

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

Criminal Appeal No. S.1454 -SB of 2003  
Date of decision 21 .01.2015.

**Om Parkash**

**..... Appellant.**

**versus**

**State of Haryana**

**..... Respondent.**

**CORAM :- HON'BLE MR.JUSTICE K.C.PURI.**

1. Whether Reporters of Local Newspapers 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

Present : Mr. Bijender Dhankar, Advocate for appellant.  
Mr. P.P.Chahar, DAG, Haryana.

**K.C.PURI, J.**

Accused-appellant-Om Parkash has directed the present appeal against the judgment dated 30.07.2003 and order dated 01.08.2003 passed by Mrs. Anita Chaudhary, the then learned Special Judge, Sonapat vide which accused-appellant Om Parkash stood convicted under Sections 7 and 13(i)(d) of the Prevention of Corruption Act (in short - P.C. Act ) and sentenced to undergo rigorous imprisonment for a period of one years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months under Section 7 of the Act and further to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.15,000/- and in default of payment of fine

to further undergo rigorous imprisonment for a period of six months under Section 13(i)(d) of the Act. Both the sentences were, however, ordered to be run concurrently.

2. Briefly stated the case of the prosecution is that one Satish made an application alleging that his electricity meter got burnt on 5.4.2001 and his mother on the next day informed the Meter Reader. Om Parkash Meter Reader, came to his house on 9.4.2001 and took Rs.2500/-. On 25.4.2001 he gave a receipt No.100 issued from book No.11043 showing deposit of Rs.600/- and promised that the meter would be installed within a month and that they were not required to ask anyone else. A bill of Rs.781/- was received on average basis which was deposited. The complainant is a student in Kurukshetra University. He returned to his house and his mother told him about the matter and about the amount paid to Om Parkash Meter Reader. The allegations made in the complaint are that on 28.6.2001, complainant met Om Parkash, who asked for Rs.2000/- more as the meter had developed a fault and insisted that they would have shell out this amount. The complainant then reported the matter to the Vigilance Bureau. A raiding party was formed. The complainant handed over four currency notes of the denomination of Rs.500/- each, which were taken into possession and their numbers were noted. Phenolphthalein powder was smeared on the notes and the same were handed back to the complainant. The complainant was directed to hand over the notes to the accused and give the pointed signal. Shri B.L.Khundia, Naib Tehsildar, Sonapat was deputed as a shadow witness and the raiding party reached the

office of the accused. Recovery was effected from the accused. Hand wash of the accused was turned pink. The recovered tainted currency notes were taken into possession vide recovery memo. After obtaining of sanction for prosecution, final report was prepared and sent to the court for trial of the accused.

3. After supplying the copies of the document as contemplated under section 207 Cr.P.C., the accused was charged-sheeted for the commission of offences punishable under sections 7 and section 13(i)(d) of the P C Act, to which, he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined Satish Kumar PW-1, ASI Daryao Singh PW-2, MHC Kartar Singh PW-3, Smt. Kitabo Devi PW-4, Prem Naraian Jain PW-5, Ram Dia, PW-6 and closed the prosecution evidence.

5. In his statement recorded under Section 313 Cr.P.C., accused denied all the allegations and pleaded his false implication. He stated that he was not the Meter Reader and his work was to maintain the distribution system and he had never gone to village Rasoi and the SDO had sent the JE to enquire about the matter and he had never made any complaint and he was booked by the officials of the Vigilance Bureau on 4.7.2002 and was forcibly taken to the office of State Vigilance Bureau and his signatures were taken on blank papers. The accused examined Ranbir Singh as DW-1, Prem Singh as DW-2, O.P.Ailwadhi as DW-3 and closed the evidence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused vide judgment dated 30.07.2003 and

order dated 01.08.2003, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment dated 30.07.2003 and order dated 01.08.2003, the present appeal has been directed.

8. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.

9. Learned counsel for the appellant has submitted that in order to prove the ingredients of offense under the Act, the prosecution is required to prove the demand and acceptance of illegal gratification. It is submitted that mother of the complainant namely Smt. Kitabo Devi, in her cross-examination has totally demolished the case of the prosecution. The real complainant is the mother of the author of FIR, but she has not supported the case of the prosecution at all regarding demand and acceptance of illegal gratification. The shadow witness is not an independent witness. So, the prosecution has failed to prove the demand and acceptance of the illegal gratification. The shadow witness is not an independent witness. So, the prosecution has failed to prove the demand and acceptance of illegal gratification. To support this contention, learned counsel for the appellant has relied upon authority **Raghu Nath Bansal vs. State of Punjab reported in 2010 (2) R.C.R. (Criminal) 445.**

10. I have carefully considered the said submission but do not find any force in these submissions.

11. The complainant has supported the case of the prosecution on all its material particulars. However, ld. defence counsel made strenuous

efforts to get the case adjourned when the complainant was being examined. The trial Court even disallowed the request for deferring the cross-examination at earlier stage but later on the trial Court adjourned the case reluctantly, which is clear from the statement of the complainant recorded in the trial Court. The complainant was cross-examined after considerable period. The learned trial Court has rightly held that earlier statement made by the complainant has to be given weight than to the cross-examination at deferred date. Mother of the complainant was also examined on the deferred date. So, the learned trial Court has rightly discussed the testimony of the complainant and his mother in right prospective. The shadow witness has supported the case of the prosecution on all material particulars. Moreover the appellant has failed to prove under what circumstances his hand-wash and pocket wash found containing phenolphthalein powder. The test of phenolphthalein powder is the perfect test which was conducted in the presence of Naib Tehsildar and the same cannot be doubted. Otherwise also, Section 20 of the Act came into operation.

12. So far as the authority **Raghu Nath Bansal's case (supra)** is concerned in that case, shadow witness was not examined and there were other circumstances to discard the case of the prosecution. So, the appellant cannot derive benefit of the authority **Raghu Nath Bansal's case (supra)**.

13. Learned counsel for the appellant has further submitted that sanction order is invalid as in that order accused has been mentioned as meter reader whereas according to the defence witness he was working as technician Grade II. However, that contention is also meritless in view of

the statement made by PW-5 Prem Naraian Jain, who has categorically stated that appellant was working as meter reader.

14. Lastly, counsel for the counsel for the appellant has prayed for taking lenient view regarding quantum of sentence. In view of the fact that occurrence has taken place in the year 2001 and the accused/appellant is facing mental agony for such a long time. So, taking into consideration all the circumstances, the sentence of the accused/appellant awarded under Section 13(1)(d) of the Act is reduced to one year instead of two years awarded by the trial Court. However, sentence of fine and sentence imposed under Section 7 of the Act stand maintained. Both the sentences are, however, ordered to be run concurrently.

15. So, in view of the above discussion, the appeal is dismissed with the modification in the sentence, as aforesaid.

16. The accused is stated to be on bail. He be taken into custody to undergo the remaining part of his sentence.

17. A copy of this order be conveyed to the trial Court for strict compliance.

**January 21 , 2015**  
SV

**( K. C. PURI )**  
**JUDGE**

