

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

**Criminal Appeal No. S-2530-SB of 2009
Date of decision: 11.02.2015 .**

Chander Singh

..Appellant

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. U.K. Agnihotri, Advocate
for the appellant.

Mr. Munish Sharma, AAG, Haryana
for the respondent – State.

Daya Chaudhary, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 26/29.09.2009 whereby, accused-appellant has been convicted for offence punishable under Section 7 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and sentenced to undergo RI for a period of 4 years and to pay fine of ₹10,000/- with default clause.

Briefly, the facts of the case are that on 09.01.2007, complainant moved an application in the office of State Vigilance

Bureau, Bahadurgarh that the accused-appellant demanded ₹7000/- as illegal gratification from him in order to allow him to issue slips in the cattle fair and also threatened him to face dire consequences in case of non-payment of ₹7000/-. On receiving said complaint, raid was conducted by the raiding party and the alleged amount was recovered from the pocket of the accused-appellant in presence of shadow witness.

On finding a prima-facie case punishable under Section 7 read with Section 13(1)(d) of the Act, the accused was charge sheeted on 07.06.2007 to which he pleaded not guilty and claimed trial.

The prosecution examined as many as 10 witnesses i.e., HC Jai Chand as PW1, Surinder Singh, Assistant as PW2, Constable Joginder Singh as PW3, Virender Sharma, Superintendent as PW4, Complainant Bijender Singh as PW5, ASI Dayanand as PW6, Om Parkash Head Clerk as PW7, Naib Tehsildar Basti Ram as PW8, ASI Ranbir Singh as PW9 and Inspector Rajinder Parshad as PW10.

Thereafter, statement of accused under Section 313 Cr.P.C. was recorded wherein he denied the allegations and pleaded that he has falsely been implicated in the case as neither any bribe was demanded nor any amount was received from the complainant. Nothing was got recovered from him and the case was got registered by the complainant due to personal enmity.

The accused-appellant examined Rakesh Sondhu, BDPO

Tosham as DW1 and tendered in evidence the document Ex.D1 along with copy of FIR EX.D3 and copy of report under Section 173 Cr.P.C. as Ex.D4.

On appraisal of evidence available on record, the trial Court convicted and sentenced the appellant on 26/29.09.2009.

The aforesaid judgment of conviction and order of sentence has been challenged mainly on the ground that the appellant has falsely been implicated in the case due to extraneous reasons whereas there are material contradictions and discrepancies in the statements of the witnesses, which casts a doubt in the prosecution version.

Learned counsel for the appellant submits that it has not been proved on record that there was a cattle fair on 10.01.2007 and 11.01.2007, hence, there was no occasion for the appellant to demand bribe from the complainant as the appellant was having no authority to issue passes. Even the presence of shadow witness has not been proved. Learned counsel for the appellant further submits that as per statement of Sh. Rakesh Sondhu, BDPO Tosham (DW1), it has not been proved that the appellant was entrusted the job of issuance of passes for the fair as the appellant was posted as an Accountant. Neither the appellant was working as 'Mela Officer' on the date of occurrence nor any pass was issued as the appellant was having no authority to issue pass. At the end, learned counsel for the appellant submits that all the essential ingredients of the charges

framed against him have not been proved as neither any demand of bribe was made nor it has been proved that the amount was received. It has also not been proved that the appellant has issued any pass to the complainant or to other participants in the cattle fair. Learned counsel for the appellant has also relied upon judgments of Hon'ble the Supreme Court in **V. Venkata Subbarao vs. State represented by Inspector of Police, A.P., 2007(1) RCR (Criminal) 519;** judgment of this Court in **Mathura Dass Gupta vs. State of Haryana, 2006(1) RCR (Criminal) 566 and ASI Jarnail Singh vs. State of Punjab, Criminal Appeal No. S-1922-SB of 2010 decided on 03.09.2014;** judgment of Rajasthan High Court in **Bhal Singh (Since Deceased) represented by his Heirs vs. State of Rajasthan, 2007(5) RCR (Criminal) 688** and judgments of Andhra Pradesh High Court in **C. Sivakumar Reddy vs. State of A.P. rep by Inspector of Police Anti Corruption Bureau Tirupathi Range, Tirupathi, 2005(3) RCR (Criminal) 642 and R.V. Subba Rao vs. State represented by Inspector of Police, Anti Corruption Bureau, Kakinada Range, 2005 (4) RCR (Criminal) 716** in support of his contentions.

Learned State counsel submits that the judgment of conviction passed by the trial Court is well reasoned and is based on proper appreciation of evidence. The contradictions pointed out by the learned counsel for the appellant are minor, which are not material. Learned State counsel also submits that the amount found to be kept in pocket of the appellant has not been explained as the burden was

upon him to prove that it was not obtained by way of illegal gratification. Learned State counsel has also relied upon judgment of Hon'ble the Supreme Court in **Raj Rajendra Singh Seth @ R.R.S. Seth vs. The State of Jharkhand and Anr., 2008(3) RCR (Criminal) 831** in support of his contentions.

