

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

**CRA-S. No. 2249-SB of 2009
Date of decision: 06.10.2015**

Darshan Singh ... Appellant.

Versus.

C.B.I. ... Respondent.

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

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

...

Present: Mr. R.S.Rai, Sr. Advocate, with
Mr. Rajiv Anand, Advocate,
for the appellant

Mr. Sumeet Goel, Advocate,,
for the respondent

...

M. JEYAPPAUL, J:

1. Accused Darshan Singh has challenged the judgment passed by the trial Court vide which he was convicted under Section 7 of the Prevention of Corruption Act, 1988 (for short, the Act) and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.3000/- and in default, to undergo RI for further period of three months and was convicted under Section 13(2) read with Section 13(1)(d) of the Act and was sentenced to undergo rigorous imprisonment for a period of 1½ years and to pay a fine of Rs.4500/- and in default, to undergo RI for further period of four months. Both the sentences were, however, ordered to run concurrently.

2. The brief case of the prosecution is that PW-2 Paramjit Singh lodged an insurance claim for damage to his vehicle with the Sonapat branch of United India Insurance Company Limited. His vehicle was inspected and surveyed for three times. Thereafter, his claim application was forwarded to Chandigarh office for final approval. Though he submitted his claim form in the month of March, 2004, his claim was not settled even after the expiry of six months. He met the accused several times but his work was not done. On 22.9.2004, he proceeded along with his uncle Radhey Shyam who was examined as PW-14, to the office of the accused and met him. The accused blatantly asked him to arrange for a sum of Rs.20,000/- so that he would get his claim passed from the Regional Office, Chandigarh and then hand over a cheque after returning to Sonapat. As PW-2 did not want to pay the bribe, though he agreed to pay a sum of Rs.15,000/- to the accused, he moved an application Exhibit PW-2/1 to the office of Superintendent of Police, CBI, Chandigarh, on the basis of which an FIR, Exhibit PW-12/1 was registered. PW-4 Inspector Balbir Singh took up the case for investigation. PW-14 was informed by PW-2, the complainant, that the accused had directed him to come to Murthal crossing, GT Road, with a car in the morning of 23.9.2004 at about 8 AM so that the accused could accompany him to the Regional Office of United India Insurance Company Limited, Sector 17, Chandigarh, where he would get his claim passed and hand over the cheque for the claim amount at Sonapat. PW-2 instructed PW-14 to reach Murthal crossing with a car on 23.9.2004 at about 8 AM and take the accused to Regional Office of United India Insurance Company Limited, Sector 17, Chandigarh, On 22.9.2004 itself, PW-4 Inspector Balbir Singh requested the Deputy Medical

Superintendent, General Hospital, Sector 16, Chandigarh, to depute two officials to the CBI Office on 23.9.2004 at about 8.30 AM.

3. On 23.9.2004, at about 9 AM, two independent witnesses, namely, PW-1 Yogesh Aggarwal and PW-3 Rajiv Kumar assembled in the office of DSP Karnail Singh. PW-2 was introduced to the trap team members and the independent witnesses. On the directions of PW-4, PW-2 produced 15 currency notes of the denomination of Rs.1000/- each, amounting to Rs.15,000/-. The numbers of the currency notes were noted down in the pre-trap memo. The currency notes were then treated with Phenolphthalein powder. The importance and significance of the reaction of phenolphthalein powder with sodium carbonate solution was explained to all the trap team members. The treated currency notes were kept in the left side shirt pocket of PW-2. PW-1 Yogesh Aggarwal was directed to act as a shadow witness. The members of the trap party, complainant and the independent witnesses left for Regional Office of the United India Insurance Company Limited, Sector 17, Chandigarh and reached there at about 11.30 AM. The complainant and the shadow witness stood outside the Regional Office while the remaining members of the trap party took their position at different locations. At about 2 PM, PW-14 Radhey Shyam informed the complainant that the accused had reached Ghazal Restaurant, Sector 17, Chandigarh, and told the complainant to reach there. Thereafter, all the members of the trap party, including the complainant and Radhey Shyam, proceeded to the said Restaurant. PW-1 and PW-14 went inside the Restaurant along with the complainant while rest of the members took their position outside the Restaurant in a scattered manner. PW-1 and PW-14 sat on the table near the table of the accused in the Ghazal Restaurant

