

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-1906-SB of 2004
Date of Decision: February 25, 2015

Kartar Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Narula, Advocate
for the appellant.

Mr.S.S.Chandumajra, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 20.09.2004, passed by learned Special Judge, Patiala, whereby the accused-appellant was held guilty and convicted under Sections 7 and 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under each Section. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that Pargat Singh had purchased 2½ acres of land for half value regarding which the case is pending in the Court of Commissioner, Patiala. Pargat Singh and Harinder Singh Khatra met Kartar Singh, Superintendent in

his office to get the case decided and Kartar Singh demanded ₹4 lacs and the matter was settled for ₹3.25 lacs plus mobile phone. It is the case of the prosecution that Pargat Singh talked with Kartar Singh on mobile phone continuously. When the land case was not decided in favour of Pargat Singh, he filed affidavit before Commissioner, Patiala. Sh.Surjit Singh, PCS conducted the enquiry and found the allegations of giving ₹3.25 lacs and mobile phone to accused Kartar Singh as correct. The FIR was registered in this case. After necessary investigation, challan was presented against the accused-appellant

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, accused-appellant was charge-sheeted under Sections 7 and 13(2) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Inderjit, Senior Assistant, office of Financial Commissioner, who mainly proved the sanction order Ex.PA. PW-2 SI Parminder Singh deposed regarding collecting of details of mobile phone Nos.9814064337 and 9814036545 from Spice Telecommunications. PW-3 Darshan Singh mainly deposed that he is relative of Pargat Singh. He further deposed that he had purchased a mobile phone bearing SIM No.9814064337 for ₹9500/- and had sold the same to Pargat Singh for ₹5500/-. He also deposed that mobile set was of Panasonic Company. PW-4 Inspector Gurcharan Singh deposed regarding arrest of the accused. PW-5 Pankaj Dewan brought the record

pertaining to both the above-said mobile numbers. PW-6 Pargat Singh, complainant deposed that Harinder Singh Khatra has purchased land in village Rasulpur and he was partner in the said land. He further deposed the case was pending in the Court of Commissioner, Patiala in respect of that land and he was pursuing the said case. Kartar Singh accused was working as Superintendent in the office of Commissioner, Patiala. Bansal Property dealer of Bhawanigarh had arranged the bargain regarding the said land and told them that they should meet accused to settle the matter by paying illegal gratification to the accused. PW-6 further deposed that he met accused at his residence near bus stand, Patiala and requested him as to how the case can be decided. The accused told them that they have to pay ₹4 lacs as illegal gratification and the case shall be decided either way. The matter was settled at ₹3.25 lacs and a mobile phone. After few days, they went to the office of accused. Accused was present in his office and called his son. Accused told that amount of ₹2 lacs be paid to his son and on his direction, they paid ₹2 lacs to the son of the accused. This witness also deposed that after 5-7 days, he paid ₹1.25 lacs and a mobile phone, which was arranged by him by paying ₹5500/- to Darshan Singh. He further deposed that mobile phone and ₹1.25 lacs were given to Kartar Singh at his residence. In spite of payment of ₹3.25 lacs, the case was not decided either way. Then the complainant met concerned officer and told him that an amount of ₹3.25 lacs and a mobile phone has been given and in spite of that his case is not being decided. Said officer

told complainant to sworn an affidavit and thereafter, complainant sworn affidavit. Photocopy of the affidavit is Mark-A. PW-7 Harinder Singh Khatra also deposed as per prosecution version. He deposed that there was one Bansal Property dealer at Bhawanigarh and he got executed the agreement regarding the land. Thereafter, Bansal Property dealer and Pargat Singh met Kartar Singh accused and accused demanded ₹4 lacs from Pargat Singh for getting the case decided in their favour and the matter was settled for an amount of ₹3.25 lacs and one mobile phone. Thereafter, he (PW-7) along with Pargat Singh went to the house of accused at Rajpura Colony, Patiala and handed over ₹3.25 lacs to him. He further deposed that when the case was not decided, Pargat Singh went to the house of Commissioner at Patiala. Pargat Singh told the Commissioner that he had paid an amount of ₹3.25 lacs and one mobile phone to Kartar Singh accused. This witness also deposed that Surjit Singh told the accused to return the money and he returned ₹3.25 lacs to Pargat Singh in two installments. PW-8 Banarsi Dass, DSP Vigilance Bureau deposed regarding recording of statements of some witnesses. PW-9 Indermohan Singh, SP Headquarters, Investigating Officer, deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent. He further pleaded that he never demanded any illegal gratification from Pargat Singh nor accepted the same. Pargat Singh has no Court

