

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2161-SB of 2011

DATE OF DECISION: NOVEMBER 30, 2015

GURJIT SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. S.S.RANGI, ADVOCATE
AND MR. JAGNAHAR SINGH, ADVOCATE
FOR THE APPELLANT.

MR. PREMJIT SINGH HUNDAL, AAG, PUNJAB.

M. JEYAPPAUL, J.

1. Accused Gurjit Singh has challenged the judgement of conviction and sentence passed by the trial Court vide which he was convicted under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced to undergo 2 years R.I. and to pay a fine of ₹2500/- and in default of payment of fine, to undergo further R.I. for 2 months for each offence.

2. PW2 Harjinder Singh is the complainant in this case. He has deposed that he was running a cloth shop at bus stand, Kauli. He applied for a loan from State Bank of Patiala at Kauli. The bank sanctioned a loan amount of ₹60,000/- to him. He received the first installment of ₹20,800/- on 10.2.2005 and 2nd installment of ₹21,000/- on 29.3.2005 by way of drafts issued by the bank. While releasing those amounts, accused Gurjit Singh

demanded bribe money of ₹2500/- from accused, but somehow PW4 dodged the payment on one pretext or the other. When the last installment was to be paid by the bank on 16.5.2005, PW2 met the accused who asked him to come after 2-3 days. PW2 met him on 19.5.2005 and requested the accused to pay the last installment. Accused demanded ₹2500/- as bribe from him. As PW2 showed his inability to make payment of ₹2500/-, the accused reduced his demand of bribe to ₹1500/-.

3. PW2 approached PW4 Gurparkash Singh and narrated the entire episode to him. As per the advice rendered by PW4, PW2 proceeded to the Vigilance Office on 20.5.2005 and met PW9 DSP Banarsi Dass at Vigilance Bureau, Patiala. PW2 suffered statement Ex.PH before PW9. He also produced one currency note of denomination of ₹500/ and 10 currency notes of the denomination of ₹100/- each. PW1 Gurpreet Singh working as Junior Engineer in the office of BDPO, Bhunerheri at Patiala was associated by PW9 for laying the trap. The currency notes produced by PW2 was treated with Phenolphthalein powder and Phenolphthalein power test was demonstrated to PW1, PW2 and PW4 by PW9. PW9 instructed PW4 Gurparkash Singh to act as a shadow witness and accompany PW2 Harjinder Singh to the office of the accused. PW9 also instructed PW2 to hand over the bribe money only when a demand was made by the accused.

4. PW2 and PW4 have stated that they met the accused at his office and handed over the bribe money of ₹1500/- immediately on the demand of bribe made by the accused from PW2 and accused received the bribe money, kept the same in a file and placed the file in the almirah. PW4

gave signal as directed by PW9. PW9 and PW1 descended on the office of the accused with the raiding party. The hands of the accused were washed in the sodium carbonate solution prepared by PW9. The hands of the accused turned pink in colour. The bribe money was recovered and the accused also was arrested by PW9.

5. The accused contended in his statement under Section 313 Cr.P.C. that he never made any demand of illegal gratification from PW2, nor had he received any bribe from him. PW2 who failed to repay the loan amount had filed such a false case against the accused who was innocent.

6. Learned counsel appearing for the appellant submitted that the accused was serving in the State Bank of Patiala which was a public sector bank under the control of the Central Government and, therefore, only the CBI under the Delhi Special Police Establishment Act is competent to lay a trap and investigate the case and file a chargesheet.

7. *Per contra*, learned counsel appearing for the State vehemently submitted that State Vigilance Bureau is not prohibited under the Delhi Special Police Establishment Act from investigating the case relating to the employees of the Central Government or employees of the public sector undertakings of the Central Government.

8. As rightly pointed out by learned counsel for the State, Delhi Special Police Establishment Act does not confer sole power on the Delhi Special Police Establishment Act to investigate the case relating to the Central Government employees or the employees of the public sector undertakings under the control of the Central Government to the complete

exclusion of the regular police force.

9. It has been categorically held in *A.C.Sharma vs. Delhi Administration, (1973) 1 SCC 726*, that the scheme of the Delhi Special Police Establishment Act does not either expressly or by necessary implication divest the regular Police Authorities of their jurisdiction, powers and competence to investigate into the offence under any other competent law. It has also been observed therein that such Act only enables the CBI to investigate into the offences specified as contemplated by Section 3 without curtailing the regular police authorities to investigate the offence as empowered by any other law.

10. In view of the above settled position of law, I am of the view that there is no merit in the submission made by learned counsel appearing for the appellant that regular police attached to State Vigilance Bureau have no authority to lay trap, investigate the case and lay final report. But inasmuch as the CBI has been empowered under the Delhi Police Establishment Act to deal with the corruption cases relating to the Central Government employees or the employees of the public sector undertakings under the control of the Central Government, the State Vigilance in a rare case where some exigency has arisen to lay the trap without any loss of time, should involve themselves in laying trap against the employees of the Central Government, as otherwise, there will be misuse of power by the local agency. The local agency also should inform the CBI of the development in the trap laid by them against the employee of the Central Government.

11. In the instant case, the file produced by the Vigilance Bureau would indicate that in fact the CBI was informed of the trap laid by them and they also got an approval from the CBI to go ahead with filing of the chargesheet. Therefore, in the above special facts and circumstances, the case of the prosecution cannot be rejected on the above plea that the local Vigilance Bureau had laid trap and investigated the case.

12. In *Dr. G.S.R. Somayaji vs. State through CBI, 2002, Criminal Law Journal, 795*, the Hon'ble Andhra Pradesh High Court refused to discharge the accused in a corruption case registered and the trap laid by the Anti Corruption Bureau of the said Organization. Of course, in the said case, further investigation was transferred with CBI, but in the instant case, it is noted that CBI itself has given a green signal to the local Vigilance Bureau to pursue the investigation and lay final report.

13. It was further submitted by learned counsel appearing for the appellant that PW9 DSP Banarsi Dass was attached to Vigilance Bureau, Fatehgarh Sahib, but he had dealt with the corruption case filed within the jurisdiction of Vigilance Bureau, Patiala and therefore, such a faulty investigation has caused prejudice to the accused.

14. It is a well settled proposition of law that even an officer not authorized by law has properly investigated the case and laid final report and the Court also has taken cognizance of the offence based on the final report, the case of the prosecution cannot be rejected on that ground unless the prejudice caused was established.

15. In the instant case, it was demonstrated that Vigilance Bureau at

Patiala has a police station which has control over the Vigilance Bureau Fatehgarh Sahib as well. Even otherwise, when there was no material to come to a conclusion that the accused was prejudiced by the investigation embarked upon by PW9, the case of the prosecution cannot be thrown overboard. In this context, it is relevant to refer to the decision of Hon'ble Supreme Court in **Ashok Tshering Bhutia vs. State of Sikkim, 2011(4) SCC 402**, wherein it has been held as follows:-

“8. *The issues raised hereinabove are not more res integra. The matter of investigation by an officer not authorized by law has been considered by this Court time and again and it has consistently been held that a defect or irregularity in investigation however serious, has no direct bearing on the competence or procedure relating to cognizance or trial and, therefore, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. The defect or irregularity in investigation has no bearing on the competence of the Court or procedure relating to cognizance of trial. (Vide **H.N.Rishbud & Anr. v. State of Delhi, AIR 1955 Supreme Court 196; Munnalal v. State of U.P., AIR 1964 Supreme Court 28, Khandu Sonu Dhobi & Anr. v. The State of Maharashtra, AIR 1972 Supreme Court 958; State of M.P. v. Bhooraji & Ors., 2001(4) R.C.R.(Criminal) 40; State of M.P.***

v. Ramesh Chand Sharma, (2005) 12 SCC 628; and State of M.P. v. Virender Kumar Tripathi, (2009) 15 SCC 533.

16. In the instant case nothing was produced to show that there was miscarriage of justice on account of irregularity of the investigation. Therefore, applying the above ratio laid down by the Hon'ble Supreme Court, I am of the view that the accused cannot go scot-free on the ground that there was defect or irregularity in the investigation.

17. Coming to the merits of this case, it is found that PW2 has categorically deposed that accused demanded bribe for releasing the final installment of loan sanctioned by the accused. PW2 and PW4 had approached PW9 and a complaint was lodged with him. In the course of the trap laid by PW9, PW2 had handed over the bribe money only on the demand made by the accused. Such a demand and acceptance was also witnessed by PW4. Their testimony could not be shaken by the defence. PW1 Gurpreet Singh, an official witness had spoken to the recovery of the bribe money received by the accused. It stands established by the prosecution that the bribe money recovered from the accused fully tallied with the currency note particulars already recorded by PW9.

18. In spite of the lengthy cross-examination, the evidence of PW1, PW2, PW4 and PW9 could not be shattered by the defence. I do not also find any reason to reject their testimony. The defence set up by the accused through his statement under Section 313 Cr.P.C. that PW2, who failed to repay the debt had chosen to file a false complaint does not appear to be true, inasmuch as accused had made demand of bribe when the loan

installments were not fully released by the bank to PW2. The repayment would arise only after the installments were released or in a case where the borrower failed to receive some of the installments for some length of time. Therefore, the defence set up by the accused falls flat.

19. Learned counsel appearing for the appellant vehemently submitted that PW2 deposed during his examination-in-chief that accused made a demand of bribe from the very beginning. But in the cross-examination, he has testified that only on 20.5.2005, the accused made a demand.

20. The question is whether the accused made a demand of bribe and accepted the same. It may be a case where the accused persisted his demand of bribe for a length of time. Further, it is found that the case originated in the year 2005, but PW2 deposed before the trial Court only in the year 2011. Such a lapse of time would have confused the witness as well. At any rate, such a discrepancy is not a substantial one to tilt the case of the prosecution.

21. Learned counsel appearing for the appellant submitted that PW2 stated that the bribe money was kept in the file and thereafter, it was put in an almirah. PW4 has come out with a different version that bribe money was recovered from the locked almirah. PW9 has come out with a contradictory version that bribe money which was kept in the file was lying on the office table.

22. I find that PW2, PW4 and PW9 were consistent in their testimony that bribe money recovered by them was kept in the file. Mild

discrepancy as regards the place where the file containing the bribe money was kept does not throw any doubt on the case of the prosecution.

23. Learned counsel appearing for the appellant further submitted that the handwash collected in a nip and exhibited in the Court was found to be white in colour, as per the evidence of PW3 and PW9. Therefore, learned counsel appearing for the appellant submitted that it will have to be construed that the accused had not received the bribe money and the handwash also did not turn pink in colour.

24. Learned State counsel submitted that on account of seizure of the material object for long ago, the handwash appeared white in colour.

25. I find force in the submission made by learned counsel for the State. The material witnesses, namely, PW1, PW2, PW4 and PW9 have categorically deposed that sodium carbonate solution was prepared and when the accused dipped his hands, they turned pinkish in colour. It is only on account of the lapse of time the solution had appeared white in colour.

26. In view of the above facts and circumstances, I find that the trial Court has rightly convicted the accused under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act . But considering the ordeal undergone by the accused for about 10 long years, I am of the view that it is just to reduce the sentence imposed on the accused.

27. Therefore, the judgement of conviction passed by the trial Court under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act stands confirmed. But the accused is sentenced to undergo 1 year R.I. for each of the offences under Sections 7

and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act .

The fine amount and the default sentence imposed for the above offences by the trial Court are sustained. Both the sentences shall run concurrently.

28. With the above modification in the matter of sentence, the appeal is dismissed.

29. The accused-appellant is on bail. His bail bond stand cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Patiala who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Patiala shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

November 30, 2015
Gulati

(M. JEYAPPAUL)
JUDGE