

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

**Crl. Appeal No. 564-SB of 2004
Date of decision : 26.02.2015**

Chaman Lal and another

versus

State of Haryana

....Appellants

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Garg, Senior Advocate,
with Mr. Sanjiv Gupta, Advocate,
for appellant No.1.

Mr. Suman Jain, Advocate,
for Mr. R.K. Gupta, Advocate,
for appellant No.2.

Mr. C.S. Bakhshi, Addl. AG., Haryana.

RITU BAHRI , J.

This appeal has been filed against the judgment of conviction dated 14.02.2004 and order of sentence dated 19.02.2004 passed by the Special Judge, Sirsa, whereby accused-appellants Chiman Lal and Dr. R.K. Gupta have been convicted and sentenced as under:-

<i>Name of the convict</i>	<i>Offence</i>	<i>Sentence</i>
Chaman Lal	U/S 120-B IPC	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo imprisonment for three months.
Dr. R.K. Gupta	U/S 13 (1) (d) (i) of Prevention of Corruption Act, 1988	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.25,000/-. In default of payment of fine, to further undergo imprisonment for six months.

Mr. Munish Ram, Animal Husbandry Department, Sirsa, made

a complaint to the Chief Secretary, Government of Haryana, Vigilance Department, against Dr. Ram Kumar Gupta, SDO, Sirsa with regard to his corrupt and dictatorial behaviour. The said complaint was forwarded to the Superintendent of Police, State Vigilance Bureau, Hisar Division, Hisar for enquiry. Thereafter, Inspector Abhey Ram, SVB, Sirsa and Inspector Ram Dhan, conducted an enquiry into the matter and found that Dr. Prem Prakash Mehta, Animal Husbandry, Sirsa was residing in a Government quarter, but he claimed bogus house rent. As per the orders of the Director, Department of Animal Husbandry, Chandigarh, he had deposited Rs.7075/- on account of house rent along with interest amounting to Rs.3366/-. Thereby, he has temporarily embezzled a sum of Rs.7075/-. The enquiry officers further found that Dr. R.K. Gupta-appellant No.2, who was posted as SDI, Department of Animal Husbandry, Dabwali, never resided on rent in the house of Chiman Lal Singla-appellant No.2 during his posting as SDO at Dabwali, but he had withdrawn a sum of Rs.12,450/- as house rent without producing any receipt in that regard. He himself was a Drawing and Disbursing Authority at that time. During enquiry, it was also found that Chiman Lal-appellant No.1 had submitted a false affidavit stating that Dr. R.K. Gupta-appellant No.2 was residing in his house on rent. In this background, FIR No.5 dated 07.04.1999, under Sections 409, 420, 468, 471, 120-B, 199, 218 IPC and Section 13 (1) (d) of Prevention of Corruption Act, 1988 was registered against all the accused at Police Station, SVB, Hisar. After completion of investigation, challan against all the accused was prepared and presented in the Court.

After presentation of the challan, accused-appellant No.2

Chiman Lal was charge sheeted under Section 120-B IPC, whereas accused Dr. R.K. Gupta and Dr. Prem Prakash Mehta were charged sheeted for commission of offence under Section 13 (1) (d) (i) of Prevention of Corruption Act, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Prem Chand (PW-1), Dr. R.K. Kathuria, Deputy Director, Animal Husbandry, Panchkula (PW-2), Rattan Singh, V.L.D.A. Veterinary Hospital, Odhan (PW-3), Narinder Kumar, Sweeper in Veterinary Department at Meerpur (PW-4), Lachhman Singh, Assistant office of Deputy Director, Animal Husbandry, Sirsa (PW-5), Dr. Shivaditta (PW-6), Rameshwar Dass, VLDA, Dabwali (PW-7) and Rattan Singh, DSP (PW-11). Thereafter, the evidence of the prosecution was closed.

After closure of the prosecution evidence, statements of accused-appellants under Section 313 Cr.P.C., were recovered, wherein entire incriminating evidence was put to them. However, they denied the same and pleaded innocence. In defence, appellants-accused examined Dr. Om Prakash Mehta, Distt. Dairy Development Officer, Kanganpur (DW-1), Pawan Kumar (DW-2), Surender Singh (DW-3) and Dr. Jora Ram, SDO, Animal Husbandry, Sirsa (DW-4) and thereafter, closed their evidence.

Trial Court, after going through the entire evidence led by the parties, convicted and sentenced the accused-appellants in the aforesaid terms. Hence, this appeal.

Allegations against Chiman Lal-appellant No.1 are that he had given a wrong affidavit in favour of Dr.R.K. Gupta-appellant No.2 to the effect that he was residing in his house as tenant while he was posted as SDO, Animal Husbandry at Dabwali. The neighbour of Dr. R.K.Gupta i.e.

Pawan Kumar while appearing as DW-2, deposed that his house adjoins the house of Chaman Lal and R.K. Gupta was residing as tenant in the house of Chaman Lal on the first floor w.e.f. 1993 to 1996 along with his family. Affidavit of Chaman Lal is dated 28.04.1998.

The trial Court, on the other hand, has accepted the photostat copies of assessment register for the period from 1989 to 1994 and 1994 to 1998, a perusal of which, shows that Dr. R.K. Gupta did not reside in the house of Chiman LalSingla-appellant No.1 at Mandi Dabwali and the same was occupied by Chiman Lal himself. Production of photostat copies of assessment register of Chiman Lal would not be sufficient material to come to a conclusion that Dr. R.K. Gupta was not residing in his house. As far as Chiman Lal is concerned, the allegation against him is that he has merely given an affidavit stating that R.K. Gupta was a tenant in his house. It was merely a statement of fact, which would not amount to an offence under Section 120-B IPC.

As regards Dr. R.K. Gupta-appellant No.2, the allegation is that he had withdrawn a sum of Rs.12,450/- as bogus house rent allowance for the period from March, 1993 to June, 1996 from the Government Treasury, without placing any house rent receipt from the owner of the house. Thus, he has misused his official power. The Hon'ble Supreme Court in **N.K. Illiyas Vs. State of Kerala**, 2012 (3) RCR (Criminal) 837 had acquitted the accused in a case of temporary embezzlement. In that case, the accused who was working as Lower Division Clerk in the Vigilance Department, had deposited the amount in Post Office after a delay of 21 days. The delay in depositing the amount, at best, could be a case of temporary embezzlement and no offence under the Prevention of Corruption Act was made out. The

Hon'ble Supreme Court while acquitting the accused, had observed as under:-

“3. We are further of the opinion that the offences under the Indian Penal Code alleged against the appellant are so trivial and have caused no harm and are in fact, no offences in the eye of the law and the benefit of Section 95 of the Indian Penal Code is thus, available to the appellant. Admittedly, a sum of Rs. 1839/- had been deposited in the post office before the due date i.e. 4th March, 1992 and that no loss had been caused to the Department, even if it is assumed that a false entry had been made in the record to show the payment on the 10th February, 1992.”

In the present case, as per enquiry report (Ex.PK), Dr. R.K. Gupta had taken house rent allowance without placing on record any rent receipt from the owner of the house and thus, misused his official power. This omission of not placing any rent receipt on record could well be taken care by the departmental authorities as per the relevant service rules. By no stretch of imagination, this irregularity would be termed as an offence under the Prevention of Corruption Act.

Another aspect which requires to be considered is that no departmental enquiry has been initiated for recovery of this amount of Rs.12,450/- from R.K. Gupta-appellant No.2. Even though an enquiry was conducted by Dr. Shivaditta (PW-6), but he was carrying enmity against Dr. R.K. Gupta because the latter had levelled allegations of bias when he had challenged the premature order of retirement in a writ petition. The said writ petition was finally decided in favour of appellant No.2-R.K. Gupta. This fact was admitted by Rattan Singh, V.L..D.A. Veterinary Hospital, Odhan who was examined as PW-3. Even though there was enmity between Dr. Shivaditta (PW-6) and Dr. R.K. Gupta, but the allegation of corruption is not made out against Dr.R.K. Gupta, at best when the enquiry was conducted by Dr. Shivaditta. Moreover, no departmental proceedings were

initiated till date for recovery of the said amount. Hence, no offence under the Prevention of Corruption Act is made out against Dr. R.K. Gupta-appellant No.2 and he is entitled to be acquitted.

Furthermore, giving of affidavit by Chiman Lal-appellant No.1 to the effect that Dr. R.K. Gupta was a tenant in his house would not lead to a conclusion that he had a common intention with Dr. R.K. Gupta to draw any illegal benefit. House rent was drawn by Dr. R.K. Gupta and this benefit was remotely not extended to Chiman Lal. Mere filing of an affidavit would not amount to an offence under Section 120-B IPC.

In the light of the above discussion, this Court is of the view that the prosecution had miserably failed to prove its case against the accused-appellants by leading any cogent evidence.

Resultantly, this appeal is allowed, the impugned judgment is set aside and the appellants are acquitted of the charges framed against them.

(RITU BAHRI)
JUDGE

26.02.2015
ajp