

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-425-SB of 2008

DATE OF DECISION: MAY 5, 2015

JAI PARKASH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

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

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. AMAN PAL, ADVOCATE FOR THE APPELLANT.
MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused-appellant Jai Parkash has challenged the conviction and sentence passed by the trial Court as against him under Section 7 and 13 of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is that the accused demanded ₹1000/- as an illegal gratification for entering mutation in favour of PW4 Ramdhan. Thereafter, he approached the Vigilance Bureau. Based on the statement made by him, a trap was laid. The accused demanded and accepted illegal gratification of ₹1000/- from PW4. It is the further case of the prosecution that an amount of ₹1000/- was recovered from the possession of the accused and accordingly he was booked under the Prevention of Corruption Act, 1988.

3. PW4 Ramdhan testified that the accused being the Patwari demanded more amount of mutation fee than required. He also turned hostile to the case of the prosecution. PW5 Constable Parveen Kumar was

the shadow witness who accompanied PW4 to the office of the accused. He spoke about the fact that he accompanied PW4 to the office of the accused. PW4 went inside the office of the accused, while PW5 stood outside. After PW4 handed over the currency notes, he made a signal to him and he accordingly conveyed the signal to the raiding party.

4. PW3 Hari Kishan was an official witness who went alongwith the raiding party. He alongwith PW8 Inspector Rohtash Kumar spoke about the raid conducted after receipt of a signal from PW4 and the recovery of ₹1000/- from the possession of the accused.

5. In the statement under Section 313 Cr.P.C., the accused has stated that he never demanded bribe from PW4 Ramdhan, nor had he received any bribe from him. He stated that PW4 Ramdhan met him in connection with the mutation of his land and paid a sum of ₹1000/- towards arrears of land revenue for issuance of khasra girdwari and towards mutation charges. He asked PW4 to wait for the receipts to be passed on by him, but PW4 left and in the meantime, two policemen in civil dress arrived there and took him to the Vigilance Inspector, Bhiwani.

6. On the side of the accused, three witnesses were examined in defence.

7. The trial Court having adverted to the evidence on record came to the conclusion that the accused demanded and received a bribe of ₹1000/- for effecting mutation and convicted and sentenced the accused.

8. It is a well settled position of law that recovery of tainted currency notes from the accused alone is not sufficient to convict him when substantive evidence let-in by the prosecution is unreliable and

untrustworthy. In the instant case, the recovery of a sum of ₹1000/- from the possession of the accused was admitted by him. The case of the prosecution is that the accused demanded bribe of ₹1000/- for effecting mutation and received the same, during the trap organized by PW8.

9. PW4 Ramdhan who is the complainant in this case has completely turned hostile to the case of the prosecution. Though he has stated during the course of chief-examination that the accused demanded more amount of mutation fee than required, he denied the case of the prosecution that the accused demanded bribe for effecting mutation. His affirmative answer was that the accused demanded ₹1000/- towards mutation charges. The above evidence of the star witness does not, in any way, support the case of the prosecution.

10. PW5 Constable Parveen Kumar has been unfortunately nominated as a shadow witness by PW8. In all fairness, an independent witness who has no interest in the outcome of the criminal case should have been employed by PW8 to shadow PW4. I thoroughly scanned the evidence of PW5 Constable Parveen Kumar. He had not in fact entered into the office of the accused. It was only the complainant who had entered into the office of the accused for the purpose of tendering the amount demanded by the accused. PW5 who was standing outside the office of the accused spoke about handing over of the money by the complainant to the accused. He had not witnessed handing over of currency notes by the complainant to the accused. He came out with a very damaging version that he had appeared as a shadow witness in as many as six criminal cases launched by the prosecution earlier. In other words, he is found to be a stock witness in the

armoury of the prosecution.

11. In my considered view, PW8 should not have employed PW5 to shadow PW4. The services of an independent witness should have been employed by PW8. Engagement of PW5, who was admittedly a stock witness in the process of trap, smacks of impropriety. Under such circumstances, it would be highly dangerous to convict the accused based on the evidence of such a stock witness who lost his credibility and trustworthiness.

12. If we eschew the evidence of PW4 and PW5, there remains some evidence to show that a sum of ₹1000/- was recovered from the possession of the accused. Such a fact was admitted by the accused himself. There is also evidence adduced by the accused to show that there had been a mounting pressure to collect the charges due to the Government. Further, as observed above, mere recovery of currency notes from the possession of the accused cannot be considered as a sufficient indication to clamp the accused with the charge of bribery. Further, in the instant case, there is no substantive evidence to prove the charge of bribery levelled against the accused.

13. To top it all, PW8 Inspector Rohtash Kumar who conducted the investigation has unambiguously admitted that out of the two currency notes recovered from the possession of the accused, one of the notes did not tally with the number noted down earlier by him.

14. In the above facts and circumstances, I am of the considered view that the prosecution miserably failed to establish that the accused demanded and received an illegal gratification from PW4 Ramdhan.

Therefore, the appellant is acquitted of the charges under Sections 7 and 13 of the Prevention of Corruption Act, 1988. Consequently, the judgement of conviction and sentence passed by the trial Court stands set aside and the appeal is allowed. The bail bond executed by the appellant shall stand discharged.

May 5, 2015
Gulati

(M. JEYAPPAUL)
JUDGE