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

**CRA-S No.1510-SB of 2006
Date of Decision: 03.07.2015**

Ashok Kumar

.....Appellant

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate
for the appellant.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. This is an appeal against judgment and order dated 03.08.2006 passed by Special Judge, Patiala convicting and sentencing the accused/appellant to undergo rigorous imprisonment for 2 years under Section 7 of Prevention of Corruption Act and to pay a fine of Rs.2500/-. In the event of default of payment of fine, he was ordered to further undergo rigorous imprisonment for 2 months. The accused/appellant was also sentenced to undergo rigorous imprisonment for 2 years under Section 13(2) of Prevention of Corruption Act and to pay fine of Rs.2500/-. In the event of default of payment of fine, he was further sentenced to undergo rigorous

imprisonment for 2 months. Both the sentences were ordered to run concurrently.

[2]. Accused/appellant was tried in terms of offence under Sections 7 and 13(2) of the Prevention of Corruption Act (for short 'the Act) on the allegations that the complainant Jaswant Singh wanted to get loan from Land Mortgage Bank for agricultural purposes, therefore, the complainant required a copy of *jamabandi*. On 23.01.2003, complainant contacted the accused/appellant in his office at Samana and made a request for the issuance of *jamabandi* of his land. The accused demanded illegal gratification of Rs.1500/-. The complainant expressed his inability, however the amount was settled at Rs.1,000/-. Complainant told the accused that he would come on the next day along with the amount. Complainant was not interested in making the payment. He contacted one Tarlok Singh. On 24.01.2003 complainant and Tarlok Singh went to the office of Vigilance Bureau, Patiala and reported the matter to DSP Baldev Singh. He got his statement recorded to DSP Baldev Singh. He also produced an amount of Rs.1,000/- i.e. ten currency notes in the denomination of Rs.100/- each. DSP Baldev Singh applied phenol phthalein power and also noted the numbers of the notes in the memo and returned the same to complainant for onward payment to accused on demand. The complainant was shown demonstration of the process of hand wash and changing phenomenon of water becoming pink on subjected to phenol phthalein hand wash.

[3]. Tarlok Singh was directed to act as shadow witness for

hearing the conversation. He was also directed to give signal to the raiding party after acceptance of amount by the accused. The statement of the complainant was endorsed by DSP Baldev Singh which ultimately resulted in lodging of FIR. Balbir Singh, Research Officer, Language Department, Patiala and Jaswant Singh, Clerk were joined in the raiding party and were also introduced with the complainant and the shadow witness and were also apprised of the facts of the case.

[4]. Raiding party proceeded to the destination. Complainant and Tarlok Singh were sent to the office of the accused whereas the other members of the raiding party remained scattered. Complainant handed over the total amount to the accused and got copy of the *jamabandi*. Shadow witness gave signal on which DSP Baldev Singh and other policemen reached at the place. Accused was apprehended. After necessary proceedings were done in terms of hand wash of the accused in water containing sodium carbonate. The colour of the solution became pinkish. Sampling was done and then it was sealed by DSP Baldev Singh with the seal of BS and same was taken in police possession. The recovery memo was got attested by the complainant, shadow witness, Balbir Singh and Jaswant Singh.

[5]. The number of notes were got tallied through Balbir Singh, Research Officer with the number mentioned in the memo. The currency notes were taken into police possession vide separate recovery memo Ex.P-Y. The pant of the accused was also subjected

to solution of sodium carbonate. The wash became pinkish. The pant was also taken into police possession vide separate recovery memo. The personal search of the accused got recovered Rs.2808/- from his purse, along with driving licence, wrist watch and mobile phone. These items were also taken into police possession vide separate recovery memos. The Police completed necessary proceedings in terms of preparation of rough site plan regarding statement of witnesses and the case property was deposited with MHC and thereafter Nip parcels were sent to FSL, Punjab. Ultimately challan was presented under Sections 7 and 13(2) of the Act. The accused was chargesheeted under Sections 7 and 13(2) of the Act and he pleaded not guilty and claimed trial.

[6]. Prosecution examined PW-1 Balbir Kaur, Junior Assistant, office of Deputy Commissioner, Patiala who produced service book of the accused and sanction order for prosecution of the accused passed by the Collector, Patiala (Ex.PR). HC Gurbhej Singh was examined as PW-2. Jaswant Singh appeared as PW-3. Both tendered their affidavits Exs.PD and PE on record. Balbir Kaur, Junior Assistant again appeared as PW-4 for bringing original record of the appellant regarding date of birth, joining and retirement. Baljinder Kaur, Stenographer appeared as PW-5 proving letter from Vigilance Department, requesting for deputing officer for raid. Jaswant Singh, complainant appeared as PW-6. Tarlok Singh, shadow witness appeared as PW-7. Balbir singh, Research Officer, appeared as PW-8. DSP Baldev Singh appeared as PW-9.

Statement of the accused was recorded under Section 313 Cr.P.C., in which he denied all the incriminating allegations. The accused led evidence in defence Hazura Singh, Nambardar examined as DW-1 and Partap Singh, Nambardar was examined as DW-2. Thereafter defence evidence of the accused was closed. Trial Court proceeded to convict the appellant after holding that the accused had a motive to demand an illegal gratification from the complainant and accused accepted illegal gratification from the complainant and the same was recovered from conscious possession of the accused.

[7]. Prosecution reiterated the facts and circumstances leading to recovery of tainted amount from the accused. The defence projected the defence that Kewal Krishan was also present in Patwar Khana when raid was conducted. Kewal Krishan was not arrested nor produced as witness in the case. The DSP at the time of effecting search did not offer his person to be searched before conducting the search of the accused. On 24.01.2003 the complainant and the shadow witness did not depose that the accused demanded illegal gratification and then the amount was paid to him for obtaining copy of *jamabandi*. No independent witness on demand of illegal gratification was produced, therefore, defence asserted that demand for illegal gratification was not proved on record.

[8]. I have heard arguments of both sides and have also perused the record.

[9]. In corruption cases, a greater degree of consideration is

required because these cases are to be treated on a different footing so far as appreciation of evidence is concerned. This is because of the reason that on conviction accused not only goes to jail but also loses livelihood and earns ignominy. Mere recovery of tainted amount from the accused is not enough to prove the demand for illegal gratification. Therefore, while appreciating the evidence in such cases, the Court has to be careful and circumspect that in case two views are possible than the view favouring the accused should be adopted. The guilt of the accused has to be proved beyond all reasonable doubts after appreciation of evidence on record.

[10]. In the present case, testimonies of PW-6 (complainant), PW-7 (shadow witness) and PW-9 (DSP Baldev Singh, I.O.) are to be strictly scrutinised so as to appreciate whether prosecution has been able to bring home the guilt of the accused to the hilt or not?

[11]. Statement of complainant-Jaswant Singh brings the following extracted broad features in examination-in-chief:-

- a) Being owner of land, he was interested in raising loan for Land Mortgage Bank.
- b) On 23.01.2003 he met with the accused and requested for issuance of *jamabandi*. Accused demanded 1500/- as illegal gratification and matter was settled at Rs.1,000/-.
- c) Complainant narrated these facts to Tarlok Singh and on 24.01.2003 complainant along with Tarlok Singh came to the office of Vigilance.

- d) Complainant gave 10 notes denomination of Rs.100/- each to DSP who applied P-power (in short) and handed over the same to the complainant after preparing memo (Ex.PH). DSP also showed demo of colour formation of hand wash on subjected to sodium carbonate. Baldev Singh and Jaswant Singh were joined as witnesses. Complainant and Tarlok Singh went to the accused and handed over the amount of Rs.1,000/- and thereafter *jamabandi* was given to him.
- f) On making signal by shadow witness Tarlok Singh, DSP Baldev Singh and others reached there and the accused was subjected to the process of hand wash on recovery of tainted amount from his pocket. The pant was also subjected to solution of sodium carbonate and colour of the water became pinkish. Besides the tainted amount, an amount of Rs.2,860/-, mobile phone, wrist watch, driving licence were also recovered from the accused during supplementary search. These items were also taken into police possession vide separate recovery memos. *Jamabandi* Ex.P-I was also recovered.

[12]. Perusal of examination-in-chief of complainant reveals that

the tainted amount before handing over to the accused was neither initialed nor signed by anyone including the Investigating Officer or the witness. The memo Ex.PH so prepared was got attested from the complainant. Secondly, when the complainant and shadow witness went to the office of the accused and the amount of Rs.1000/- was allegedly paid to the accused, whether this amount was on demand by the accused or not, has not been pleaded in the examination-in-chief. Thirdly whether Investigating Officer offered his personal search before effecting search of the accused? Fourthly, whether complainant was also subjected to the process of hand wash after the alleged recovery of currency notes from the accused by the complainant?

[13]. The examination of PW-6 Jaswant Singh-complainant reveals the following details:-

- a) Accused the complainant were class-fellows in 1971-72. No complaint was made to SDM or Tehsildar orally or in writing on 23.01.2003 except that the complainant met Tarlok Singh in the evening of 23.01.2003, to whom he disclosed the factum of demand of illegal gratification made by the accused, otherwise factum of demand by the accused was never disclosed to anyone by the complainant on 23.01.2003.
- b) Complainant has no specific relationship with shadow witness Tarlok Singh except

acquaintance.

- c) Accused was having helper with him on 23.01.2003 but the complainant could not tell his name though he disclosed his configuration in terms of age and other features.
- d) Complainant has mentioned in cross-examination that no loan was raised by him after this occurrence.
- e) Statement of complainant was not recorded in the office near Dukhniwaran Sahib. The employee recorded his statement in the office of Vigilance in Court complex, however no statement of Tarlok Singh was recorded nor his signatures were obtained on his statement. Complainant further stated that his statement was recorded after reaching Samana at about 3.00 p.m. The witness further stated that he did not apply for loan nor obtained till date, for which the copy of *jamabandi* was required.
- f) Helper prepared the *jamabandi* and the said person remained there. The said person was arrested by the Police and was brought to Patiala and his name and address were also asked by DSP. His statement was not recorded nor his signatures were obtained at Samana. Complainant

produced copy of *jamabandi* before the Vigilance officials at about 5.00 p.m.

[14]. The aforesaid cross-examination has to be tested in the context of factum of demand for illegal gratification made by the accused or not. The witness has deposed that on 23.01.2003, he neither made any representation or oral complaint to SDM or Tehsildar nor stated the factum of demand of illegal gratification of the accused to anyone on 23.01.2003 except Tarlok Singh-shadow witness to whom he met in the evening of 23.01.2003. Secondly the helper was arrested by the Police but his statement was not recorded. Thirdly the factum of not recording statement of the complainant by the DSP in the office at Patiala, rather statement was recorded by an official in the office of Vigilance. Fourthly statement of Tarlok Singh who accompanied the accused was not recorded. Fifthly signatures of the complainant were obtained on papers at Samana. Complainant did not apply for loan nor obtained till date for which copy of *jamabandi* was required.

[15]. Examination-in-chief of Tarlok Singh-shadow witness reveals the following:-

- a) Shadow witness stated that the complainant disclosed to him that the accused was demanding Rs.1,000/- and he pleaded that amount of Rs.1,000/- was excessive.
- b) DSP Baldev Singh recorded the statement of complainant.

- c) Complainant demanded copy of *jamabandi* and accused demanded Rs.1,000/-. Complainant handed over the tainted amount to the accused and obtained the *jamabandi*.

[16]. Cross-examination of PW-7 Tarlok Singh-shadow witness reveals the following:-

- a) Complainant was known to him since 1989 because the witness used to get his land ploughed from the complainant as he was having tractor. Witness was on visiting terms with complainant and the complainant used to come to house.
- b) On 24.01.2003 complainant met him at Samana thereafter they went to Patiala.
- c) His statement was not recorded by the official in the Court complex. Official scribed the statement of complainant within 15-20 minutes.
- d) Official witnesses were called at 1.30 p.m. in the Vigilance Office. They put signatures on one paper in the office of Vigilance Bureau, Patiala. Official witnesses signed that paper in English.
- e) Except the statement of complainant no other statement was recorded in the office of Vigilance Bureau, Patiala. Tehsildar was not joined in the investigation. Two persons were present in the

office of accused when they reached there.

- f) Kewal Krishan was the other person who was present there. His name and address was inquired into by the Vigilance and they recorded the same. His statement was also recorded by the DSP. His signatures were also obtained by the Police on papers.
- g) The door was closed from inside the room next from residential house. Kewal Krishan was also arrested by the Police and was brought to Vigilance Bureau Office at Patiala.

[17]. Perusal of aforesaid cross-examination of Tarlok Singh reveals that factum of proximity with the complainant was from 1989 as both were on visiting terms, having sound bonding. Secondly complainant was already present when the witness reached Tehsil complex Samana. The official witnesses were called at 1.30 p.m. in vigilance office and they put signatures on one paper in the Office of Vigilance Bureau at Patiala. Statement of complainant was stated to be recorded at Vigilance Bureau, Patiala. Kewal Krishan was arrested at the spot, he was even brought to the Vigilance Bureau Office at Patiala for recording his statement.

[18]. Statement of Research Officer Balbir Singh-PW8 has the following extracted characteristics:-

- a) They left the office room of the accused at 4.30 p.m. and reached his house at about 5.00 p.m.

- b) DSP Baldev Singh did not search of person of either Jaswant Singh or Tarlok Singh in his presence.
- c) DSP Baldev Singh also did not offer his search to them. They remained in the house of the accused from 5.30 p.m. to 6.30 p.m. Nothing was taken into possession from the house of the accused. The talk in the office of the accused was not audible at the place where they were standing.
- d) The *jamabandi* was produced by complainant, no one came from outside so long as they remained in office of the accused.

[19]. Cross-examination of PW-9 DSP Baldev Singh brings the following extracted features:-

- a) He handed over the currency notes to the complainant vide memo Ex.PH and directed him to hand over these notes to the accused on demand.
- b) On his demand accused took out currency notes from his pocket and thereafter the number of currency notes so recovered got tallied through Balbir Singh, Research Officer.

[20]. Cross-examination of this witness reveals that there were two rooms in the office of accused. Tarlok Singh remained in other room. Accused and complainant remained in the office room of the accused. Both the rooms of office of the accused are parallel and

adjoining to each other. Both the rooms are facing the street. Further said that only one room is situated on the street and the second room has the opening only after passing the first room. Tarlok Singh was not visible to the Investigating Officer where he was standing in the first room.

[21]. In the site plan Tarlok Singh was shown standing at a distance of 4-5 karams from the chair of the accused. He had offered himself for search to the accused. His personal memo was prepared to this effect and aforesaid statement of DSP Baldev Singh gave rise the fact that complainant was to hand over the tainted amount to the accused only on demand of the accused. Secondly there were two rooms and the placement of room were shown in the site plan from where it could be found that both the rooms were parallely situated. Tarlok Singh shadow witness was not visible to him when he was standing in the first room. The placement of shadow witness was shown at a distance of 4-5 karams from the chair of the accused. The witnesses offered their personal search before effecting the search of the accused and accused checked himself.

[22]. The defence witness got examined by the accused are Hazura Singh and Partap Singh who have deposed that nothing was recovered from the accused and no proceedings of hand wash were done in the office. They were sitting in the office of Patwari/accused and two policemen came there and enquired from the accused. Both of them asked him to come out of the office and they later took them in official gypsy.

[23]. Perusal of statement of material witnesses revealed that there was no demand made by the accused on 24.01.2003. This fact can be gathered from the cross-examination of the complainant when he stated that on 23.01.2003 the factum of alleged demand of illegal gratification was not disclosed by him to anyone and on 24.01.2003 there was no mention in the statement that the amount was given to the accused on demand made by him.

[24]. Cross-examination of DSP Baldev Singh in reference to site plan showed that it was prepared by him. Perusal of rough site plan prepared by Investigating Officer Ex.P5 revealed that placement of the shadow witness was not visible to the raiding party. It was nowhere stated by any of the witness that the shadow witness after receipt of illegal gratification by the accused went to another room at point 'D' and thereafter he made any signal to the raiding party. Accused was shown sitting at point 'A' in front of complainant where the alleged amount of illegal gratification was paid by the complainant to him. Placement of shadow witness at point 'C' was also shown in the same room but the presence of no other person was shown in this enclosed room having opening in the adjoining room. Only entry from the street was shown. Both the rooms were internally connected. Shadow witness could not have given any signal to the raiding party while standing in the room where accused and complainant were present.

[25]. In **Amrik Singh v. State of Punjab 2005(4) RCR (Crl.) 301** this Court held that shadow witness is treated to be interested

witness if he is proved to be related with complainant. A trap witness is interested in the success of trap and qualitatively statement of such witness is inferior to that of ordinary interested witness. Mere recovery of tainted amount is not enough to convict the accused when substantive evidence is found to be not reliable.

