

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

Crl. Appeal No. 732-SB of 2004

Date of Decision : 06.11.2015

Sunita Sharma

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.Narinder Kumar Vashisth, Advocate
Legal Aid Counsel for the appellant.

Mr.Manjit Singh Naryal, Addl.AG, Punjab.

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

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 03.02.2004 passed by the learned Special Judge, Patiala vide which appellant Sunita Sharma was held guilty and convicted for the offences punishable under Sections 8 and 9 of the Prevention of Corruption Act, 1988 (hereafter called the Act) and the order on quantum of sentence of the even dated vide which the appellant was sentenced as under:-

Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
8 of P.C.Act	One year	500	One month
9 of P.C.Act	One year	500/-	One month

2. The brief facts giving rise to this prosecution are that PW-1 complainant Pardeep Kumar moved his affidavit Ex.PA to PW-6 Gursharan Singh Bedi, Deputy Superintendent of Police (for short D.S.P) City-II Patiala alleging therein that on 10.10.1999, he was married with Usha Rani d/o Prem Chand resident of village Jansali. That appellant Sunita Sharma, who was alleging herself to be the president of Mehla Congress received a sum of Rs. 3200/- (Rs.1700/- + 1500/-) on the pretext of passing over this money to the Patiala Police. When, he has paid this money to the appellant Sunita Sharma, Meena Rani wife of Madan Lal and Parkash Chand son of Pirru Ram resident of Village Jansua Tehsil Rajpura, District Patiala were present. It is further mentioned that they had come to know that appellant Sunita Sharma is a cheater. She was also demanding Rs. 2000/- more from them. She has also threatened that if this money was not paid, he will get the compromise effected between him and his wife broken. It is further mentioned that when he gave this information to Sub-Inspector Women Cell, Patiala, then she asked Sunita Sharma that she has taken money from the complainant on

her name. The appellant admitted in presence of the Inspector Woman Cell that she has received Rs. 3200/-. But, alleged that she has not taken that money on her name rather she has taken money as his fees and now, she has spent that money and will not return the same. On this affidavit Ex.PA, PW-6 Gursharan Singh Bedi, D.S.P after verifying the facts send the letter Ex.PD to the Police Station concerned for registration of the case. On the basis of which F.I.R Ex.PA/1 was registered and investigation initiated.

3. PW-7 R.K.Sharma, D.S.P. Rajpura carried out the investigation. He recorded the statements of the witnesses. Accused-appellant was formally arrested on 21.08.2001. The Investigating Officer also prepared the site plans Ex.PE and Ex.PF and on completion of the formalities of the investigation, the report under Section 173 Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

4. After compliance of the provisions of Section 207 Cr.P.C, accused-appellant was charge sheeted for the offences punishable under Sections 8 and 9 of the Act by the learned Special Judge, Patiala, vide order dated 07.02.2002 to which the appellant pleaded not guilty and claimed trial.

5. In order to substantiate its case, prosecution examined as many as seven witnesses.

6. When examined under Section 313 Cr.P.C, she pleaded that near about two years ago she had gone to D.S.P Office to enquire about Kuldip Singh and to get register a complaint against him. There she met Mastan Singh, Nambardar, who was sitting with some other persons. Those persons were having some matrimonial dispute. She suggested that either divorce the girl and pay her maintenance or keep her with full satisfaction. Due to that the husband side has paid huge amount of maintenance and a divorce petition was filed by them. Due to the loss accrued to the husband, a false case was got registered by the complainant against her in connivance with his brother-in-law, who was a police officer.

7. In the defence evidence, she examined Mastan Singh, Nambardar as DW-1. Bhim Sain, a worker of the Congress party and journalist as DW-2. Arjun Dhingra, the publisher of the newspaper 'News Lake' as DW-2, who have supported the defence plea raised by the appellant.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, learned Special Judge held guilty and convicted the appellant for the offences punishable under Section 8 and 9 of the Act and was sentenced as mentioned in the upper part of the judgment.

9. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

10. I have heard Mr.Narinder Kumar Vashisth, Advocate, learned Legal Aid counsel for the appellant, Mr.Manjit Singh Naryal, learned Additional Advocate General, for the State of Punjab and have meticulously examined the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the money is alleged to have been paid in March 2001. But, the complainant has moved his affidavit Ex.PA to the police authorities on 23.04.2001 i.e. after more than one month. It is not explained as to why he kept mum for such a long period. The FIR has been registered on 15.05.2001 after another delay of one month, which renders the prosecution case doubtful.

12. He further contended that from the testimony of complainant, it comes out that he has reported the matter to the police at the instigation of PW-2 SI Bindu Bala, Sub-Inspector. So, complainant himself has not reported the matter to the police.

13. He further contended that no recovery of money has been effected from the possession of appellant. PW-3 Meena Rani wife of Madan Lal in whose presence the money

was alleged to have been paid has not supported the prosecution case. Another witness Parkash Chand has not been examined. The statement of PW-4 Balwant Singh carries no evidentiary value as he was an introduced witness. His name does not figure in the FIR. The complainant has also not stated that money was paid in his presence. Thus, he contended that there is no corroboration to the statement of complainant Pardeep Kumar and the payment of money by the complainant to the appellant is not established.

14. He further contended that even the ingredients of the offences punishable under Section 8 and 9 of the Act are not made out. In order to attract these Sections, there should be some inducement to the public servant to do any illegal act and the money should have been paid to the public servant. But, there are no such allegations nor it is proved that the appellant has influenced PW-2 Bindu Bala or any money was paid to her. Thus, he contended that the ingredients of the offences for which the charges have been framed are not established. To support his contentions he relied upon case **Kumar Suman Singh Vs. State of Bihar 2006 CriLJ 1599**. Thus, he pleaded that conviction of the appellant has been wrongly recorded.

15. On the other hand, learned State counsel

contended that from the statement of PW-1 Pardeep Kumar, it is established that appellant had demanded Rs. 5000/- from him for influencing the Incharge Women Cell, Patiala as the matrimonial dispute of the complainant was pending there. He has paid Rs. 1700/- on 17.03.2001 and Rs. 1500/- a week thereafter. The version of the complainant is also corroborated by PW-2 SI Bindu Bala before whom the appellant has admitted receiving the aforesaid money and PW-4 Balwant Singh. Parkash Chand has died. Meena Rani has sided with the accused. He further contended that the defence plea raised by the appellant is an afterthought. Thus, he contended that conviction of the appellant has been rightly recorded.

16. I have duly considered the aforesaid contentions.

17. Complainant Pardeep Kumar while appearing in the witness box as PW-1 has stated that he was married on 10.10.1999 with Usha Rani. They resided together as husband and wife for 6-7 months and thereafter differences arose between them. On 12.03.2001, he had gone to the office of D.S.P, Rajpura, where he met accused Sunita Sharma. She told him that their dispute would be resolved in Women Cell and not in the office of D.S.P. She told that Rs. 5000/- would have to be paid to the Incharge Women Cell, Patiala and some expenses would have to be paid to

her/accused. Near about 17.03.2001, he had gone to the house of accused-appellant and gave her Rs. 1700/-. He was accompanied by his brother namely Parkash Chand, who has since expired. After one week, he gave Rs. 1500/- to accused near Women Cell, Patiala to be given to the Incharge Women Cell. He further deposed that Bindu Bala, Incharge Women Cell inquired from him if he had paid any money to any person on her behalf. She told that accused has taken money from him on her behalf. Bindu Bala, then inquired from the accused and brought them to the office of Gursharan Singh Bedi, D.S.P City-II, Patiala. Thus, complainant Pardeep Kumar has categorically deposed that appellant has raised the demand of Rs. 5000/- for paying the said money to the Incharge Women Cell, Patiala and she actually received Rs. 3200/- i.e. Rs. 1700/- on 17.03.2001 and Rs. 1500/- a week thereafter for payment to the Incharge Women Cell, Patiala.

18. Bindu Bala, Sub-Inspector has appeared as PW-2, who was the Incharge Women Cell, Patiala at the relevant time. She deposed that an application from the side of complainant Pardeep Kumar was received against Usha Rani and his in-laws. She called both the parties and got effected the compromise. Later on, she came to know from Pardeep Kumar that Sunita Sharma had taken Rs. 3200/-

in all in the name of police. She took both the parties to the D.S.P, who verify the facts and Sunita Sharma was also present at that time and admitted before the DS.P that she has received Rs. 1700/- in her house from the complainant and Rs. 1500/- in Women Cell. She also admitted that this money was taken in the name of police i.e. in the name of this witness. She did not know anything about this matter and only came to know when Pardeep Kumar told her and verified the facts in the presence of Gursharan Singh Bedi, Chairman Women Cell, Patiala.

19. PW-4 Balwant Singh has also corroborated the version of the complainant and deposed that in March 2001, Pardeep Kumar met Sunita Sharma in Women Cell, Patiala, who told him that Rs. 1500/- were required to be paid to Bindu Bala, Incharge Women Cell, Patiala as bribe. Pardeep Kumar gave Rs. 1500/- to Sunita Sharma in his presence. When, they met Bindu Bala, Incharge Women Cell, Patiala, she told them that she has not asked for bribe nor she had received the same. So, he is the witness in whose presence accused-appellant has received Rs. 1500/- from the complainant in the name of PW-2 Bindu Bala. PW-5 Bhupinder Kaur was the President District Mehla Congress at the relevant time. She deposed that they had received complaints against the accused that she was taking money

from the public as a bribe for giving the same to the public servants. So, she was dismembered from the Mehla Congress, Rajpura. PW-6 Gursharan Singh Bedi, D.S.P City-I, Patiala has deposed about the affidavit Ex.PA produced before him by complainant Pardeep Kumar and the verification of the facts by him from Sub-Inspector Bindu Bala, Incharge Women Cell and thereafter, sending the affidavit of the complainant to D.S.P, Rajpura with his endorsement Ex.PD for registration of the case.

20. Complainant Pardeep Kumar has categorically deposed that appellant Sunita Sharma has received Rs. 3200/- from him on two occasions for being paid to the Incharge Women Cell, Patiala i.e. a public servant. In order to influence the public servant by corrupt or illegal means and also by using his personal influence being the member of Mehla Congress. The version of the complainant is fully corroborated from the testimonies of PW-2 Sub-Inspector Bindu Bala, the public servant concerned. PW-4 Balwant Singh has also categorically deposed that Rs. 1500/- were received by appellant Sunita Sharma in March 2001 from complainant Pardeep Kumar in Women Cell, Patiala as bribe. Mere this fact that name of PW-4 Balwant Singh does not figured in the FIR is no ground to render his testimony unworthy of credence. The Hon'ble Supreme Court in case

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593 has laid down that there is no requirement of law for mentioning the names of all the witnesses in the FIR. The same principle of law has been laid down by the Hon'ble Apex Court in case **Chittar Lal Vs. State of Rajasthan 2003 Criminal Law Journal 3548**. Thus, the omission of the name of PW-4 Balwant Singh in the FIR cannot be a ground to discard his statement. There is no doubt omission with respect to his name in the statement of complainant. But, PW-4 Balwant Singh has faced the cross-examination and his statement cannot be shattered therein. So, there is no reason to disbelieve or ignore his statement.

21. Complainant Pardeep Kumar has categorically stated that his brother-in-law Parkash Chand has expired. So, no adverse inference can be drawn against the prosecution for non-examination of said Parkash Chand. Mere this fact that PW-3 Meena Rani wife of Madan Lal has not supported the prosecution version is no ground to discard the testimony of the complainant, which is fully corroborated from other evidence available on record.

22. Even, in her statement under Section 313 Cr.P.C, the accused-appellant has admitted the pendency of matrimonial dispute of the complainant with the Women Cell. She also admitted that she intervened in that

matrimonial dispute. DW-1 Mastan Singh, Nambardar has also deposed that on 14.03.2001, he had gone to the office of D.S.P from the girl side in-connection with the matrimonial dispute. The D.S.P asked the husband to keep the wife with him, but he refused. He also refused to pay the maintenance. Accused Sunita Rani also came there. She also told that matter be compromised. Wife should be rehabilitated or maintenance allowance be paid to her by the husband. From the above evidence i.e. statement of the accused under Section 313 Cr.P.C and the statement of DW-1 Mastan Singh, it comes out that as the appellant was intervening in the matrimonial dispute of the complainant, she had every occasion to demand the money in the name of police officer for getting the matter resolved.

23. DW-1 Mastan Singh has further stated that the brother-in-law of the husband was in police. He threatened Sunita Rani that she will be involved in a criminal case. He further deposed that he returned thereafter. Sunita Rani did not know him. Sunita Rani also did not know Pardeep Kumar complainant. He did not tell him about the demand of illegal gratification by the appellant. DW-1 Mastan Singh appears to be closely connected to the appellant. In his statement, he has pleaded that he was not known to the appellant. However, from the statement of PW-7

R.K.Sharma, D.S.P, the Investigating Officer, it comes out that on 21.08.2001 Mastan Singh, Nambardar stood surety for appellant Sunita Sharma. It shows his close association with the appellant and obviously he has come forward only to save the appellant from the clutches of law.

24. DW-2 Bhim Sain is a Congress Worker as well as journalist. He also admitted that Sunita Sharma is their party leader and she came to the office of D.S.P, Rajpura, where the matrimonial dispute between the complainant and Usha Rani was taken up. He also deposed that appellant Sunita Sharma tried to pacify the husband and wife. But, the complainant and relatives quarreled with Sunita Sharma and also used abusive language to her. It is even not the case of appellant that complainant Pardeep Kumar had raised any quarrel with her and also abused her. So, this witness is overstepping even the complainant and shows his interestedness.

25. DW-3 Arjun Dhingra, only came into action after the registration of the case and alleged to have conducted the parallel investigation by contacting PW Meena Kumari. His testimony is not based on any fact in his personal knowledge. Both, DW-2 Bhim Sain and DW-3 Arjun Dhingra have admitted in the cross-examination that they were not present at the time of transaction of the money. So, all the

defence witnesses appear to be the introduced and interested witnesses. The testimonies of these type of witnesses can not be made a ground to dislodge the prosecution case.

26. The delay in report the matter in such cases is of no legal consequence. Earlier, the matrimonial dispute of the complainant was pending. So, it is natural that he could have come forward to raise his grievance only after the settlement of his matrimonial dispute. The plea raised by learned counsel for the appellant that the matter was reported to the police only at the instance of PW-2 Bindu Bala has also no substance, because it is complainant Pardeep Kumar who has moved his affidavit Ex.PA to PW-6 Gursharan Singh Bedi for taking legal action against the appellant. It is immaterial that if some inquiry has been made by PW-2 Bindu Bala that if the appellant has received the money from him on her behalf, it may be due to the reputation of the appellant. PW-5 Bhupinder Kaur, who was the President of District Mehla Congress at the relevant time has categorically stated that they had started receiving complaints against the accused that she had been taking money from the public as bribe for giving the same to the public servants. She called a meeting of coming to know about the said fact. She further deposed that on

16.02.2001, she was dismembered from the Mehla Congress, Rajpura. As the appellant was intervening in the matrimonial dispute and did not enjoy good reputation, so, it was natural that PW-2 Bindu Bala might have made some inquiry from the complainant. So, that her reputation may not be spoiled. There is also no abnormality in the conduct of PW-2 Bindu Bala that she took the complainant and appellant to her immediate superior officer PW-6 Gursharan Singh Bedi, D.S.P on coming to know about the malpractice/mischief of the appellant.

27. It can not be stated that case of the prosecution is based only on the statements of the interested witnesses. No material has been placed on record to establish any connection between PW-4 Balwant Singh and complainant Pardeep Kumar. PW-2 Bindu Bala is a police official. She also had no connection with the complainant. It also cannot be stated that the testimony of complainant is not corroborated, rather his statement is fully corroborated from the testimonies of PW-2 Bindu Bala and Pw-4 Balwant Singh.

28. Appellant Sunita Sharma has received a sum of Rs. 3200/- (Rs.1700 + 1500) from the complainant Pardeep Kumar for inducing the Incharge Women Cell a public servant. The essential ingredients of Section 8 of the Act are

as under:-

- (i) that the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone
- (ii) for himself or for some other personal
- (iii) any gratification whatever
- (iv) as a motive or reward for inducing by corrupt or illegal means any public servant to do or forbear to do any official act or to show favour or render any service to any of the person specified in Section 8.

29. As far as Section 9 of the Act is concerned, the only difference is that inducement is by the exercising of a personal influence. In the instant case, as already mentioned appellant Sunita Sharma has obtained a sum of Rs. 3200/- as illegal gratification in the name of Incharge Women Cell, Patiala for inducing her by corrupt or illegal means and also by exercising of her personal influence being the member of Mehla Congress. Hence, the ingredients of the offences punishable under Section 8 and 9 of the Act are clearly established.

30. Case Kumar Suman Singh (Supra) is absolutely of no help to the appellant. In that case also the Hon'ble Patna High Court has laid down that Section 8 is applicable even to others who are not the public servants when they induced any public servant to do any illegal act. In this

authority, it is nowhere laid down that to constitute offences punishable under Section 8 and 9 of the Act, the public servant must be influenced and the bribe money should have been passed to said public servant. The Hon'ble Kerela High Court in case **Devan alias Vasudevan and etc Vs. The State 1988 CriLJ 1005** has laid down that receipt of gratification reward for inducing public servant by corrupt means will complete the offence. So, it is necessary that the money must have been passed over to the public servant concerned. Even, the recovery of the said money from the accused is not essential. Practically also, it is not possible that recovery of the tainted currency notes could be effected after a period of more than one month. Moreover, in the affidavit Ex.PA, it has been categorically mentioned that appellant has told that she has already spent the money. So, there was no question of recovery of bribe money from the possession of appellant. Thus, the plea raised by learned counsel for the appellant in this aspect is devoid of merits. Consequently, the prosecution has been able to establish beyond shadow of reasonable doubt the charges against the appellant. Hence, the conviction of the appellant does not suffer from any infirmity.

31. Learned counsel for the appellant has also pleaded that accused-appellant is a house wife. She is more

than 53 years of age. She has four daughters. her husband has already expired. Her in-laws are also not there. She has no other criminal record. Thus, he has pleaded for reduction in the matter of sentence.

32. I found substance in the contentions raised by learned counsel for the appellant for reduction in the quantum of sentence. The record of the case shows that the appellant is not a previous convict. She is more than 53 years of age. There is no rebuttal to the contentions raised by learned counsel for the appellant that she is a widow lady having four daughters. Her in-laws are also not there and is not involved in any other criminal activity. So, even the lenient view in the matter of sentence will suffice the ends of the justice.

33. Consequently, there is no illegality or infirmity in the conviction of the appellant as recorded by the learned trial Court for the offences punishable under Sections 8 and 9 of the Act and the same is hereby maintained and confirmed. However, the sentence awarded to the appellant is hereby modified as under:-

Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
8 of P.C.Act	Six months	500	One month
9 of P.C.Act	Six months	500/-	One month

The aforesaid sentences shall run concurrently.

34. Thus, with the aforesaid modification in the sentence, the present appeal being devoid of merits is hereby dismissed.

35. The accused-appellant is on bail. Her bail stand cancelled. She shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Patiala, who shall send her to jail to undergo the remaining part of her sentence. If, she fails to surrender, the learned Chief Judicial Magistrate, Patiala, shall take coercive steps to secure her presence and send her to jail to undergo the remaining part of the sentence.

November 6, 2015

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**(DARSHAN SINGH)
JUDGE**