

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-461-SB of 2004

DATE OF DECISION: APRIL 22, 2015

AMRIK SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

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

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

PRESENT: MR. PANKAJ BHARDWAJ, ADVOCATE FOR THE APPELLANT.
MRS. RITU PUNJ, ADDL.A.G, PUNJAB.

M. JEYAPPAUL, J.

1. Accused Amrik Singh has challenged the conviction and sentence passed by the trial Court under Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988.

2. It is the case of the prosecution that on 16.2.1994, PW2 Surjit Singh, the complainant in this case, approached the accused and demanded a copy of the jamabandi. The accused demanded a sum of ₹2000/- as an illegal gratification for issuance of a copy of jambandi. The deal was struck at ₹1500/-. PW2 came back with an excuse to pay the same on 17.2.1994. Thereafter, PW2 met PW6 Inspector Daljit Singh and narrated the whole incident and presented a sum of ₹1500/-. Phenolphthalein powder test was demonstrated and thereafter a trap was laid. PW2 handed over a sum of ₹1500/- to the accused-appellant. The tainted money to the tune of ₹1500/- was recovered from the purse kept in the pocket of the accused by PW6 Inspector Daljit Singh, who reached the office of the accused immediately

on receipt of the signal from the complainant. The accused was thereafter arrested by PW6.

3. PW2 Surjit Singh has spoken about the demand of ₹2000/- made by the accused for issuance of copy of jamabandi demanded by PW2, the deal struck at ₹1500/-, the complaint lodged with PW6 Daljit Singh, the demonstration of Phenolphthalein powder test, handing over of ₹1500/- to the accused and the recovery of the same from his person.

4. PW3 Dharam Singh who was employed as a shadow witness retracted from his earlier version. Therefore, he was subjected to cross-examination by the Public Prosecutor. PW4 Surinder Singh, Junior Engineer, was an official witness who spoke about the recovery of tainted notes from the purse kept in the pocket of the accused. PW5 Narinder Pal Singh was a witness to the entire proceedings. PW6 Inspector Daljit Singh who registered a case based on the complaint given by PW2, laid the trap and conducted the investigation. PW7 Smt. Gurbinder Kaur, Clerk attached to the D.C. Office, Fatehgarh Sahib spoke about the sanction order Ex.P7/A.

5. The accused set up a plea under Section 313 Cr.P.C. that he was innocent and a false case was foisted upon him.

6. The trial Court having relied upon the evidence of PW2 in the background of the evidence of PW4 and PW6 returned a verdict of conviction as stated supra.

7. PW2 Surjit Singh has categorically deposed that he sought for a copy of jamabandi in order to sell his property in dispute, but the accused demanded a sum of ₹2000/- as an illegal gratification, however, the deal was struck at ₹1500/-. In the guise of making payment by the next day,

PW2 came out of the office of the accused and reported the matter to PW6 Inspector Daljit Singh. The next day, as instructed by PW6 Inspector Daljit Singh, he proceeded alongwith PW3. On 17.2.1994, Surjit Singh (PW2) handed over the tainted money which was treated with Phenolphthalein powder to the accused. Thereafter, a signal was given by Dharam Singh, PW3 to PW6 who descended on the office of the accused alongwith PW4 Surinder Singh and PW5 SI Narinder Pal Singh and recovered the tainted amount from the possession of the accused.

8. Of course, PW3 Dharam Singh who was a shadow witness in this case completely turned hostile to the case of the prosecution. PW4 Surinder Singh who was an official witness spoke about the recovery of tainted money from the purse kept in the pocket of the accused. PW5 who also joined the raiding party, too supported the version of PW4.

9. The above testimony of PW2, PW4 to PW6 would go to establish that the accused having demanded a sum of ₹1500/- accepted the tainted sum of ₹1500/- treated with Phenolphthalein Powder and the same was recovered from the purse kept in the pocket of the accused.

10. Learned counsel appearing for the appellant would vehemently submit that no copy of the jamabandi was recovered at the office of the accused. It may be a case where the accused had planned to prepare the copy of jamabandi after the amount demanded by him was paid by the accused. It is also true that the jamabandi register was not recovered. In my considered view, the failure on the part of the investigating official to recover the jamabandi register does not create a dent in the case of the

prosecution inasmuch as the prosecution has to establish only the demand of bribe and the acceptance thereof for performing official duty.

11. It was submitted by learned counsel appearing for the appellant that PW2 Surjit Singh had not spoken about the demand made by the accused on 17.2.1994. Referring to the cross-examination of PW1, learned counsel appearing for the appellant would submit that PW2 had simply put the tainted currency notes on the table of the accused. Inasmuch as there is no evidence to establish the demand made on 17.2.1994 and the acceptance of the tainted money by the accused, the accused cannot be convicted, it is further submitted.

12. On a careful perusal of the entire testimony of PW2, I find that PW2 has categorically deposed that on 16.2.1994, the accused chose to demand a sum of ₹2000/- for issuance of a copy of jamabandi, but the deal was struck at ₹1500/-. In the chief-examination, PW2 has unambiguously stated that amount was handed over to the accused. Further, it is noted from the evidence of PW2 that two or three other Patwaris also were present at the office of the accused at the time when PW2 tendered the amount demanded by the accused on previous day. Therefore, PW2 had not waited for further demand to be made by the accused on 17.2.1994. Further, in my considered view, when the deal was struck after negotiation between the accused and PW2 and such a deal was struck only the previous day, there would have been no occasion for the accused to demand payment on 17.2.1994. As rightly pointed out by learned Addl.A.G., Punjab, the demand originally made on 16.2.1994 for issuance of copy of jamabandi

will have to be linked with the transaction that took place on 17.2.1994 at the office of the accused. In other words, the tainted money handed over to the accused by PW2 on 17.2.1994 cannot be segregated from the demand of illegal gratification made by the accused on the previous day.

13. Learned counsel appearing for the appellant cited a decision of the Hon'ble Supreme Court in **Banarsi Dass vs. State of Haryana, 2010(4) SCC 450**, wherein it has been held that mere placing of the currency notes on the table of the accused without any demand emanated from him would not constitute an offence under the Prevention of Corruption Act, 1988.

14. The above decision was thoroughly scanned by me. In the said case, the complainant as well as the shadow witness completely turned hostile. In other words, the demand of illegal gratification was never spoken to by the complainant and the shadow witness. Under such circumstances, an observation was made in the above case by the Hon'ble Supreme Court that mere placing of currency notes on the table of the accused without any demand emanated from the accused would not constitute an offence under the Prevention of Corruption Act, 1988. Therefore, in my view, the above decision will not apply to the facts and circumstances of this case where PW2, the complainant in this case, has categorically deposed that pursuant to the demand of illegal gratification made by the accused on 16.2.1994, the tainted amount was handed over to him on 17.2.1994.

15. In **Subash Parbat Sonvane vs. State of Gujarat, 2003(2) RCR (Criminal) 541**, it was held that unless there was evidence to establish

demand of illegal gratification by the accused, conviction under Section 13 of the Prevention of Corruption Act, 1988 does not arise.

16. In the above case, on fact, it was noticed by the Hon'ble Supreme Court that the complainant had completely turned hostile. In other words, he had not spoken about the demand of illegal gratification and acceptance thereof by the accused. Though the trial Court relied upon the evidence of PW2, in the said case, the Hon'ble Supreme Court on scanning the evidence of PW2, the shadow witness in that case, found that he also had not spoken anything about the demand made by the accused from the complainant. Under such circumstances, in my view, the above decision is factually distinguishable.

17. Learned counsel appearing for the appellant would bring to the notice of this Court that the charge framed by the trial Court would read that demand of illegal gratification was made by the accused on 17.2.1994 and the same was accepted by him on the said day. It is his submission that there is no charge that on 16.2.1994 a demand was made by the accused. Therefore, it is submitted that the charge as such that a demand of bribe was made on 17.2.1994 by the accused was not established by the prosecution. He also referred to the decisions of various High Courts to support his contention that defective charge not formulated in terms of Section 212 of the Cr.P.C. would cause prejudice to the accused and as a result of which the accused is entitled to acquittal.

18. Let me straight away refer to Section 464 Cr.P.C. which deals with the effect of omission to frame, or absence of, or error in charge. It has

been categorically postulated therein that no finding, sentence, or order by the Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or error or omission or irregularity in the charge was found, unless failure of justice has occasioned thereby.

19. The trial Court has failed to refer in the charge framed that on 16.2.1994, the accused made a demand of illegal gratification. The charge would read that on 17.2.1994, the accused demanded an illegal gratification and accepted the bribe of ₹1500/- from the complainant.

20. The first information report and the evidence let-in in by the prosecution would go to show that the demand of bribe was made by the accused on 16.2.1994 itself from the complainant. Pursuant to which the complainant appeared before the accused on 17.2.1994 with tainted money and handed over the same to him.

21. In the above facts and circumstances, in my view, no failure of justice has occasioned on account of the omission to refer to the demand made on 16.2.1994 by the accused in the charge framed as against him. Further, as per the above provision of law, the conviction and sentence passed by the trial Court cannot be invalidated on that score.

22. Learned counsel for the appellant would further submit that there was no specific question put to the accused under Section 313 Cr.P.C. that he demanded an illegal gratification on 16.2.1994 and therefore, much prejudice has been caused to him. He also cited some of the decisions of the Hon'ble Supreme Court.

23. As per Section 313 Cr.P.C., the entire evidence need not be

brought to the notice of the accused. After examination of the witnesses on the side of the prosecution, the Court is supposed to put questions generally on the case in order to afford an opportunity to the accused to explain personally the incriminating circumstance appearing in the evidence against him. On a perusal of the statement of the accused recorded under Section 313 Cr.P.C., I find that the trial Court had specifically referred to Ex.PB, the statement suffered by PW2, complainant Surjit Singh. Ex.PB, the statement suffered by PW2 specifically refers to the demand ₹2000/- made by the accused on 16.2.1994 and the deal struck for ₹ 1500/-. Had the trial Court not brought to the notice of the accused the statement Ex.PB suffered by the complainant before PW6 Inspector Daljit Singh, it could be concluded that the demand of ₹1500/- ultimately made by the accused was not at all brought to the notice of the accused.

24. In my view, the entire text of the statement Ex.PB, wherein the demand was made by the accused on 16.2.1994, had been specifically brought to the notice of the accused. Therefore, the accused cannot lawfully complain of prejudice on the ground that demand of illegal gratification made on the previous day was not put to him.

25. In Surjit Biswas vs. State of Assam, SC 2013(3) RCR (Criminal) 227, Ganesh Gogoi vs. State of Assam SC 2009(4) RCR (Criminal) 561, Inspector of Customs, Akhnoor J&K vs. Yashpal and another, 2009(2) RCR (Criminal) 514, Keya Mukherjee vs. Magma Leasing Ltd., 2008(2) RCR (Criminal) 741, State of Punjab vs. Sawaran Singh, 2005(3) RCR (Criminal) 889 and Basavaraj R. Patil vs. State of

Karnataka, 2000(4) RCR (Criminal) 542, it has been held by the Hon'ble Supreme Court that the incriminating circumstance which was not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and must be excluded from consideration.

26. In the recent decision in *Nar Singh vs. State of Haryana, 2014 RCC (SC) 1134*, the Hon'ble Supreme Court has held that even the appellate Court may examine the convict as to the incriminating circumstance which was not put to him under Section 313 Cr.P.C. by the trial Court and record his answer for consideration in the appeal.

27. I found that there was a specific reference to Ex.PB, the statement suffered by complainant Surjit Singh in the question put to the accused under Section 313 Cr.P.C. The said statement specifically refers to the illegal gratification demanded by the accused on 16.2.1994. Therefore, in my view, it is quite redundant to draw the attention of the convict at this appellate stage to the evidence on record to the effect that on 16.2.1994, there was a demand of illegal gratification by the accused.

28. It was submitted by the counsel appearing for the appellant that the purse which allegedly contained tainted notes was not recovered by the investigating official. Mere non-recovery of the purse does not weaken the case of the prosecution. In the instant case, it is found from the evidence of PW4, PW5 and PW6 that the tainted currency notes were recovered from the purse found in the pocket of the accused. The accused had handled the currency notes and as a result of which his hands on being dipped in the sodium carbonate water turned pink in colour. There was no explanation

from the side of the accused as to how he came into possession of the tainted notes treated with Phenolphthalein Powder.

29. Learned Addl.A.G., Punjab cited a decision of the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab 2015(1) RCR (Criminal) 647**, wherein it has been held as follows:-

“The fact remains that the appellant's pocket contained phenolphthalein smeared currency notes when he was searched. It is apt to take note of the fact that the currency notes that have been recovered from the right side of the pant pocket were actually prepared by PW8 by smearing them with phenolphthalein powder. The appellant was caught red-handed with those currency notes. In his statement recorded under Section 313 Cr.P.C. he has taken the plea that he is innocent and has been falsely implicated due to animosity. No explanation has been given as regards the recovery. Therefore, from the above facts, legitimately a presumption can be drawn that the accused-appellant had received or accepted the said currency notes on this own volition.”

30. The above ratio squarely applies to the facts and circumstances of this case, apart from the substantive evidence of PW2, which was corroborated by the evidence of PW4 to PW6. The presumption that could be legitimately drawn on account of non-explanation for the tainted money recovered from the accused also goes to substantiate the case of the prosecution.

31. In the above facts and circumstances, I find that there is no merit in the appeal. Therefore, the appeal stands dismissed.

32. Accused-appellant Amrik Singh is on bail. His bail bond stand cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Fatehgarh Sahib. If he fails to surrender, the learned Chief Judicial Magistrate, Fatehgarh Sahib shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

April 22, 2015
Gulati

(M. JEYAPPAUL)
JUDGE