis, to the accused in his statement under Section 313 Cr.P.C., are matters which certainly affect the outcome of the case.

Thus, in the totality of what has been detailed and discussed above, there has been misconstruing of the factual as well as legal intricacies involved in the case by the trial Court necessitating indulgence by this Court by way of acceptance of the instant appeal and thereby setting aside the impugned judgment of conviction.

Ordered accordingly. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

November 4, 2015
rps

Whether to be referred to the Reporters or not?