where the accused was taking meals along with three other persons. After finishing the lunch, accused came towards the complainant and asked him whether he had brought the entire amount of Rs.15,000/-. Complainant gave reply in the positive. Thereafter, the accused asked the complainant whether there was any necessity to count the notes and then kept the amount in his left side shirt pocket. PW-1 Yogesh Aggarwal went outside the Restaurant and gave a signal to the trap party. On receipt of signal, PW- 4 Inspector Balbir Singh along with PW-3 Rajiv Kumar and other trap party members entered the Restaurant. PW-4 disclosed his identity to the accused. On the directions of PW-4, PW-3 Rajiv Kumar recovered the tainted currency notes from the left side shirt pocket of the accused. The numbers of the currency notes entered in the pre-trap memo. matched with the numbers of the tainted currency notes recovered from the accused. The currency notes were kept in a sealed envelop. Thereafter, a colourless solution of sodium carbonate was prepared and the accused dipped his left hand fingers in the solution, as directed. The solution turned pink in colour. Another colourless solution of sodium carbonate was prepared and the accused was asked to dip his right hand fingers in the said solution and on his so doing, the same also turned pink in colour. Thereafter, in another solution of sodium carbonate so prepared, his left side shirt pocket was also dipped and the same also turned pink in colour.

4. PW-4 prepared rough site plan. All the material objects were properly packed and sealed. PW-16 Inspector Jai Singh who took up the case for further investigation, recovered certain documents, received FSL report and thereafter, laid a final report under Section 173 Cr.P.C.

5. PW-5 Virender Kumar, Deputy General Manager, United India

Insurance Company Limited, and PW-6 Vijay Sharma, Divisional Manager, United India Insurance Company Limited, spoke about the processing of the claim form submitted by PW-2 with the branch office at Sonapat, Divisional Office at Panipat and the Regional Office at Chandigarh.

6. PW-7 R.K.Sharma who was called by PW-4 to the Ghazal Restaurant immediately after the trap, spoke about the arrest of accused Darshan Singh. He also deposed that the claim form submitted by PW-2 Paramjit Singh was approved on 22.9.2004 and was sent at Panipat Office through courier.

7. PW-9 Satish Chander was the Cashier of Ghazal Restaurant, Sector 17, Chandigarh. He spoke about the lunch taken by the accused along with others at his Restaurant on 23.9.2004 and the settlement of the bill through credit card by Sonam Angroop, Development Officer, United India Insurance Company Limited

8. In his statement under Section 313 Cr.P.C., the accused has submitted that he was a union leader who represented the employees from lower class. PW-5 Virender Kumar and PW-7 R.K. Sharma were completely perturbed over his activities. The accused could secure several benefits to the employees hailing from lower class. His union became powerful and achieved its targets. In order to discourage and remove the accused from his job, they all joined together and acted in connivance with CBI officials, PW-2 and PW-14. Accused further submitted that on the way at Ambala, he took DW-1 Ashok Kumar, Assistant Administrative Officer of his company in the same car at Chandigarh. The presence of Ashok Kumar was admitted by CBI. The antecedents of PW-2 Paramjit Singh throw doubt on his testimony. PW-6

and PW-7 knew about the scheduled visit of the accused to Chandigarh. They have connived with PW-2 and PW-14 and framed a false against him. The entire evidence on record speaks of his innocence. Neither he demanded nor did he accept any amount. At Ghazal Restaurant, PW-2 Paramjit Singh tried to put Rs.1000/- into his shirt pocket to settle the bill by him. Thereafter, PW-2 approached the counter and offered the payment. But by that time, the payment through credit card had been made by Sonam Angroop. Had he intended to accept any bribe, he would not have organised his colleagues to assemble at the restaurant. Further, he had not done anything at Chandigarh Regional Office for PW-2 Paramjit Singh and therefore, there would have been no occasion for PW-2 to make payment to him.

9. On the side of defence, DW-1 Ashok Kumar was examined who deposed that he boarded the Zen car at Bus Stand, Ambala Cantonment in which accused Darshan Singh was travelling. There was another person in the front seat besides the driver. On the way, he called Sonam Angroop and informed him that he would have lunch with him at Ghazal Restaurant. Sonam Angroop and Kamal met the accused and DW-1 at Ghazal Restaurant. The person who accompanied DW-1 and accused in the front seat of Zen car informed him that he was from CBI.

10. The trial Court having adverted to the evidence on record, returned a finding as stated supra.

11. Let me first evaluate the evidence of PW-2 Paramjit Singh who set the law in motion by lodging a complaint. In the complaint, PW-2 Paramjit Singh has stated that he met the accused in his office several times after he

submitted his claim form in the month of March, 2004. His grievance was that his work was not accomplished though it was processed and sent to Chandigarh Office for final approval. He has deposed that the accused made a demand of Rs.20,000/- , which was ultimately settled at Rs.15,000/-. The accused had never made any demand of money except on 22.9.2004. It is not the case of the prosecution that the accused delayed making of recommendation to the Regional Office through Divisional Office. In the complaint, he has categorically stated that his claim form had already been despatched along with the recommendation by the accused to the Regional Office at Chandigarh.

12. In the above context, learned senior counsel appearing for the accused vehemently submitted that the accused who had not made any demand of money for making his recommendation, would not have demanded any bribe for getting clearance by the Regional Office. To the contrary, learned counsel appearing for CBI would submit that the amount was demanded as per the version of PW-2 only for getting approval from the Regional Office. Therefore, the recommendation made by the accused without making any demand would not falsify the case of the prosecution that he did make a demand for processing it at the Regional Office.

13. As rightly pointed out by the learned senior counsel for the accused, the accused had not made any demand from PW-2 for processing and making recommendation of the claim submitted by him in spite of the fact that three surveys had been organized beforever the accused made a recommendation to the Regional Office through the Divisional Office. In my

considered view, it is highly doubtful whether the accused made a demand after he had already despatched the claim form with his positive recommendation.

14. PW-2 has categorically admitted during the course of cross-examination that in fact, one Bikram was driving the vehicle at the time of accident. As his licence was at Gauhati, he thought it proper to substitute Jagbir in place of said Bikram as the driver of the vehicle at the time of accident.

15. The above admitted facts would suggest that PW-2 had come out with a totally false and fraudulent claim substituting Jagbir in place of Bikram as driver who drove the vehicle at the time of accident.

16. In the above context, learned senior counsel appearing for the accused submitted that if at all the accused had made a demand of Rs.15,000/- to get approval from the Regional Office, PW-2 who had submitted a false and fraudulent claim, would have readily accepted to pay the amount demanded without involving the CBI.

17. Learned counsel for the CBI would submit that PW-2 never wanted to part with the bribe amount demanded by the accused and therefore, he approached the CBI to teach a lesson to the accused for making such demand.

18. It is a human nature that a person who commits fraud, would try to accomplish the object by hook or crook. He would have a mortal fear of potential trap in the fraudulent activities embarked upon by him and therefore, he would think twice before displaying his nefarious act to other person(s).

Therefore, a prudent man who is involved in a fraudulent act by which he would stand to gain, would not have thought of bargaining with the person who demanded money for clinching the deal. Rather, he would have agreed to pay the entire amount demanded by the person who promises to do something. Never would he have opened his mouth for fear of exposure of his illicit act. In my view, it is quite unnatural that the complainant who had submitted fabricated documents to make an unlawful claim from the insurance company, preferred to give a complaint aggrieved by the demand of Rs.15,000/- allegedly made by the accused for delivering the cheque on approval given by the Regional Office.

19. PW-2 has categorically deposed that the accused informed him that he would receive Rs.15,000/- after getting the claim passed. The case of the prosecution is that the accused who was taking lunch along with his friends, ascertained from PW-2 as to whether he had brought the entire amount and then received the tainted currency notes from PW-2.

20. If the accused had promised to get approval from the Regional Office before payment of Rs.15,000/-, he would not have ventured to verify from PW-2 as to whether he had brought Rs.15,000/- only after he had reached the Regional Office and processed the approval of the claim form submitted by PW-2, he would have endeavoured to receive the illicit consideration. The accused had not gone to the Regional Office. He had come straight to Ghazal Restaurant, taking DW-1 along with him after organising two more companions from the insurance company. In my considered view, the accused would not have taken one of his friends, namely, DW-1 Ashok Kumar in the

very same car in which he travelled from Murthal road to Chandigarh and having arrived Chandigarh, he would not have invited his two more friends to the hotel where the amount was allegedly received by him.

21. A prudent man would not demand and receive any bribe amount in the midst of customers to the full capacity in the Restaurant and also in the company of his three friends. In this context, it is very important to refer to the evidence of PW-9 Satish Chander, Cashier of the Ghazal Restaurant. He has testified that the group consisting of the accused came to the counter for payment. They were arguing amongst themselves for making payment but the payment had already been made through credit card submitted by Sonam Angroop, Development Officer, United India Insurance Company Limited. Since the credit card had already been punched. PW-9 pleaded his inability to accept any amount in cash. The CBI caught the accused when the group was leaving the counter, PW-9 has deposed.

22. Accused has set up a plea in his statement under Section 313 Cr.P.C. that PW-2 who was present in the Restaurant, thrust a sum of Rs.1000/- into his shirt pocket to facilitate him to make payment of the bill but he refused. Thereafter, PW-2 approached the counter and offered payment but by that time, the payment had already been made by Sonam Angroop through his credit card. At that point of time, CBI pounced upon the accused and took him into custody.

23. The above sequence of events narrated by PW-9 which was not put to challenge by the prosecution, goes to support the above defence version of the accused. There had been some argument as to who should make the

payment. As per version of the accused, PW-2 was also a part of that group who made an attempt to thrust a sum of Rs.1000/- into his pocket to clear the bill. Immediately after the Cashier explained that the amount was already paid through credit card, the accused was apprehended by the CBI. The accused has made out a case through the evidence of PW-9 that PW-2 was also a part of the group which vied with each other to make the payment. In that process, it is possible that PW-2 would have made an attempt to thrust a sum of Rs.1000/- into the pocket of the accused.

24. It is a settled proposition that the mere recovery of the tainted currency notes from the possession of the accused without any evidence of demand of illegal gratification would not attract the offences under Sections 7 and 13(1) of the Act. In **P. Satyanarayana Murthy v. The Dist. Inspector of Police and another, Criminal Appeal No. 31 of 2009, decided on 14.9.2015**, the Hon'ble Supreme Court has held as follows:-

“ 20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayaraj* (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(i)(d)(i) &(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a

presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1) (d) (i) &(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Section 7 and 13(1)(d)(i) &(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.”

25. PW-14 Radhey Shyam, uncle of the complainant, has specifically stated that he did not accompany PW-2 Paramjit Singh to the office of the CBI Chandigarh on 22.9.2004 for making any complaint whereas PW-2 deposes that PW-14 also accompanied him to the office of CBI to lodge a complaint. In this context, it is relevant to refer to the evidence of PW-1 Yogesh Aggarwal, shadow witness employed by CBI for the purpose of trap. PW-1 has categorically testified that he was in his office on 22.9.2004 when he received a direction from the Medical Superintendent to report in the office of CBI Chandigarh in the morning on 23.9.2004. His office hours were 8 AM to 2.30 PM. It is the case of the prosecution that the complaint was lodged by PW-2 Paramjit Singh to the CBI on 22.9.2004 at 5.30 PM. The evidence

referred to above would go to show that CBI had associated PW-1 Yogesh Aggarwal even before 2.30 PM on 22.9.2004, i.e. even before the complaint was lodged by the complainant at 5.30 PM on the same day. PW-14 had not accompanied PW-2 to the office of CBI Chandigarh. PW-2 had been moving with the CBI sleuths long before he lodged the complaint. The association of PW-1 before 2.30 PM on 22.9.2004 speaks volumes of the scheme of the CBI to trap the accused.

26. To top it all, PW-1 Yogesh Aggarwal has categorically admitted that he remained associated with the CBI team when a raid was conducted earlier in Sector 34 hospital. Thereafter, he also joined the CBI team in the house search of one Inspector J.S.Cheema. This was the third time when PW-1 was associated by the CBI as a shadow witness. The credibility of PW-1 is very much at stake. It is quite unsafe to rely upon the testimony of such a witness.

27. Learned counsel appearing for the CBI submits that the evidence of PW-1 completely establishes the demand and receipt of illegal gratification by the accused.

28. Weighing the entire evidence of PW-2, I am of the considered view that his evidence is not trustworthy inasmuch as he had taken all out efforts to get an unlawful gain by impersonating a driver in the claim form submitted by him.

29. Learned counsel appearing for the CBI further submitted that there was no plausible explanation from the accused as to why he boarded the car employed by PW-2 through PW-14 Radhey Shyam.

30. Learned senior counsel appearing for the accused brings to the notice of the court that the accused has answered in his statement under Section 313 Cr. P.C. as to how the lift facility in a car extended by PW-2 had led to lethal consequences.

31. Let me revisit the statement suffered by the accused under Section 313 Cr.P.C. He has stated that he had an appointment with PW-7 R.K.Sharma, Regional Manager in United India Insurance Company Limited. As he had to travel to Chandigarh, the offer made to the accused to board the car was accepted by him without knowing that a net was already spread to involve him in a false case. PW-7 has categorically admitted that he had given an appointment to the accused to meet him on 23.9.2004 at 2.30 PM. PW-2 had a long acquaintance with the accused in connection with the claim form submitted by him. No wonder, an offer was made by the complainant to transport him to Chandigarh which was innocently accepted by the accused. In my view, the accused has explained satisfactorily the reason why he boarded the car organized by PW-2 through PW-14 Radhey Shyam.

32. Had the accused boarded the car organized by PW-2 only for the purpose of getting approval of the claim form submitted by PW-2 and for receiving the bribe from him, the accused would not have waited in the car boarded by him and taken DW-1 Ashok Kumar in the very same car. A prudent man would have avoided any company if he ventured to involve himself in such a nefarious activity.

33. Learned senior counsel appearing for the accused referred to the evidence of PW-7 to project the motive for false implication of the accused in a

case under the Prevention of Corruption Act. PW-7 R.K.Sharma has admitted unambiguously that the accused who was serving as Branch Manager in United India Insurance Company Limited at Sonapat was the General Secretary of All India General Insurance Scheduled Caste and Scheduled Tribes Employees Parishad. The accused had fixed an appointment with him for the meeting on 23.9.2004 at 2.30 PM in connection with the pending demands of the said Union. He further admitted that on 6.8.2004, the said Union held an agitation in connection with certain demands in front of the Regional Office. Accused Darshan Singh was at the fore-front. The police arrived and videographed the agitation with the assistance of PW-7. He apprehended an untoward incident and therefore, he arranged for the videography. The agenda of the meeting to be held on 23.9.2004 was sent in advance. Appointment for the meeting was taken by accused Darshan Singh. PW-7 also admitted that accused Darshan Singh used to write to the head office alleging harassment by him to scheduled caste officers/employees. He has also deposed that accused Darshan Singh might have complained to the head office about calling of police and the preparation of video film on 6.8.2004.

34. The above evidence of PW-7 would indicate that the accused had fought for the rights of the members of his union. He staged protest in front of the Regional Office which was headed by PW-7 R.K.Sharma, The police was called and the videography done. Accused Darshan Singh had written a letter to the head office alleging harassment by PW-7 to the scheduled caste officers/employees. He had also objected to the police presence and the

videography done at the instance of PW-7 during the course of agitation held by the union members headed by him on 6.8.2004.

35. The above facts and circumstances would go to show that the management at Regional level was not happy with the agitation spearheaded by the accused. PW-7 was not particularly happy with a communication sent by the accused to the head office alleging harassment attributed to him. PW-7 had gone to the extent of preparing video-film of the agitation. It was only PW-7 who had given the appointment just half an hour before the trap. PW-2 had shown undue haste in organizing the trap on the basis of the complaint given by him. CBI had associated even a stock shadow witness to lay the trap.

36. The evidence of PW-5 and PW-6 would go to show that the accused had processed and recommended the claim form submitted by PW-2 long before the alleged demand of money. On 22.9.2004, the day when the alleged demand was made, the Regional Office had already given its approval for the claim made by PW-2 and approval to the Divisional Office. Under such circumstances, the charge of demand of Rs.15,000/- made by the accused appears to be imprudent and artificial.

37. On a perusal of the charges framed as against the accused, I find that there was no charge that he demanded bribe. Ofcourse, an irregular charge framed cannot be a ground to acquit the accused. But on a careful perusal of the entire record, I am of the considered view that the prosecution miserably failed to establish both the charges as against the accused. Therefore, the accused is found not guilty of the charges framed against him and therefore, he stands acquitted of the same.

38. Consequently, the judgment of conviction and sentence passed

by the trial Court is hereby set aside and the appeal is allowed. The bail bond executed by him shall stand discharged.

October 06, 2015
JS

(M. JEYAPPAUL)
JUDGE