

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

**Crl. Appeal No. S-2478-SB of 2004
Date of decision : 17.08.2015**

Varjinder Pal Singh

..... Appellant

versus

State of Haryana

... Respondent

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. A.P. Kaushal, Advocate
for the appellant.**

Mr. Deepak Kumar Grewal, DAG Haryana.

ANITA CHAUDHRY, J.

Challenge in the instant appeal is to the judgment dated 20.11.2004 vide which the appellant was held guilty under Section 9 of the Prevention of Corruption Act, 1988 (for brevity, 'the Act'). He was sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.1,02,000/-. It was directed that out of the recovered amount Rs.1 lac would be paid to the complainant as compensation.

The case set up by the prosecution was that the accused demanded a sum of Rs.2.5 lacs from the complainant Ravinder Singh for getting him enrolled in Police Department by using the influence of his father, who is claimed to be posted as SP in CBI. Rs.1 lac were agreed to be paid in advance while

remaining amount was to be paid after the recruitment. It was alleged that the complainant paid a sum of Rs.1 lac on 03.06.2001 to the accused and his father in the presence of Ujagar Singh, Balbir Singh and Amarjit Singh. It was further the case of the prosecution that accused and his father assured that the work would be done and in case it was not, the amount was to be returned. The complainant appeared in the recruitment process, but was not selected. He demanded his money back. The accused put off the matter on one pretext or the other and finally refused to return the same.

On the statement made by the complainant, FIR No.207 dated 11.05.2002 was registered under Section 9 of the Act at Police Station City Jagadhari and investigated upon. During investigation, Sadhu Singh's (father) role was not found. Challan was filed only against the accused-appellant.

Charge under Section 9 of the Act was framed, to which he pleaded not guilty and claimed trial.

Twelve witnesses were produced by the prosecution. PW1 Amar Chand recorded the formal FIR Ex.PA/1; PW2 Gurdass Ram took the special report to the Magistrate; PW3 Const. Mulakh Raj prepared the site plan Ex.PB; PW4 Sadhu Singh, father of the accused produced him before the police on 19.07.2003; PW5 ASI Bal Kishan testified that the complainant participated in recruitment process in May 2001; PW6 Ravinder Singh is the complainant; PW7 Jaswant Singh introduced the complainant to the accused and in his presence money was paid;

PW8 Balbir Singh and PW9 Amarjit Singh supported the case of prosecution about the payment of Rs.1 lac; PW10 Anil Kumar proved the withdrawal of Rs.90,000/- by Kehar Singh from his account; PW11 Kehar Singh is the grandfather of the accused and PW12 DSP Bijender Singh had investigated the matter.

When examined under Section 313 Cr.P.C. the case of the accused was of false implication. He took the stand that on account of enmity, he had been falsely implicated.

No evidence was led in defence.

On appraisal of the evidence available on record, the trial Court rejected the defence and convicted and sentenced him in the manner indicated above. Hence, the instant appeal by the appellant.

Opening his arguments, learned counsel for the appellant has urged that there was inordinate and unexplained delay in lodging the FIR. Elaborating his arguments, he urged that the money was allegedly paid on 03.06.2001, but the FIR was lodged on 11.05.2002. He further urged that the witnesses were interested and related and there are number of inconsistencies and infirmities in their statements. Elaborating the contradictions he urged that the statements were contradictory with respect to those present and the day when the amount was paid and it casts a shadow on the prosecution case. He further urged that Sadhu Singh, father of the appellant was claimed to be present at the time when the money was handed, but during investigation involvement of Sadhu Singh was not

found. He was found to be on duty at Delhi and the conviction was based on unreliable witnesses and could not be sustained. He had further urged that the prosecution had given up Ujaggar Singh and Amarjit Singh and an attempt had been made to hide the truth.

Learned State counsel, on the other hand, supported the judgment and order of conviction and sentence. He had contended that the contradictions referred to were minor in nature and were bound to occur due to efflux of time. He prayed for dismissal of the appeal.

The appellant has been convicted under Section 9 of the Act, which provides for punishment for accepting or obtaining or attempting to obtain any gratification as a motive or reward for inducing by exercise of personal influence with a public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government

The case set up by the prosecution was that the appellant who is the son of a Police Officer working in RAW exerted and claimed that he could get the appointment and obtained a sum of Rs.1 lac from the complainant. It has come on record and is not in dispute that the father of the appellant was posted in RAW, a premier institute and his posting was in Delhi.

To prove its case the prosecution relied upon the testimonies of

complainant Ravinder Singh (PW6), Jaswant Singh son of Ujagar Singh (PW7), Balbir Singh son of Jasmer Singh (PW8) and Amarjit Singh son of Kehar Singh (PW9).

