

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

Criminal Appeal No.1918-SB of 2008

Date of Decision : 30.09.2015

Jhabar Singh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Akshay Jain, Advocate,
for the appellant.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

The appellant, namely, Jhabar Singh, has preferred this appeal impugning the judgment and order dated 29.09.2008/01.10.2008, (hereinafter referred to as 'impugned judgment') passed by the learned Special Judge, Hisar (hereinafter referred to as 'trial Court'), whereby, he has been convicted for the commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short as the 'Act') and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- or in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

Brief facts of the case in hand, as noticed in para No.1 of the impugned judgment, are being reproduced as under:-

“The prosecution case, in brief, is that the present case was registered on the statement of Parhlad Singh complainant made to DSP Raj Gopal on 20.10.2000. Parhlad Singh stated that he along with his brother in law (wife's brother) Mukesh runs STD PCO shop in front of bus-stand, Mandi Adampur bearing No.43815, which was earlier a local telephone No.43664. He moved an application along with affidavit for converting the local number into STD one and approached Jhabar Singh JTO and Operator Dhani Singh many a times but they did not pay any heed to his request. On the assurance that the complainant will pay Rs.1,000/-, they converted his local connection into STD and thereafter JTO Jhabar Singh and Dhan Singh operator continuously demanded Rs.1,000/-. The complainant stated that he does not want to pay the bribe money but they are harassing him. It was further stated that on 19.10.2000, accused came to his shop and asked to pay the amount on the next day. Raj Gopal DSP made his endorsement on the statement and sent the same to police station for registration of case. DSP Raj Gopal along with Parhlad Singh and Mukesh went to Tehsildar and joined him in the raiding party. Parhlad Singh handed

over two currency notes of the denomination of Rs.500/- each vide a memo. Phenolphthalein powder was applied to both the notes and were handed over to the complainant with the direction that he should give those notes to Jhabar Singh on demand. Mukesh witness was appointed as a shadow witness who gave signal, and they conducted raid. Accused Jhabar Singh was quizzed, who took out that money from the middle drawer of the table and handed over the same to the raiding party. The recovered currency notes were taken into possession in an envelope sealed with seal RG and the seal after use was handed over to Ram Parkash. The hand wash of the accused as well as of Parhlad Singh, complainant, turned pinkish. A nip from each hand wash for the purpose of sample was separated and sealed with the same seal RG and taken into possession vide separate recovery memos. A nip of sample was also separated, sealed and taken into possession. The memos were signed by PWs Parhlad Singh, Mukesh Kumar and Naib Tehsildar Ram Parkash, rough site plan was prepared, statements of the witnesses were recorded, accused was arrested in the case. Sanction order was obtained from the competent authority and after completion of investigation the challan was put in the court.”

On presentation of the challan, copies of the documents, as provided under section 208 Cr.P.C., were supplied to the accused.

The accused was charge-sheeted for the commission of offence under Sections 7 and 13(1)(d) of the Act to which he pleaded not guilty and claimed trial.

In order to substantiate its case against the accused, the prosecution examined the following witnesses:-

PW1-Subhash Chand, Draftsman, prepared the scaled site plan, Ex.P1, on 14.02.2001;

PW2-Dwarka Parshad, Telecom Operative Assistant, deposed that the appellant was transferred to Mandi Adampur from Fatehabad on 22.06.1999 on the post of JTO vide order, Ex.P2. He also deposed that on 20.10.2001, the appellant was posted in the office of BSNL, Mandi Adampur;

PW-3 SI Raja Ram, deposed that on receipt of the statement of the complainant, Ex.P3, he recorded the formal FIR, Ex.P4 on 20.10.2003;

PW-4 Constable Rajesh Kumar, PW-5 ASI Suresh Kumar and PW-6 Constable Shish Pal tendered in evidence their sworn affidavits, Ex.P6, Ex.P7 and Ex.P8, respectively;

PW-7 Ram Kishan, Senior Telecom Officer, deposed that he had brought the summoned record as the same was in the custody of SDO(T) Adampur;

PW-8 DSP Maan Singh, deposed that he was posted as DSP on 11.12.2000 and took up the investigation of this case,

recorded the statements of the witnesses and on completion of the investigation, prepared the report under Section 173 Cr.P.C. on 24.03.2001;

PW-9 Roshan Lal Yadav, Junior Telecom Officer, BSNL, Adampur, deposed that on 06.09.2000, an application for shifting of telephone No.43664 of Parhlad Singh was received in his office along with affidavit. The photocopy of application is Ex.P10, while copy of affidavit is Ex.P11. The copy of order passed on his application is Ex.P12. He further stated that the appellant was posted as JTO in the month of September, 2000;

PW-10 Ram Parkash, Naib Tehsildar, deposed that on 20.10.2000, on the request of DSP Raj Gopal, he joined the raiding party. He further deposed with regard to conducting the raid;

PW-11 Parhlad Singh, complainant and PW-12 Mukesh Kumar, the shadow witness, did not support the prosecution case and were declared hostile by the trial Court.

PW-13 Satish Kumar, Senior TOAP, proved sanction order Ex.P24;

PW-14 DSP Raj Gopal, deposed that Parhlad Singh complainant made statement Ex.P3, he made endorsement Ex.P3/A and sent the same to police station for registration of the FIR on 20.10.2000. He joined Naib Tehsildar, Ram Parkash in the raiding party.

The accused was examined under Section 313 Cr.P.C., wherein, he denied all the allegations and pleaded innocence.

Though, initially opted, but he closed the defence evidence without leading any evidence.

After hearing learned counsel for both the parties and considering material/evidence on record, the learned trial Court has convicted and sentenced the appellant for the offence and the term as indicated at the outset of this judgment.

Aggrieved by the judgment of conviction and order of sentence, the present appeal is directed by the appellant which was admitted by this Court on 16.10.2008.

The learned counsel for the appellant refers to the statement of PW-9, Roshan Lal Yadav, JTO, to contend that the telephone connection in question could not have been transferred according to the rules of the Nigam, and therefore, there was no occasion with the appellant to demand or accept any illegal gratification. It is further submitted that both the material witnesses, i.e. complainant- PW-11, Prahlad Singh, and shadow witness, PW12, Mukesh Kumar, did not support the case of the prosecution. He further states that there are material contradictions in the statements of PW-10, Ram Parkash and PW-14, Raj Gopal, Investigating Officer. As per the statement of PW10, Ram Parkash, the IO came to his office at 4.00 PM, whereas, it has come in the testimony of the IO that he reached the office of the Ram Parkash, Naib Tehsildar, PW-10, at 11.30 AM. The learned counsel further refers to the statement of the accused recorded under Section 313 Cr.P.C., wherein, it has been stated that the appellant was not present in the room of the SDO, he

was called by the police to that room and at the asking of the Police, opened the drawer of the table of the SDO. Thus, there is no evidence of demand and acceptance of the illegal gratification by the appellant.

On the other hand, the learned State counsel submits that the prosecution has been able to prove its case against the accused-appellant beyond a shadow of reasonable doubt. There is no doubt that the complainant and the shadow witness have turned hostile but solely due to this fact, the prosecution evidence cannot be entirely brushed aside. The other prosecution witnesses have duly supported the prosecution version and the contradictions, if any, are minor and deserve to be ignored.

I have heard learned counsel for the parties and perused the record with their able assistance.

In the present case, the appellant was charged under Sections 7 and 13(1)(d) of the Act. However, in view of the fact that the complainant, PW11, Parhlad Singh, and shadow witness, PW12, Mukesh Kumar, turned hostile, the learned trial Court acquitted the appellant under section 13(1)(d) of the Act as the demand and acceptance of illegal gratification could not be proved. However, the appellant has been convicted under Section 7 of the Act.

In order to bring home the guilt to an accused charged under Section 7 of the Act, the prosecution is required to prove that the accused had accepted or agreed to accept any illegal gratification. In this regard, the prosecution has examined PW10, Ram Parkash, Naib Tehsildar, who was joined as independent witness at the time of

conducting the raid. His statement finds corroboration from PW14, DSP Raj Gopal, who has stated that on 20.10.2000, Prahlad Singh, complainant, made a statement, Ex.P3, which was endorsed by him and sent to the police station for registration of case. He also joined Ram Parkash, PW10, Naib Tehsildar, as independent witness. Two currency notes were taken into possession from Parhlad Singh, vide memo Ex.P16. Phenolphthalein powder was applied on the currency notes and were handed over to the complainant vide memo Ex.P17. The raiding party reached the office of the accused and a trap was laid. The complainant and the shadow witness went inside, where, the complainant handed over the currency notes to the appellant and the shadow witness gave the signal. The accused on questioning took out the amount from the drawer of his table and handed over the same to the DSP. The currency notes were recovered and taken into possession vide memo Ex.P19. The hands of the accused were washed and the water turned pinkish. A nip was separated and taken into possession vide recovery memo Ex.P22. The recovered samples and the currency notes were sent to the Forensic Science Laboratory Haryana, Madhuban. The report, Ex.P26, was recovered wherein, it revealed that sodium carbonate and phenolphthalein powder was detected on each of the samples and the tainted currency notes.

Section 20 of the Prevention of Corruption Act, 1988 reads as under:

*"20. Presumption where public servant
accepts gratification other than legal*

remuneration.- (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, or any gratification (other than legal remuneration) any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is

mentioned in Section 7, or as the case may be without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

Thus, once it is proved that the tainted money was accepted by the accused, the presumption under Section 20 of the Act is attracted and it is presumed that the appellant accepted the gratification for doing or forbearing to do any official act as provided in Section 7 of the Act. The appellant has not lead any evidence in defence to rebut this presumption.

As far as the argument regarding contradictions in the statements of the prosecution witnesses is concerned, it is evident from the perusal of the record that the evidence was recorded after about six years of the alleged occurrence and due to the passage of time, memories tend to fade. Moreover, it clearly establishes that the witnesses were truthful and not tutored.

In this case, there is not even an iota of evidence, oral or documentary, to show that the PW10, Ram Parkash, Naib Tehsildar and PW14 DSP Raj Gopal, were inimical to the appellant. Therefore,

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there is no reason with the prosecution to falsely implicate the appellant in the present case.

In the light of the foregoing discussion, this Court comes to the conclusion that the prosecution has been successful in proving its case beyond a shadow of reasonable doubt as far as the charge under Section 7 of the Act is concerned.

Accordingly, the present appeal fails and is hereby, dismissed. The impugned judgment of conviction and order of sentence are upheld. The appellant is stated to be on bail. His bail bonds shall stand forfeited. He be taken into custody forthwith to suffer the remaining part of the sentence.

30.09.2015

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**(JITENDRA CHAUHAN)
JUDGE**

Note: Whether to be referred to reporter ? Yes/No