

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-662-SB of 2004
Date of Decision: February 11, 2015

Prem Lata

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Brar, Advocate
for the appellant.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 18.03.2004, passed by learned Special Judge, Patiala, whereby the accused-appellant was held guilty and convicted under Sections 7 and 13(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under each Section. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that FIR in the present case was registered on the basis of statement of Paramjit Singh, complainant, which he got recorded before DSP Vigilance

Flying Squad-II, Patiala, wherein he mainly stated that his sister Sarabjit Kaur is married with Ram Singh, who was liquor addict. Earlier, Ram Singh sold the land to some other person. Then, Ram Singh sold 9 acres of land to his son Harinder and the mutation of which had to be sanctioned. Mutation was got entered with the Patwari and the same was to be finalized by the Naib Tehsildar Prem Lata accused. Mutation was not sanctioned by the accused. They again met the accused and the Patwari told them that they have to pay some money for getting the mutation sanctioned. Then, complainant talked to accused regarding sanctioning of the mutation and the accused demanded ₹4000/- as bribe from him and the matter was settled at ₹2000/-. Then, complainant went to Vigilance office on 07.05.1999 and narrated the demand of bribe. J.E. Devinder Singh was called by the DSP in his office. The demonstration after applying powder to the currency notes was given. A raid was planned, which was conducted after joining Balbir Singh as shadow witness and the currency notes were recovered from the drawer of the table of accused and numbers of same were tallied with the memo already prepared. After necessary investigating, challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to her under Section 207 Cr.P.C. Finding prima facie case, accused-appellant was charge-sheeted under Sections 7 and 13(2) of the Prevention of Corruption Act, to which she pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 MHC Gurbej Singh and PW-2 Head Constable Harinder Singh, who are formal witnesses and tendered into evidence their affidavits Ex.PA and PB respectively. PW-3 Talwinder Singh, Patwari mainly deposed that he entered mutation in the register in favour of Harinder Singh. He produced the mutation register along with photocopy of the sale deed and special power of attorney before the Vigilance officials i.e. DSP Vigilance Bureau, which was taken into possession. When he has not supported some facts in chief-examination, when he was declared hostile and was cross-examined by Public Prosecutor and he admitted that he said in his statement that on 07.05.1999 he produced before Prem Lata, Naib Tehsildar accused in her office one mutation register Ex.P1, photocopy of the sale deed dated 04.01.1999 executed by Ram Singh in favour of Harinder Singh and special power of attorney for sanctioning the mutation. PW-4 Kartar Singh, Superintendent, Office of Commissioner Patiala Division mainly deposed regarding the sanction Ex.PC/1 by identifying the signatures of Commissioner Patiala Division Sh.D.S.Kalha, IAS. PW-5 Lady Constable Kamaljit Kaur mainly deposed that on 07.05.1999, she went with DSP Ranjit Singh along with other police officials. Lady Constable Mangaljit Kaur was also with them. Accused present in the Court, who was working as Naib Tehsildar at that time, was apprehended. From her personal search, two gold bangles, one gold ring then said two gold ring, one gold chain with locket, one lady purse containing ₹1820/- and one identity card with driving licence were taken into police possession

vide recovery memo Ex.PF. PW-6 Devinder Singh J.E., who is recovery witness, also deposed as per prosecution version and deposed regarding the raid and further regarding recovery of bribe money of ₹2000/- i.e. twenty notes of ₹100/-, which were recovered from the right drawer of the table of the accused. PW-7 Amar Singh mainly deposed regarding signing as witness on the Special Power of Attorney and also deposed regarding registered sale deed dated 30.12.1998. PW-8 Balbir Singh, who was the shadow witness, has not supported the prosecution version and turned hostile. PW-9 Paramjit Singh, complainant deposed regarding the demand of ₹4000/- bribe by the accused-appellant for sanctioning the mutation, which was later on settled at ₹2000/-. He also deposed regarding raid that after giving ₹2000/- to the accused-appellant, he gave signal to Balbir Singh, shadow witness, who was standing outside the room but was visible to him. He further deposed that accused kept the bribe money in the drawer of the table. After receipt of the same, DSP and raiding party, reached the spot. He also deposed regarding recovery of bribe money and deposed as per prosecution version. PW-10 Ranjit Singh Dhillon, S.P. Crime, the then DSP Vigilance Flying Squad-II, deposed as per prosecution version and investigation conducted by him in the present case. PW-11 Bhag Singh, DSP (Retd.) deposed regarding partly investigation conducted by him in this case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and she denied

the correctness of the evidence and pleaded herself innocent. She further pleaded that he has been falsely implicated in the present case due to professional rivalry.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant argued that PW-8 Balbir Singh, who was stated to be shadow witness, has not supported the prosecution case and has turned hostile. He further argued that a reasonable doubt exists in the prosecution version. In the present case, demand and acceptance of the bribe money has not been proved. He next argued that why the accused-appellant would raise demand of bribe, when she was not seized of the matter i.e. approval of the mutation. He further argued that it is a false case. Learned counsel for the appellant next contended that there are discrepancies regarding time. He further contended that the statements of the Investigating Officer and Paramjit Singh are self-contradictory. He also contended that department of the recovery witness Devinder Singh, J.E. has not been informed nor any permission was taken for joining him in the raid. He next argued that no independent witness has been joined while conducting the raid. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed. In the alternative, he prayed for reduction of the sentence imposed upon the appellant.

On the other hand, learned State counsel argued that case

of the prosecution has been duly proved beyond reasonable doubt. The demand, acceptance and recovery of bribe money has been duly proved. Even if it is taken that shadow witness has not supported the prosecution, it will not be fatal to the whole prosecution case. He further argued that there is nothing on the record to show that it is a false case. No defence evidence has been produced to show that any professional rivalry was there and how the officials witnesses and complainant are concerned with the professional rivalry. Learned State counsel further contended that some minor discrepancies are to occur in the statements of the witnesses due to gap of time. It is not necessary and will not create any reasonable doubt if the permission was not taken from the department to join Devinder Singh, J.E. in the raid. He next contended that there is no question of independent witness in this case as complainant is a private witness and Devinder Singh J.E. is the witness of some other department and has no motive or enmity against the accused and he is an independent witness. He further argued that it is duly proved by the PWs that mutation was to be sanctioned by the accused-appellant, therefore, it cannot be held that why she would ask for the bribe. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the evidence on record, I find that complainant

witness PW-9 Paramjit Singh has duly supported and corroborated the prosecution version. He has proved the demand raised by the accused-appellant and the acceptance of the same and also the recovery of bribe money from the drawer of the table of the accused. PW-6 Devinder Singh, J.E., is independent witness from the Soil and Conservation Department, Patiala. He is neither from the department of the accused nor relating to department of police nor related to the complainant. He has no motive or enmity against the accused-appellant to falsely implicate her. There is nothing on the record as to why he would depose falsely and what was the motive to falsely depose against the accused-appellant. He has consistently deposed regarding recovery of bribe money from the accused-appellant. The mere fact that no written order was made by any of his officer to allow him to join the raid and no written request was made by DSP, Vigilance in his office to join him in the raid, will also not create any reasonable doubt in the prosecution version. I have gone through cross-examination of PW-6 Devinder Singh, J.E. There is nothing which may make his statement unreliable. The minor discrepancies in the cross-examination does not create any reasonable doubt in the prosecution version. Such type of discrepancies are to occur in the statements of truthful witnesses after a gap of time. The raid was conducted on 07.05.1999 and PW-6 has been examined on 24.01.2002. Again, PW-10 Ranjit Singh Dhillon, S.P., Crime, who was at that time DSP, Vigilance, Flying Squad-II, Patiala has consistently deposed regarding prosecution version. There are no material

contradictions or material improvements in his statement. There is nothing on the record that he has any enmity or motive against the accused-appellant to falsely implicate her. There is no reason or ground as to why he would depose falsely against the accused-appellant to implicate her in this case. It is settled law that the minor discrepancies did not create any doubt. Only the material discrepancies which may go to the root of the case, create reasonable doubt in the prosecution version.

Further, I find that PW-5 Lady Constable Kamaljit Kaur, who is witness to Jama Talashi, has supported the prosecution version that raid was conducted as per prosecution case. PW-3 Talwinder Singh, Patwari has also deposed that he made statement before the police that on 07.05.1999 he produced before Prem Lata, Naib Tehsildar accused in her office one mutation register Ex.P1, photocopy of the sale deed dated 04.01.1999 executed by Ram Singh in favour of Harinder Singh and special power of attorney for sanctioning the mutation, which shows that mutation was to be sanctioned finally by Naib Tehsildar and this was the motive for asking bribe.

From the evidence produced by the prosecution, I find that demand, acceptance and recovery of bribe from the accused-appellant has been duly proved. Accused-appellant was to sanction the mutation, therefore, she asked for the bribe money. There is nothing on the record to show that accused is innocent or she has been falsely implicated. There is nothing on the record to show any

motive of the PWs including official PWs to depose falsely against the accused-appellant. The minor discrepancies in the statements of the witnesses, do not create any reasonable doubt in the prosecution version. There are no material contradictions or material improvements in the statements of the witnesses, which may go to the root of the case. The mere fact that no written request was given to join Devinder Singh J.E. nor permission was taken from his superior officers, also does not create any doubt in the prosecution version. PW-6 Devinder Singh, J.E. is the independent witness and there is no need of other independent witness in the present case and it does not create any doubt in the prosecution case. Similarly, the mere fact that shadow witness has turned hostile and has not supported the prosecution version, also cannot be held as fatal to the prosecution case, especially when other witnesses have duly supported and corroborated the prosecution version.

Learned counsel for the appellant cited judgment passed by this Court in ***State of Punjab vs. Kushal Singh Pathania, 2004(4) RCR (Criminal) 498***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case independent witness deposed that accused was not accepting the tainted money and money was being put in pocket of his shirt, which are not the facts in the present case. Learned counsel for the appellant also placed reliance upon judgment passed by this Court in ***Sushil Kumar vs. The State of Punjab, 1974 CLR 193***. I have also gone through this cited judgment and the same having

distinguished facts will not apply in the present case as in that case evidence of the alleged eye witness found to be of a tainted nature, which are not the facts of the present case.

Learned counsel for the appellant on the point that witnesses were interested witnesses and partisan, cited judgments passed by the Hon'ble Supreme Court in ***Ram Prakash Arora vs. The State of Punjab, 1972 Crl. L.J 1293, Darshan Lal vs. The Delhi Administration, 1974 CLR 611, Prem Kumar vs. The State of Punjab, 1976 CLR 366*** and judgments passed by this Court in ***Mohinder Singh vs. State of Punjab, 1990(3) RCR (Criminal) 44, Joginder Kumar Sood vs. State of Punjab, 1989(1) RCR (Criminal) 257, Kuldip Rai vs. State of Punjab, 2002(2) RCR (Criminal) 781*** and ***Harnek Singh vs. State of Punjab, 2000(2) RCR (Criminal) 403***. I have gone through all the above-cited judgments and the same having distinguished facts will not apply in the present case as already held that the witness from the other department was having no enmity or motive against the accused and he is an independent witness and not interested in the success of the case.

Learned counsel for the appellant on the point of that there is no evidence of demand and shadow witness did not support the demand, cited judgments passed by this Court in ***Ram Jaspal Kanungo vs. State of Punjab, 1991(2) RCR (Criminal) 547, Hari Kishan vs. State of Haryana, 1997(2) RCR (Criminal) 330, Satbir Singh vs. State of Haryana, 2000(1) RCR (Criminal) 487, Sat Pal (Died) through LRs vs. State of Punjab, 2004(1) RCR (Criminal)***

830, Dharam Pal vs. State of Haryana, 1998(2) RCR (Criminal) 295 and **Dalip Singh vs. State of Punjab, 1988(1) RCR (Criminal) 123**. I have also gone through all the above-cited judgments and the same having distinguished facts will not apply in the present case as already held that demand, acceptance and recovery in the present case has been duly proved.

Learned counsel for the appellant further placed reliance upon the judgments passed by this Court in **Sarwan Singh vs. State of Punjab, 2004(1) RCR (Criminal) 368**, **State of Punjab vs. Krishan Kumar Bhandari, 2003(4) RCR (Criminal) 423**, **Ranjit Singh vs. The State of Punjab, 2003(4) RCR (Criminal) 496**, **Mani Ram vs. State of Haryana, 2000(2) RCR (Criminal) 352** and judgment passed by the Hon'ble Supreme Court in **Union of India Thr. Inspector, CBI vs. Purnandu Biswas, 2005(4) RCR (Criminal) 517**. I have gone through all the above-cited judgments and the same having distinguished facts will not apply in the present case.

In view of the above discussion, I find the judgment of conviction dated 18.03.2004 passed by learned Special Judge, Patiala is correct, as per law and the same is upheld.

As regarding prayer of learned counsel for the appellant for reduction of sentence, I find that appellant is suffering from the long protracted criminal proceedings since the year 1999 i.e. for the last about 16 years. Therefore, keeping in view the facts and circumstances of the present case, the sentence of the appellant is reduced to rigorous imprisonment for a period of one year and six

months from two years under each Section 7 and Section 13(2) of the Prevention of Corruption Act. However, the sentence of fine and default sentence shall remain the same.

With the above-said modification in the sentence, the present appeal stands dismissed.

Since, appellant Prem Lata is on bail, her bail bonds stand annulled. She is directed to surrender herself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against her in accordance with law.

February 11, 2015
Vgulati

(INDERJIT SINGH)
JUDGE