

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

Crl. Appeal No.S-1043-SB of 2004

Date of Decision: 14.01.2015

Chanan Ram

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. T.S. Sangha, Sr. Advocate
with Narinder Singh, Advocate
for the appellant.

Mr. Premjit S. Ghuman, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed by the accused-appellant Chanan Ram to challenge the judgment of conviction and order of sentence passed by Special Judge, Kapurthala in case FIR No.34 dated 22.05.2001 registered under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Jalandhar.

Briefly, the case of the prosecution is that the complainant-Surjit Singh was accused and was undergoing sentence in case of murder of his wife. On 08.05.2002, he was released on parole for 28 days. He had purchased some land and because of his conviction, the mutation could not be entered. While on parole, he went to the present appellant, who was working as *Patwari*, in his office, at Bholath and requested to enter the mutation in his favour. Accused-appellant demanded a sum of ₹ 5,000/-

for entering mutation. However, the amount of ₹ 2,500/-was settled. Copy of the original sale deed was kept by the appellant. Thereafter, on 22.05.2002, the complainant reached in the Office of Deputy Superintendent of Police, Vigilance Bureau, Kapurthala and told him regarding the demand of amount of bribe. A raiding party was constituted. Paramjit Singh, PHG was appointed as a shadow witness. Complainant went to the office of the appellant along with shadow witness and offered the settled amount. On giving signal by the complainant, the accused was apprehended by the raiding party while accepting the amount of bribe. A glass tumbler, containing water, was fetched, in which sodium bicarbonate was mixed and hands of the accused were got washed into that solution, as a result whereof, the colour changed into pinkish. The solution was put into a nip, which was sealed with the seal and the same was taken into possession vide memo, Exhibit PG. It was attested by the witnesses and personal search of the accused was got conducted through Subash Chander, PW. Four currency notes of the denomination of ₹ 500/- each and five currency notes of the denomination of ₹ 100/- each were recovered and numbers thereupon were also tallied. Said currency notes were taken into possession vide Memo, Exhibit PD, attested by the witnesses. One purse, containing ₹ 2,960/-, identity card, driving licence and wrist watch were also recovered from the accused-appellant, which too were taken into possession. The pant, worn by the accused, was got removed and its pocket was dipped into the solution, as a result whereof, its colour was also changed into pinkish.

After completing all the formalities including the arrest of the appellant, the case property was deposited with Ranjit Singh, Moharrir Head Constable, with seals intact and on receipt of the report of Forensic Science Laboratory, Punjab, Chandigarh and also on completion of

investigation, the challan was presented against accused under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. Thereafter, charge was framed against him under the said sections.

The prosecution, in support of its case, examined as many as nine witnesses. Surjit Singh-PW1 is the complainant, who has partly supported the case of the prosecution. Paramjit Singh, PW2 is the shadow witness, Dr. Subash Chander, medical officer appeared as PW-7, who is a witness of the recovery and Brij Mohan Sarup, DSP appeared as PW-8, who was the Investigating Officer.

Statement of the accused, under Section 313 Cr.P.C was recorded and he pleaded false implication. Accused has also stated in his statement that Surjit Singh-PW approached him in his Office on 16.05.2002 and asked for making entry of mutation, in his favour and the entry was made on that very day but copy, thereof, was not supplied as it was to be verified and approved by the Tehsildar, after hearing the objections. He further stated that when copy was not supplied to him for want of verification, the complainant got annoyed as he had to report back to the Jail. It has also been stated that there is no justification to demand amount of bribe after entering of mutation. On conclusion of statements of PWs and also the statement of the accused, the appellant was found to be involved on the basis of evidence against him and ultimately, he was convicted for offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- with default clause vide judgment dated 24.04.2004 passed by the Special Judge, Kapurthala.

The judgment of conviction and order of sentence awarded by the trial Court is subject matter of challenge in the present appeal, which

has been challenged by raising various grounds.

Learned counsel for the appellant submits that there are serious contradictions and variations in the statements of prosecution witnesses including the statement of PW-1 Surjit Singh-complainant. Those contradictions are material and there is improvement as well, which doubts the prosecution version. Learned counsel also submits that even the complainant-Surjit Singh has resiled from his statement and he has not supported the case of the prosecution. He further submits that there is no evidence on record to prove that illegal gratification was demanded by the appellant and the same was paid by Surjit Singh-complainant in presence of shadow witness-Paramjit Singh. PW-2 Paramjit Singh has not stated anything as to how the amount was paid by the complainant. Paramjit Singh is subordinate to the Investigating Officer and his statement cannot be relied upon. It is also the argument of learned counsel for the appellant that no independent corroboration is there, whereas, many persons were available at the place of occurrence. PW-2 Paramjit Singh has been introduced by the police being member of the police force. Learned counsel also submits that there was no occasion for the appellant to demand or to accept the illegal gratification on 22.05.2002 when entry of the mutation was already made on 16.05.2002, itself. Moreover, the appellant was not competent to have passed the order of mutation as it was within the jurisdiction of the Assistant Collector IInd Grade. At the end, learned senior counsel-Mr. T.S. Sangha submits that maximum sentence has been awarded to the appellant which is on the excessive side. He has already been removed from his job and has also faced the agony of trial since lodging of FIR i.e 22.05.2001. He further submits that since the appellant is facing the proceedings since 2001, hence, by taking a lenient view, his sentence be reduced reasonably.

Learned counsel for the appellant has relied upon the judgment of Hon'ble the Apex Court in case **V. Venkata Subbarao vs State represented by Inspector of Police, A.P. 2007(1) RCR (Criminal) 519** as well as judgments of this Court in cases **HC Aroor Singh vs State of Punjab** passed in **Criminal Appeal NO.203-SB of 2003**, decided on **06.08.2009**, **Anand Parkash vs State of Haryana 2008(2) RCR (Criminal) 335** and **Sarwan Singh vs State of Punjab 2004(1) RCR (Criminal) 368**, in support of his contentions.

Learned State counsel submits that the judgment of the trial Court is well reasoned and is based on proper appreciation of evidence. The contradictions and improvements in the statements of the witnesses, are not material, which may occur due to passage of time. Learned State counsel also submits that the guilt of the accused has been proved beyond reasonable doubt and no interference is required.

Heard the arguments of learned counsel for the parties and has also gone through the record placed on the file.

After giving thoughtful consideration to the rival contentions of both the sides and on perusal of evidence on record, some minor contradictions have been noticed but the same are not material. For commission of offence under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 following ingredients are necessary to be proved ;

- (i) that the accused was a public servant at the time when the offence was committed;
- (ii) that the accused accepted or obtained or agreed to accept or attempted to obtain illegal gratification from some person;
- (iii) that such gratification was not a legal remuneration to which he was legally entitled;
- (iv) that the accused accepted such gratification as a reward or motive for doing an official act or to show

favour or disfavour to someone, in exercising his official duties and by abusing his position as public servant, by obtaining for himself or for any other person, any valuable thing for pecuniary advantage.

The demand as well as acceptance have been proved as tainted currency notes were also recovered from the left side pocket of the pant of the accused. The hands as well as pocket of the pant were put into solution and the colour thereof changed into pinkish. Even the sale deed, Exhibit P1 and other registers, which were taken into possession vide memo, Exhibit PE, were proved. Although the complainant Surjit Singh and shadow witness-Paramjit Singh have slightly resiled from their statements but that is also not material. Certain negligible contradictions are there in the statement of Surjit Singh-PW1 and some of the discrepancies have also occurred in his statement but those contradictions and discrepancies does not affect the merits of the case. Not only on the basis of statement of the prosecution witness but from the report of the Chemical Examiner, the prosecution has been able to prove its case. It has also been proved that the accused demanded and accepted the amount of bribe other than legal remuneration, for a sum of ₹ 2,500/- from the complainant-Surjit Singh as a motive or reward, for entering and getting sanctioned the mutation of his land, which was purchased in the year 1994.

The argument of learned counsel for the appellant that the mutation on the basis of sale deed, produced by the complainant, was already entered by the accused on 16.05.2002 and the question of demand of gratification does not arise, cannot be accepted as the relevant record was with the accused and the complainant was not aware. Otherwise also, the allegations against the appellant was that the amount of bribe was to be given for entering the mutation in the revenue record and after making necessary entry, it was to be sent to the concerned officer but copy,

thereof, was not supplied to the complainant. Moreover, at the time of occurrence, many officials were present in the room including Surinder Pal, Kanungo but the accused did not examine any of those persons as witness. He could have cited some of the persons from the office as defence witness but none of them has been cited as DW.

Keeping in view the facts as mentioned above, the prosecution has been successful to prove his case beyond reasonable doubt and the accused-appellant has been held guilty for said offences and convicted accordingly.

The submission of learned counsel for the appellant is that the appellant has lost his job and has faced the agony of trial for a considerable period of more than 13 years and the maximum sentence has been awarded to him. Not only, he has lost his job but he has been deprived of other service benefits which could have been granted to him, had he been in service.

In view of the submissions made by learned counsel for the appellant and keeping in view the sentence awarded to him as well as other facts including the fact that his family is completely dependent on him and he was dismissed at such a young age, the sentence awarded to him is reduced from five years to one year.

Accordingly, the conviction is upheld and the sentence awarded to the appellant is reduced to one year.

The appeal is dismissed with the said modification of sentence.

14.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE