

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**CRA-S-560-SBA of 2004**

Date of Decision : December 09, 2015

State of Punjab

.....Appellant

**Versus**

Balwant Kaur

.....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN**

Present : Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

Mr. S.K. Chawla, Advocate  
for the respondent.

**T.P.S. MANN, J.**

The State of Punjab is in appeal against the judgment dated 23.4.2003 passed by learned Special Judge, Faridkot whereby the accused stood acquitted of the charge under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988.

According to the prosecution, the accused, namely, Balwant Kaur was posted as Rent Clerk in the Municipal Committee, Jaitu whereas complainant Mahesh Kumar was running two shops, bearing Nos. 35 and 36 under the tenancy of the Committee and dealing in sale and purchase of spare parts. As per the terms of the tenancy, he was to pay the rent by 7<sup>th</sup> of every month. As 7.6.1998 was declared a holiday and on account of his personal ability, he could not deposit the rent on 8.6.1998 the complainant went to the office of the Committee on 9.6.1998 where he met the accused, who told him that under the terms of the tenancy he was supposed to pay Rs.2,900/- as rent on

which an amount of Rs.725/- was to be levied as penalty on account of late deposit of the rent. When the complainant showed his inability and on some persistence, the accused told him that she would charge Rs.500/- as illegal gratification and would issue the receipt regarding payment of the rent in the back date and the complainant would not pay any penalty. On the request of the complainant the accused agreed to take Rs.300/- as bribe money. The complainant on the pretext of fetching the money went back and while on his way, he met Mukesh Kumar to whom he disclosed about the demand and on his advise the complainant came to the office of the Vigilance Bureau and made statement. On the basis of the statement, FIR was registered at Police Station Vigilance Bureau, Ferozepur. The complainant, thereafter, tendered a sum of Rs.300/- by way of three currency notes of the denomination of Rs.100/- each before DSP Baljit Singh Buttar, Vigilance Bureau, Faridkot, who applied phenolphthalein powder and after conducting the personal search of the complainant, handed over the tainted currency notes to the complainant, besides directing him to hand over the money on demand to the accused and also gave instructions to Mukesh Kumar to accompany the complainant and to hear the dialogue between the complainant and the accused and to give the police party a signal when the bribe money is passed to the accused. The DSP held the demonstration about solution of sodium carbonate turning pink when coming in contact with the phenolphthalein. The DSP summoned two lady Constables Harinderpal

Kaur and Paramjit Kaur and other police officials and alongwith Sanjiv Kumar, Clerk of the office of DTO, Faridkot introduced all of them to each other, detailed the particulars of the trap and roles of each of them. The raiding party, thereafter, went to the office of the accused. The DSP instructed the complainant and Mukesh Kumar to go to the office of the accused and both of them met the accused in her office. On her demand, tainted currency notes were handed over to her. A signal was, thereafter, given by Mukesh Kumar to the raiding party which reached the office of the accused who was caught red handed. The DSP disclosed his identity and prepared a solution of sodium carbonate water and asked Sanjiv Kumar to dip his hands therein. On his doing so, the colour of the solution did not change. However, when the accused was asked to dip her hands in the same very solution and on her doing so, the colour of the solution changed to light pink. On search , the tainted currency notes were recovered from the drawer of the table of the accused and numbers of the same were got tallied with the previous memo with the assistance of Sanjiv Kumar. The numbers tallied and were taken into possession through a memo. The DSP took into possession the official record of the Committee through a separate memo and further personal search of the accused by the lady Constable, led to the recovery of a ball point pen.

The DSP prepared rough site plan of the place of occurrence, recorded the statements of the witnesses and, thereafter, deposited the case property with the MHC. On receipt of report from

the Chemical Examiner and completion of investigation, challan was presented in the Court. The accused was, thereafter, charged for the aforementioned offences, to which she pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twelve witnesses.

PW1 HC Sukhvir Singh deposed regarding the receipt of the case property in the case and in cross-examination was conformed with his statement under Section 161 Cr.P.C.

PW2 Constable Joginder Singh deposed regarding taking of ruqa by him to the Police Station leading to the registration of the FIR.

PW3 Jit Singh Constable deposed that he was MHC on duty on 9.6.1998 and had received the case property from the Investigating Officer. In his cross-examination he was confronted with his statement under Section 161 Cr.P.C.

PW4 Sanjiv Kumar, Clerk, Office of the DTO, Faridkot deposed regarding the raid by the police leading to the apprehension of the accused and recovery of the tainted money and other finer aspects of the case and in his cross-examination he was confronted with his statement under Section 161 Cr.P.C.

PW4 Constable Iqbal Rai proved the fact of depositing of the nip and signatory slip, with the office of the FSL at Chandigarh.

PW5 Constable Surinder Singh proved having attested the

memo for taking into police possession the receipt book, chest register and attendance register of the Committee and PW6 Des Raj, Inspector (retd.) proved regarding receipt of ruqa for Ex.PE, his endorsement Ex.PE/1 and registration of the FIR Ex.PE/2.