A perusal of their testimonies reveals that all of them in unequivocal voice have deposed that the accused claimed that his father was S.P. in Vigilance Department and he would get the complainant recruited in the Police Department. The accused demanded and accepted Rs.1 lac in advance for getting Ravinder Singh appointed in the Police Department and it was settled that Rs.1.5 lacs would be paid after the selection. Their statements are consistent and convincing, so far as inducement on the part of the accused and obtaining gratification of Rs.1 lac, is concerned. No ill will or motive was proved by the appellant. Though, the accused took the plea of enmity but no evidence was led. Their testimonies cannot be discarded only on the ground that they were related to the complainant. Even otherwise, such deals and transactions are not made in public.

The prosecution had given up Ujjagar Singh and Amarjit Singh, but their non-examination would not help the appellant. It is the quality of evidence that has to be seen and not the quantity. It has been proved that the complainant had participated in the selection process on 08.06.2001, 12.06.2001 and 28.06.2001. Ravinder Singh was, however, not selected. It has come in statements of prosecution witnesses that the accused had put off the matter on one pretext or the other and on his final refusal, the case was got registered. In that view of

the matter, it cannot be said that the matter was reported to the police after delay, rather it goes to show that the complainant was desirous of getting his money back instead of taking him to the police. It was when he refused to return the amount, then the case was registered. It is no doubt true that the complainant had named the father of the accused but it may be for the reason that the complainant wanted his money back and to put pressure he had named his father. Another another mitigating circumstance and supporting the prosecution is the testimony of PW10 who had proved withdrawal of Rs.90,000/- from the account of PW11 Kehar Singh on 01.06.2001. The contradictions pointed out by defence that the denomination of currency notes was not given or who had actually handed the amount to the accused, are minor in nature. Trivial embellishments are bound to occur due to the passage of time. It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case, must not prompt the Court to reject the evidence thus provided, in its entirety.

It is relevant to refer to what had been observed by the trial Court while dealing with the submissions made by the defence and relevant paragraph No.12 reads as under:-

"12. The argument of the counsel seems to be impressive but is without force. It is correct that the complainant has named the father of the

accused but presumably he has named him in the complaint to the police only with a view to put pressure upon his father to get the money back. However, the accused or his father have not bothered for any such complaint and the police has investigated the matter. During investigation it has come that the accused was earlier not known to the complainant and he was introduced by Jaswant Singh at his residence and there the money demanded by the accused was Rs.2.5 lacs out of which Rs. 1 lac was paid by the complainant. It could not be disputed by the defence counsel on the basis of evidence on the file that the complainant has appeared for the test conducted for the recruitment of the constable in the police. It is also proved by the statement of PW10 and PW11 that Rs.1 lac were given by Kehar Singh grand-father of the complainant to the complainant. The amount of Rs.90,000/- was withdrawn on 1.6.2001 from the bank account of Kehar Singh grand-father of the complainant. All the witnesses have been cross examined at length, even with regard to the denomination of the notes which were given by the complainant to the accused but all the witnesses have stood the test of cross

examination. The perusal of their statement reveals that none of the witnesses have stated that the accused has named his father so as to influence him for getting the complainant employed. However, all of them are consistent that the accused took Rs. 1 lac and assured that he would be recruited in the police, but the remaining amount of Rs.1.5 lacs was to be paid later on. The accused being son of an officer who was employed in RAW, the complainant could very well be influenced by his assertion when accused says that his father is S.P. in CBI. Even if it is not proved that the accused has taken money, so as to exercise his influence over his father, it can be presumed that he has taken his money with a view to influence some police officer or public servant, who were incharge and were having power so as to enroll the complainant as constable.”

The findings returned by the trial Court are based on correct appreciation of evidence and it cannot be said that the same are against facts and evidence. There is no reason to differ it. The statements of the witnesses are credible and trustworthy. There was no reason to discard the evidence. Their testimonies, was sufficient to hold the appellant guilty.

The appellant had been substantively sentenced to undergo rigorous imprisonment for six months, which is minimum sentence provided for the offence. The accused had deprived the complainant of Rs.1 lac and was rightly asked to compensate the complainant. No interference is warranted on the quantum of sentence.

Consequently, affirming the judgment and order of conviction and sentence of the appellant, the appeal is dismissed. His bail bonds and surety bonds stands cancelled. The appellant is directed to surrender before the Court of CJM concerned within 15 days from today to undergo the remaining sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate action in the matter. A copy of this order be sent to the CJM, concerned for compliance.

August 17, 2015
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(ANITA CHAUDHRY)
JUDGE