

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

CRA-S-1734-SB-2008 (O&M)

Date of Decision: 13.05.2015

Satbir Singh

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. D.P. Singh, Advocate
for the appellants.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

- 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?***

RAJ MOHAN SINGH, J. (Oral)

This appeal is directed against the judgment of conviction dated 01.09.2008 under Section 7 and 13 (1) (d) of Prevention of Corruption Act and order of sentence dated 03.09.2008 passed by Special Judge, Faridabad. The appellant has been sentenced to undergo 1 year under Section 7 and 3 years and fine of Rs.25,000/- under Section 13 (2) of Prevention of Corruption Act along with default clauses.

The prosecution story started on the basis of complaint made by Mahabir complainant/driver of truck who gave written

complaint alleging that he had taken his truck from Mathura to Aligarh and was returning to Palwal. The truck was to be filled at Mahabir Transport, Palwal. His truck crossed Rahimpur bridge and entered Harayana where there was a sales Tax Barrier. A permit was required for 3 months for a total permit fee of Rs.1630/-. Accordingly, the said amount was offered to the accused who was Tax Inspector at the tax barrier. Instead of accepting the amount towards permit fee demand of Rs.2000/- allegedly made by Tax Inspector/appellant. The complainant refused, the permit was not given and a demand of Rs.360 over and above Rs.1630/- was made and then only this permit for three months would be released. The complainant did not want to pay the amount and wanted that a trap be set and official be caught red handed. Accordingly, written complaint was made by complainant Mahabir to the Superintendent of Police Rural Palwal on 01.12.2006. The said complaint was marked to DSP, Palwal and a raiding party was constituted. Sub Divisional Magistrate, Palwal was associated in the raiding party. Complainant was given amount of Rs.2000/- which was signed by DSP and SDM and thereafter the same amount was handed over to complainant. Kali Charan conductor of the truck was nominated as shadow witness. The raiding party went in a truck followed by the police vehicle. Police vehicle was stopped at a distance at the barrier. Complainant and shadow witness Kali

Charan proceeded further as directed. Money was paid and required signal was given. Raiding party reached at the spot and amount of Rs.2130/- was allegedly recovered. The hand wash was taken which was turned pink. The shirt pocket of the accused was also got washed and the solution turn pinkish. After necessary compliance accused was arrested and charges were framed for the offence under Section 7 and 13 (1) (d) of PC Act. The accused did not plead guilty and claimed trial.

Prosecution examined Balbir Singh, Superintendent as PW-1 who brought the record and proved the sanction given by Tax Commissioner, Haryana. Complainant Mahabir was ultimately declared hostile and did not support the prosecution story. On cross-examination the witness stated that he had not gone to Sale Tax Barrier on 01.12.2006 nor told the police that Rs.2000/- had been demanded by the accused for permit for which an amount of Rs.1630/- was payable. The witness also denied the demand having been made by the accused for illegal gratification. Though witness admitted his signatures on the application Ex.PC. He denied other particulars and was declared hostile by the prosecution. The witness has also denied amount of Rs.130 having taken by him from the Conductor Kali Charan to make the entire amount to be Rs.2130/-. He stated that his signatures were obtained on blank papers. Shadow witness Kali Charan PW-4 was also declared hostile on the same pattern as

in case of PW-2. The witness denied all the incriminating allegations and stated that he was sleeping in the truck from 1.00 PM to 4.00 PM and when he woke up he found the truck to be in the police station. PW-3 SDM, Sultan Singh who has been cited as member of the raiding party supported the prosecution case that he joined the raiding party on being appointed on verbal orders of the Deputy Commissioner. The witness has stated that necessary formalities were done and the complainant was handed over an amount of Rs.2000/- with three notes of 500/- each and five notes of 100/- each on which the witness and DSP put their initials. The statements of other witnesses were also recorded. In the present case after witness the PW 2 complainant and PW-4 shadow witness having been declared hostile then it has to be considered in light of other attending circumstances. Puran Lal Clerk who has brought the duty roster of 01.12.2006 from 4.00 PM upto 12.00 at night has examined as PW 5. Parveen Kumar Mehta, DSP examined as PW-6 who has supported the prosecution case.

The statement of the accused was recorded under Section 313 Cr.P.C who denied the prosecution story altogether.

According to accused he had not made any demand nor had accepted any bribe. He had stated that Mahabir had given him Rs.2000/-, he had issued a receipt of Rs.1630/- and the remaining amount of Rs.370 had been returned to him. In

defence accused/appellant got examined Shiv Charan DW-1 who stated that he used to walk daily after dinner on the road near the tax barrier. On 01.12.2006 he was walking on the road and reached tax barrier where he saw that truck driver after getting receipt from Sale Tax Officer was going back to his truck, when he was apprehended by police and later he came to know his name was Mahabir. Mahabir gave Rs.2000/- to the Sale Tax officer and Sale Tax Officer returned Rs.370/- to him after obtaining the receipt. No demand was made by the Sale Tax Officer and police officials threatened Mahabir and asked him to accompany him to the police station. Nothing had happened at the spot.

I have heard counsel for the parties.

FIR was registered not on the basis of initial version given by the complainant. The FIR was registered only after the raid was conducted and alleged proceedings were done in which amount was allegedly shown paid to the accused and on the basis of trap, the same was so recovered from the person of the accused with all incriminating features. Learned counsel for the appellant has argued that the police was bound to record FIR on the basis of initial version under Section 154 Cr.P.C. Lodging of FIR on the basis of subsequent alleged features does not satisfy spirit of Section 154 Cr.PC which requires that when information in respect of cognizable offence is given to the incharge of the

police station then he is bound to register case for investigation. The police is not entitled to embark upon any inquiry without registration of the case, except for a limited purpose of ascertaining whether cognizable offence is made out or not.

Secondly in the original version the prosecution story alleged that as against Rs.1630, the accused demanded Rs.2000/-. Accordingly an amount of Rs.2000/- was handed over to the complainant for onwards payment to accused with initialed currency of notes. Surprisingly, the total recovery from the accused was shown to be Rs.2130/-. This prosecution tried to improve the case by alleging that at the time of handing over the amount, in fact the demand was made by the accused to make round figure of Rs.500/- towards the demanded amount and therefore after obtaining additional amount of Rs.130/- from shadow witness Kali Charan amount of Rs.2130/- was handed over to the accused. Apparently there was no demand of Rs.500/- as per prosecution story unfolded by the complainant in the written complaint. Demand is sine qua non for commission of offence under PC Act. Learned counsel stated that PW-2 and PW 4 have not supported the prosecution case and they have demolished in the composition of raiding party. PW 2 complainant and PW 4 shadow witness have uprooted the prosecution story, thereby, denying the alleged demand and payment of alleged money to the accused.

Statement of PW-3 SDM, Sultan Singh is suggestive of the fact that he joined the raiding party only on the oral orders of the Deputy Commissioner. No document is forthcoming in respect of appointment of Executive/Duty Magistrate who has to be appointed under the order of Deputy Commissioner.

Learned counsel states that recovery cannot be treated as incriminating bribe because tax receipt of Rs.1630/- already stood issued and amount of Rs.2000/- allegedly recovered from him was supposed to be with him after issuing receipt of Rs.1630/-.

According to statement of the complainant balance amount was duly paid by the accused. The alleged story of taking additional amount of Rs.130/- from shadow witness Kali Charan in order to make round figure of 500/- as bribe has not been corroborated with reference to any evidence. Payment to the tune of Rs.500/- was never in-offing. The statement of PW-2 and PW-4 did not support the prosecution case. The entire skeleton and its basic fabrics have to fall down. According to learned counsel for the appellant, demand has not been proved in the absence of corroboration from the complainant and the shadow witness and therefore, acceptance of illegal gratification does not arise at all. The currency notes were with the accused-appellant against the tax receipt. Therefore, learned counsel states that no offence is made out against the appellant. Secondly, learned counsel by

relying upon **2015 (Criminal Law General) 72 MR Purushotham Vs. State of Karnataka** submitted that when the demand is not proved accused has to be acquitted. Mere possession and recovery of currency notes from the accused without any proof of demand will not bring the culpability under mischief of Section 13(1) (d) of the Act. Since, the complainant and shadow witnesses have been declared hostile, therefore demand and acceptance of illegal gratification by the accused have no legs to stand. The Hon'ble Apex court in aforesaid judgment relied upon **2014 (2) RCR (Criminal) 410 B. Jayaraj Vs. State of Andhra Pradesh** to conclude that mere possession of currency notes without proof of demand is not sufficient to bring home the guilt of the accused in terms of provision of PC Act. Since, the complainant and shadow witness have not supported the prosecution case, the statement of Sub Divisional Magistrate in the context of assigning the raid on oral orders of the Deputy Commissioner is also one of the feature in which the composition of the raiding party itself comes under clog.

The Apex Court in the cited case of **Jayaraj** (Supra) has observed that the presumption in terms of Section 20 of the Act only be attracted in respect of offence under Section-7 and not in terms of offence under Section 13(1) (d) of the act. It is only the proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act. In the

instance case entire skeleton stood collapsed down with the declaration of complainant and shadow witness to be hostile and in view of assigning duty to SDM without there being any official order by the Deputy Commissioner. Additionally, the demand as per prosecution case was in respect of Rs.370/-, the manner in which it was alleged to be in a round figure of Rs.500/-, remained conspicuous. The alleged amount of Rs.130/- taken from PW-4 and then paid to accused is totally far fetched and does not inspire confidence.

Receipt of Rs.1630/- was duly executed. The amount so recovered was found to be in consonance with the amount received plus some personal amount of accused. Payment of Rs.370/- having made to complainant stood admitted. The alleged story had gone out of the proposition in the form of taking of Rs.130/- by the complainant from the shadow witness. This has been denied by the shadow witness and has not been established on record. The alleged initial demand of Rs.370/- was allegedly enlarged to the tune of Rs.500/- without there being any link evidence. From the statements of complainant and shadow witness, these allegations have not been proved on record. No demand has been proved and in the absence of any demand, the recovery so effected cannot be presumed to be on account of any illegal gratification, rather the amount was meant to be retained by the petitioner after issuance of receipt against an amount of

Rs.1630/-. All the notes were supposed to be with the appellant after payment of balance amount of Rs.370/- from his own pocket.

Learned counsel also relies upon **2010 (2) RCR (Criminal) 553 Banarsi Dass Vs. State of Haryana** in which the Apex Court dealt with the offence under Section 7 and 20 of the Act and held that recovery of tainted currency notes from the pocket of the accused in the absence of demand cannot be held to be incriminating. Complainant and shadow witness having been turned hostile, make the story of demand and payment totally imaginary. The accused was acquitted on the ground of mere recovery by itself cannot prove the charge of prosecution. In the absence of independent corroboration of the fact, the offence under Section 7 of PC Act was held not attracted in the given situation. On the other hand, learned counsel for the respondent has cited **2015(1) RCR (Criminal) 647 Vinod Kumar Vs. State of Punjab** to allege that presumption in terms of Section 20 of PC Act is attracted in view of money recovered on account of trap. The Hon'ble Court has also noticed the fact that when the tainted money recovered from the accused as a result of trap then recovery itself is not sufficient to record conviction, unless there is some evidence that the amount was paid on account of demand and the money was paid voluntarily as bribe. In the absence of any such evidence, the acceptance of the amount as illegal

gratification and recovery thereof would not be a ground to convict the accused. In the cited judgment the distinguishing features were that there was independent corroboration from the evidence that created deviation from normal rule. It is also settled principle of law in view of **Jayaraj (supra)** that presumption under Section 20 of PC Act can only be attracted when the demand is proved.

In view of statements of PW2 and PW 4, demand is not proved on record, therefore, the aforesaid judgment has its on applicability in view of facts and circumstances involved therein. In the present case, the dictum laid down by the Apex Court in **2015 (Criminal Law General) 72 MR Purushotham case (supra)** and **2014 (2) (Criminal) 410 B. Jayaraj (supra)** are fully applicable and features endorsed by the Apex Court in **Banarsi Dass case (supra)** is also attracted to hold that payment of money without demand would not be sufficient to constitute offence in terms of PC Act. The presumption under Section 20 of the Act is not applicable, where demand is not forthcoming on record.

After due consideration of facts and circumstances involved in the case, it is found that changed demand of Rs.500/- is not forthcoming on record. The initial version in which the demand of Rs.370/- was made already stood explained by the complainant himself when he said that for Rs.1630 a receipt was

issued by the accused and remaining amount of Rs.370/- out of Rs.2000/- was paid to him. In view of aforesaid the prosecution has miserably failed to bring home the guilt of the accused-appellant to the hilt. Prosecution story is revolving around testimonies of the interested witnesses which are otherwise discrepant and do not inspire confidence.

Consequently, this appeal is allowed. Impugned judgment of conviction dated 01.09.2008 and order of sentence dated 03.09.2008 passed by Special Judge, Faridkot are set aside. Appeal is allowed, acquitting the appellant from the charges. Fine paid by the appellant is ordered to be refunded in accordance with law.

13.05.2015
prince

(RAJ MOHAN SINGH)
JUDGE