Heard arguments of learned counsel for the appellant as well as learned State counsel and have also perused the record of the trial Court including statements of the witnesses.

The statement of the complainant has not only been corroborated by shadow witness but by the Investigating Officer also. Complainant Bijender Singh while appearing as PW5 has stated that accused-appellant was working in the cattle fair held on 10.01.2007 and 11.01.2007 and was issuing slips. Accused demanded ₹7000/- for issuance of slips for participating in the fair for the purpose of sale of cattle. Raid was conducted and amount was recovered from the pocket of pent of the accused-appellant. The currency notes were identified not only by numbers but when those notes were put in sodium carbonate solution, its colour changed to pink. The statement of complainant has been corroborated by PW8 Naib Tehsildar Basti Ram as well as ASI Ranbir Singh PW9, who was shadow witness in the case. Similarly, Inspector Rajinder Parshad PW10, who was the Investigating Officer, has also deposed that an amount of ₹7000/- was paid by the complainant to the accused and signal was given by the shadow witness and accused was apprehended red handed while

accepting the amount to the tune of ₹7000/-, which was recovered from the pocket of his pent.

It has been proved by statement of Sh. Rakesh Sondhu, BDPO, Tosham-DW1, who has admitted in his cross-examination that on the date of occurrence i.e., 09.01.2007, the accused appellant was posted as Accountant-cum-Panchayat Officer under him.

On perusal of statements of prosecution witnesses, it has been proved that the money was accepted by the accused appellant. The accused appellant has not proved the presumption as to how the amount was recovered from his pocket.

As per the scope and applicability of the presumption under Section 20 of the Act, it is to be proved that the accused has accepted or obtained or agreed to accept amount from other person other than the legal remuneration, it shall be presumed unless the contrary is proved that he accepted the amount as legal remuneration. Section 20 of the Act is reproduced as under: -

“20. Presumption where public servant accepts gratification other than legal remuneration

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall

be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by a accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

As per provisions of Section 20 of the Act, it was for the accused to prove or to explain that an amount of ₹7000/- was not accepted as bribe unless the presumption is disproved or rebutted. It is to be presumed by the Court that the accused was in possession of

the currency notes by way of illegal gratification. In case, any amount is found in possession of the public servant, the burden is on him to establish that it was not by way of illegal gratification. Once it has been established that a public servant accepted the gratification, which was not his legal remuneration, then burden shifts on him that the money was not accepted as a motive or reward and such presumption is rebuttable. The prosecution witnesses were subjected to lengthy cross-examination but their testimonies were not shattered. No adverse inference can be drawn even after noticing certain minor discrepancies and contradictions.

It has been held by Hon'ble the Apex Court in **Munshi Parsad and Ors. vs. State of Bihar, 2001(4) RCR (Criminal) 415 (SC)** while relying upon judgment of Hon'ble the Supreme Court in **Leela Ram (Dead) through Duli Chand vs. State of Haryana, 1999 (4) RCR (Criminal) 588 (SC)** that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting core of the prosecution case, ought not to prompt the Court to reject evidence in its entirety. It is the totality of the situation, which has to be taken note of.

Although an argument has also been raised that no independent witness was joined whereas many persons were working in the office. In the present case, there is no reason to doubt the statements of Naib Tehsildar Basti Ram PW8 and Inspector Rajinder Parshad PW10 as they were not having any reason to falsely

implicate the accused appellant.

The observation made by Hon'ble the Apex Court in **B. Nohra vs. State of Kerala and Anr., 2006(4) RCR (Criminal) 938** is as under: -

*“10. The evidence shows that when PW-1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to take cut and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in **Madhukar Bhaskarrao Joshi v. State of Maharashtra, 2000 (4) RCR (Criminal) 705: (2000 (8) SCC 571)** as follows:*

“12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted ‘as

motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

11. This decision was followed by this Court in **M. Narsinga Rao v. State of A.P., 2001(1) RCR (Criminal) 95: (2001 (1) SCC 691)**. There is no case of the accused that the said amount was received by him as the amount which he was legally entitled to receive or collect from PW-1. It

was held in the decision in State of A.P. v. Kommaraju Gopala Krishna Murthy (2000 (9) SCC 752), that when amount is found to have been passed to the public servant the burden is on public servant to establish that it was not by way of illegal gratification. That burden was not discharged by the accused.”

Accordingly, there is no merit in the contentions raised by learned counsel for the appellant and the appeal being devoid of any merit is dismissed.

11.02.2015
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(DAYA CHAUDHARY)
JUDGE