case nor he (accused) was dealing with the court cases. He was posted as Superintendent, Establishment in the office of Commissioner, Patiala Division, Patiala and he has no concern with the court cases of Commissioner, Patiala Division.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that prosecution has failed to prove its case by leading any cogent evidence on record. The version regarding payment of money to the accused is totally contradictory. He further argued that there is no documentary evidence to support the version of the prosecution. There is no evidence on record to show that SIM no. of mobile phone was in whose name regarding which call details have been taken. He next argued that statements given by PW-6 Pargat Singh and PW-7 Harinder Singh Khatra are also totally contradictory. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There are no material contradictions or material improvements in the statements of the witnesses. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as

learned State counsel and have gone through the record minutely and carefully.

From the evidence on the record, I find that prosecution has failed to prove the guilt of the accused-appellant by leading cogent evidence. First of all, there is no documentary evidence on record to prove the payment of ₹3.25 lacs and giving of mobile phone. The prosecution has nowhere produced any cogent evidence on record to show that the same mobile phone is used by appellant Kartar Singh. There is no evidence that PW-3 Darshan Singh has used that mobile phone. Simply oral evidence has been led that Darshan Singh sold the mobile phone to Pargat Singh. There is no document/receipt on the record. The witness, who brought the call details etc. has clearly stated in cross-examination that they do not know about the subscriber of the mobile phone numbers. Therefore, mobile phone numbers brought on the record, in no way, are connected with the complainant and the accused. As per statement of PW-7 Harinder Singh Khatra, the amount has been re-paid by appellant Kartar Singh in two installments. Again, there is no documentary evidence regarding re-payment of money. No particulars are given as to when the money was paid back.

Further, I find that as regarding payment of bribe also, there is no document on record to show that the money was paid to Kartar Singh. There is no document on record to show that money was withdrawn from the bank. It is a huge amount of ₹3.25 lacs.

Furthermore, no action has been taken against the complainant as the

person who gives the bribe money, is equally responsible. There is no evidence on the record that complainant was not willing to give the bribe money.

Next, I find that the case is based upon statements of two witnesses i.e. PW-6 Pargat Singh and PW-7 Harinder Singh Khatra. The statements of both these witnesses are totally contradictory. PW-6 Pargat Singh stated that he met accused at his residence and accused told him to pay ₹4 lacs as illegal gratification and the matter was settled for an amount of ₹3.25 lacs. He further stated that after some days, they went to the office of accused and accused stated to pay ₹2 lacs to his son and after 5-7 days, he paid ₹1.25 lacs and mobile phone to the accused at his residence but PW-7 Harinder Singh Khatra, nowhere deposed regarding payment of money of ₹2 lacs to the son of the accused and then ₹1.25 lacs to the accused at his residence. Rather, he deposed that ₹3.25 lacs and mobile phone was given to the accused at his residence. Therefore, on the material facts, both the main witnesses are contradictory. Otherwise also, there being only oral evidence, it creates reasonable doubt in the prosecution version. Sh.Surjit Singh, PCS, who conducted enquiry has not been examined. The affidavit which Pargat Singh has given in the office of Commissioner Patiala, has also not been proved, as only photocopy of the affidavit has been brought on the record.

Next, I find that the bribe was stated to have been given to get the case decided in favour of Pargat Singh and Harinder Singh Khatra. But, there are no particulars on the record regarding the land

to show from whom it was purchased or to be purchased. No agreement to sell, sale deed or particulars of land have come on the record. Even names of the parties between whom the case was going on in the Court of Commissioner, Patiala, have come on the record. There are no particulars proved in the present case. The witnesses were not knowing the names of the parties and the dates on which the case was fixed. Even, the complainant failed to tell the name of the Advocate, who was pursuing the land case. As Pargat Singh was not party in the land case, it looks unnatural as to why he was pursuing the case. There is nothing on the record to show any interest of the complainant and Harinder Singh Khatra in the land case or property regarding which the case was going on.

As already discussed, there are no particulars as to in which month and year, the amount was paid to the accused. Keeping in view the evidence on record produced by the prosecution, I find that prosecution has failed to prove its case by leading cogent evidence and reasonable doubt exists in the prosecution version. Hence, giving benefit of doubt to the accused-appellant, he is acquitted of the charges framed against him. The judgment of conviction and order of sentence dated 20.09.2004, passed by learned Special Judge, Patiala are set aside.

Since, the appellant is on bail, his bail bonds stand discharged.

February 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE