

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-S. No. 2052-SB of 2008
Date of decision: 02.12.2015

Bali Ram	...	Appellant.
	Versus.	
State of Haryana	...	Respondent.

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

1) Whether the judgment should be reported in the Digest ?.

...

Present: Ms. Monica Thakur, Advocate,
for the appellant

Mr. Gaurav Jindal, Addl. AG Haryana

...

M. JEYAPPAUL, J:

1. Accused Bali Ram who was serving as an Assistant Sub Inspector, has challenged the judgment of conviction and sentence passed by the trial Court vide which he was convicted under Section 7 of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'the Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months, and was also convicted under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

2. It is the case of the prosecution on 22.9.2006, accused Bali Ram,

ASI, took forcibly PW-1 Sushil Kumar from his house, having raised a demand of Rs.25,000/- as an illegal gratification, and kept him illegally at the Police Post Naka Assandh Road, Panipat. PW-3 Vikram is the brother of PW-1. PW-3 accompanied by PW-5 Rajender Sharma, met the accused in the Police Post. Ultimately, the accused agreed to release Sushil Kumar after receiving a sum of Rs.10,000/- as an illegal gratification. PW-3 did not like to part with the illegal gratification so demanded by the accused and so, he contacted the Director General of Police, Haryana. PW-21 DSP Rajesh Duggal was placed on duty with the Flying Squad to look into the complaint of PW-3. PW-3 handed over to PW-1 five currency notes in the denomination of Rs.1000/- each and ten currency notes in the denomination of Rs.500/- each. In the presence of PW-3 Vikram, PW-5 Rajender Sharma and PW-16 ASI Man Singh., Phenolphthalein powder test was demonstrated. It is further the case of the prosecution that PW-5 Rajender Sharma proceeded with the tainted currency notes along with PW-3 Vikram, who was used as a shadow witness, to the house of the accused and on demand of bribe made by the accused, tainted currency notes to the tune of Rs.10,000/- were handed over to the accused in the presence of PW-3 Vikram who gave pre-arranged signal to PW-21 who along with the raiding party descended on the house of the accused and recovered the currency notes. The hands of the accused were dipped in the Sodium Carbonate solution upon which the said solution turned pink in colour. The amount was recovered and the accused was also arrested by PW-17.

3. Accused set up a plea in his statement under Section 313 Cr.P.C.

that he was innocent and had been falsely implicated in the case. No such raid was conducted. No currency notes were recovered from his possession. PW-1 Sushil Kumar was also not released from Police Post.

4. Learned counsel appearing for the appellant would submit that the material witnesses, namely, PW-1 to PW-5 and PW-11 have completely turned hostile to the case of the prosecution. Therefore, it is her submission that neither the demand of bribe nor acceptance of the same was established by the prosecution. It is her further contention that mere recovery of tainted notes *ipso facto* would not establish the charge under Section 7 of the Act.

5. Per contra, learned State counsel would submit that the statement under Section 164 Cr.P.C. suffered by PW-1 Sushil Kumar and the testimony of PW-17 to PW-21 would establish beyond reasonable doubt the charge under Section 342 I.P.C. and Section 7 of the PC Act.

6. As rightly pointed out by the learned counsel for the appellant, the material witnesses, namely, PW-1 Sushil Kumar, the alleged victim of illegal detention, PW-2 Smt. Santosh wife of Sushil Kumar(PW-1), PW-3 Vikram brother of PW-1, who is the complainant, PW-4 Satpal who allegedly contacted DGP Haryana over telephone informing about the illegal detention of PW-1 Sushil Kumar by the accused, PW-5 Rajender Sharma who allegedly accompanied PW-3 to part with the bribe demanded by the accused and PW-11 EHC Jaibir Singh who made an entry in the Roznamcha, have utterly failed to support the case of the prosecution. In their words, their testimony does not even distantly prove the case of the prosecution.

7. PW-16 ASI Man Singh spoke of the fact that one Risala

submitted an application alleging robbery. Though the said application was marked to him by the accused, he kept the file with him. But PW-16 having verified the allegations, came to the conclusion that PW-1 was the real culprit in the case of robbery complained of by Risala. Of course, PW-16 admits that PW-21 DSP Rajesh Duggal raided the Police Post on 22.9.2006 and found PW-1 Sushil Kumar there. But he was not aware as to who brought Sushil Kumar to the Police Post. PW-17 ASI Sia Nand was associated by PW-21 Rajesh Duggal who laid the trap and conducted raid. Both of them would have been interested in the positive outcome of the case investigated by PW-21. Therefore, it is totally unsafe to rely upon their testimony to completely believe the story of the prosecution with a view to record conviction.

8. It is true that Section 164 Cr.P.C. statement had been suffered by PW-1 Sushil Kumar before the Magistrate and the same was exhibited as Exhibit PC/1. Now, the question that arises for consideration is whether such a statement in the absence of any support or corroboration by the author thereof can be used as a substantive piece of evidence to convict the accused.

9. It is a settled position of law that the statement suffered under Section 164 Cr.P.C. by a witness can never be used as substantive evidence of truth of facts, but it may be used for contradiction or corroboration of the witness who made it. It may also be used to impeach the credit of a prosecution witness, but it can never be used as substantive evidence to base conviction. Therefore, in my considered view, the statement under Section 164 Cr.P.C. suffered by PW-1 cannot at all be effectively used by the prosecution for the author thereof had completely disowned it, to convict the

accused.

10. The only witnesses who could speak of the demand of bribe and its acceptance were PW-1 Sushil Kumar, PW-2 Smt. Santosh, PW-3 Vikram, PW-4 Satpal and PW-5 Rajender Sharma. As they have completely turned hostile, the prosecution has miserably failed to bring home the episode which took place in the house of the accused. In other words, neither the demand nor acceptance of illegal gratification was established by the prosecution.

11. Now, it is well settled proposition of law that mere possession of currency notes by the accused and recovery of the same from him without any proof of demand and acceptance, do not constitute the offence under the Prevention of Corruption Act (**Refer M.R. Purushotham v. State of Karnataka, (2015) 3 SCC 247 and Vinod Kumar v. State of Punjab, (2015) 3 SCC 220**).

12. In view of the above facts and circumstances, I am of the considered view that the prosecution has miserably failed to establish the charges framed as against the accused. Therefore, the accused is acquitted of the charges. Consequently, the appeal is allowed and the conviction and sentence passed by the trial Court under Section 7 of the Prevention of Corruption Act and Section 342 IPC stand set aside. Accused is on bail. The bail bond executed by the accused shall stand discharged.

(**M. JEYAPPAUL**)
JUDGE

December 02, 2015
JS