PW7 Madan Lal, Cashier, Municipal Committee, Jaitu proved the fact of receipt of the cash and its deposit in the bank alongwith Form 'F'.

PW8 Gurtej Singh, Computer Clerk of the Municipal Committee, Jaitu was examined who deposed regarding handing over of the money in parcel by DSP Vigilance Bureau to Madan Lal.

PW9 Mukesh Kumar was declared hostile and PW10 Vishav Bandu, Clerk of the Municipal Committee, Jaitu proved the sanction for the prosecution of the accused as Ex.P1.

PW11 Mahesh Kumar, complainant serialised the events and details, which led to the arrest of the accused.

PW12 DSP Baljit Singh Buttar deposed about various steps taken by him during the investigation of the case and proved the documents relied upon by the prosecution in support of its case. Thereafter, the prosecution closed its evidence.

When examined under Section 313 Cr.P.C., the accused denied the incriminating circumstances appearing against her and pleaded that she was innocent. However, she did not lead any evidence in her defence.

After hearing the arguments advanced by both the parties and on going through the evidence, learned trial Court, after holding that there were deficiencies and inconsistency in the prosecution story, came to the conclusion that the prosecution had failed in its endeavour to prove its case against the accused, acquitted her by giving her the benefit of doubt.

This Court has heard learned Assistant Advocate General, Punjab, learned counsel for the accused and perused the evidence with their able assistance.

According to the prosecution, complainant Mahesh Kumar had to pay the rent of his shop in the office of the Committee after the stipulated date and when he approached the accused on 9.6.1998, she told him to pay an amount of Rs.300/- to her as illegal gratification instead of paying the default of Rs.725/-. PW11 Mahesh Kumar deposed that when he handed over a sum of Rs.300/- to the DSP and the DSP recorded their particulars and applied powder to it and, thereafter, he conducted personal search of the complainant and handed over the tainted notes to him. Except the tainted notes, nothing remained on his person. DSP Baljit Singh Buttar in his examination-in-chief testified that after he received Rs.300/- from the complainant he applied phenolphthalein powder on the notes and after making search of the complainant that no money was left on his person, he handed over the tainted notes to him after recording their particulars. However, in the cross-examination of PW11 Mahesh Kumar it stood mentioned

that he had handed over Rs.2,900/- and Rs.300/- and it was the accused who had handed over Rs.2,900/- to her Clerk sitting adjacent to her for the purpose of preparing the receipt and putting Rs.300/- in the drawer. Thus, it cannot be said that only Rs.300/- remained with the complainant which he had handed over to the accused as bribe.

PW11 HC Sukhbir Singh testified that on 11.6.1998 he had joined the duties after availing leave which goes to show that on 9.6.1998 as well as on 10.6.1998 he was on leave. PW3 Constable Jit Singh testified that on 9.6.1998 he was working as duty Moharrir as MHC Sukhbir Singh was on leave. On the same day, the respondent had deposited a nip containing hand wash and on 10.6.1998 MHC Sukhbir Singh returned and he handed over the case property to him. Thus, the stand of the DSP that he had handed over the case property with MHC Sukhbir Singh on 9.6.1998 was factually wrong.

It is the prosecution case that tainted notes were recovered from the drawer of the table. However, PW9 Mukesh Kumar who was the shadow witness did not support the prosecution story and after getting him declared hostile, learned Additional Public Prosecutor cross-examined him. However, he stuck to his stand that the accused never demanded illegal gratification from complainant Mahesh Kumar in his presence and that the police had got his signatures on the memos which were never read out to him.

PW4 Sukhdev Kumar, Clerk of the office of DTO, Faridkot testified that the money was recovered from the drawer of the table of

the accused. Similar was the stand of DSP Baljit Singh Buttar. However, according to the defence, the complainant had come to the office of the accused to deposit the rent and there was an exchange of hot words whereafter she received the rent and issued receipts to him and subsequently the complainant threw the currency notes at her table. This version of the defence stands corroborated by the deposition of DSP Baljit Singh Buttar, who in his cross-examination stated that he did not find the receipt-book in the office on the day of the raid. If that be the position, then it is highly improbable that the receipt-book was recovered from the spot.

PW10 Vishav Bandhu, who had proved the sanction Ex.P1 for prosecution of the accused testified that no formal order of sanction for the prosecution had been made. He only proved the resolution Ex.P1 passed by the Committee and a bare perusal of the same goes to show that it could not be even loosely termed as sanction. The Committee had simply authorised, vide this resolution, its executive officer to take appropriate steps into the matter and as such it is simply an authorisation and not a sanction.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

The appeal lacks any merit and is, accordingly, dismissed.

**( T.P.S. MANN )**  
**JUDGE**

**December 09, 2015**  
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