[26]. The demand has not been proved by independent witness. Rather the complainant has stated that on 23.01.2003 he never disclosed to anyone regarding factum of demand of illegal gratification made by accused except the shadow witness Tarlok Singh. The complainant did not say in his statement that on 24.01.2003 the amount was paid to the accused on demand by him. Investigating Officer DSP Baldev Singh has specifically stated in his statement that complainant was to pay the amount on demand by the accused. In view of aforesaid, statement of shadow witness would required to be corroborated by way of independent corroboration. The demand has to be proved by way of independent witness. Reliance can be placed on **Karnail Singh v. State of Punjab 2009(1) RCR (Crl.) 403** and **Jarnail Singh v. State of Haryana 1991(1) RCR (Crl.) 351.**

[27]. In **2015 Criminal Law Journal, 72 M.R. Purshottam v. State of Karnataka** mere possession and recovery of currency notes from the accused without any proof of demand was not considered sufficient for bringing the culpability of the accused under the mischief of offence under the Prevention of Corruption Act. The observations made by the Apex Court in **2014(2) RCR (Crl.) 410 B.**

Jaya Raj v. State of Andhra Pradesh was relied to conclude that mere possession and recovery of currency notes from the accused without proof of demand is not sufficient and to bring home the guilt of the accused under Section 7 of the Act.

[28]. In **Rakesh Kapur v. State of H.P. 2013(1) RCR (Crl.) 211** the Hon'ble Supreme Court has held that if the offence under Section 7 of the Act is not proved than the offence under Section 13(2) of the Act cannot be sustained as this is not a substantive offence and there is no charge under Section 13(1)(a) of the Act.

[29]. In the absence of demand and proof of acceptance of illegal demand, presumption in terms of Section 20 of the Act cannot be attracted. The alleged recovery from the accused as a result of trap was not sufficient to record conviction of the accused unless there was some evidence to show that the amount was paid on demand by the accused. Mere acceptance of the amount as illegal gratification and recovery thereof would not be a ground to convict unless the factum of demand was proved by an unimpeachable evidence on record.

[30]. The extracted cross-examinations of PW-6, PW-7 and PW-9 on different issues came to the fore that demand on the part of the accused was not proved.

[31]. In the present case one more important feature that should have been taken note of by the Court. Hands of complainant PW-6 were not got washed in the solution of Sodium Carbonate after the recovery of the currency notes from the accused. Failure on this front

was sufficient to create doubts as to the act and conduct of the Investigating Officer. Had he got the hands of complainant washed in the solution of sodium carbonate, had he sent the contents of the hand wash to the chemical examiner for scientific test and had a report of chemical examiner being favoured to the prosecution case, it would have been certainly proved that complainant had actually given the said currency to the accused on the spot immediately before the recovery of the same from the possession of the accused. In the absence of the same there cannot be any reliable evidence on record to show that the complainant had actually given the said currency to the accused on the spot. The conduct of shadow witness was also under shadow in view of his relationship with the complainant and his divergence in the statement on other material aspects of the case clearly made it a case of illegal trapping with all evil design to secure some illegal goal.

[32]. On the aforesaid proposition reliance can be placed on **Abdul Rashid Ansari v. State of U.P., 1993(2) Crimes 26 (Allahabad).**

[33]. From the aforesaid incriminating facts and circumstances of the case, it can be easily culled out that demand at the instance of accused was not proved on record. Complainant and shadow witness were having close proximity with each other. There was no independent corroboration of the factum of demand of illegal gratification by the accused particularly in view of the fact that his own testimony showed that he never disclosed factum of demand of

illegal gratification by the accused on 23.01.2003 nor the amount was paid to the accused on demand on 24.01.2003. The instructions of DSP Baldev Singh were specific in nature that the amount was to be paid only on demand by the accused. The other features of link evidence were also not established in view of divergent statements made by PW-6, PW-7 and PW-9 on the factum of recording of statement of complainant either in Court complex at Patiala or in Tehsil office, Samana. The helping hand Kewal Krishan even though was arrested but not examined by the prosecution to establish link evidence on record. The complainant never availed the facility of loan thereafter. Motive for obtaining *jamabandi* also remained unexplained. In view of entirety of facts and circumstances of the case, it has been found that prosecution has miserably failed to bring home the guilt of the accused/appellant to the hilt beyond all reasonable doubts.

[34]. In view of aforesaid, this appeal is accepted. Impugned judgment of conviction and order of sentence are set aside. Accused/appellant is acquitted of charges.

Parties be communicated.

July 03, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE