

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

**Crl. Appeal No. 2467-SB of 2006
Date of decision : 16.07.2015**

Naranjan Dass

..... Appellant

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. Arshdeep Bhullar, Advocate and
Mr. Manoj Gorkela, Advocate
for the appellant.**

Mr. Deep Singh, AAG Punjab.

ANITA CHAUDHRY, J.

Through the instant appeal, appellant Naranjan Dass has laid challenge to the judgment of conviction and order of sentence dated 28.11.2006, by virtue of which he has been held guilty under Sections 7, 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'the Act') and sentenced to undergo rigorous imprisonment for a period of two years with a fine of ₹2500/- under each head. In case of default of payment of fine, the appellant was directed to further undergo rigorous imprisonment for six months. Both the sentences were ordered to run concurrently.

The case of the prosecution, in nutshell, is that complainant Balihar Singh had purchased 6 kanals 4-1/2 marlas

of land from his father Swaran Singh in August 2002. Mutation was sanctioned in respect thereof. The complainant was in need of copy of jamabandi, so on 11.10.2002 he contacted Naranjan Dass, appellant, who was posted as Patwari in Revenue Department. The appellant told him about the sanction of the mutation by the Naib Tehsildar on 24.09.2002 and demanded illegal gratification of Rs.5000/- for preparing the copy of jamabandi. The complainant showed his inability and requested to reduce the amount, to which accused refused. The complainant was asked to come on 14.10.2002 in the afternoon in Sub Tehsil Goraya with Rs.5000/-. It is further the case of the prosecution that complainant falsely promised the accused to pay the amount. Instead, he along with Gurbachan Singh, Numberdar went to Vigilance Bureau, Jalandhar and informed them about the demand of illegal gratification by the accused and requested for taking action against the accused.

Statement of complainant Ex.PC was recorded. On the basis of the complaint, FIR was registered at Police Station Vigilance Bureau, Jalandhar. The complainant handed over ten notes of denomination of Rs.500/- each, which were taken into possession vide memo Ex.PQ. The numbers were noted down and phenolphthalein powder was applied on them. Munish Kumar, Deputy Economical Statistics Advisor, Jalandhar and Jatinder Parshad, his Assistant were called and associated in the raid as official witnesses. They were introduced to the complainant and Gurbachan Singh, the shadow witness. Pre-trap proceedings were carried out. Demonstration was done.

The raiding party along with complainant Balihar

Singh and shadow witness Gurbachan and other official witnesses proceeded towards Sub Tehsil Goraya. The shadow witness Gurbachan Singh was directed to give the appointed signal when the bribe money was accepted. The complainant and shadow witness went inside the office. The rest of the raiding party remained outside. After sometime they noticed that the complainant and shadow witness had come out of Sub Tehsil along with one person and they went inside a tent house situated in front of the office. On receipt of the appointed signal from Gurbachan Singh, the raiding party entered the tent. DSP Vipin Choudhary revealed his identity to the accused. Identity of the accused was also confirmed. The investigating officer put the fingers of the accused in the solution which turned pink. Personal search of the accused was carried out, the tainted currency notes were recovered from left side pocket of shirt worn by him. The currency notes (Ex.P-2 to Ex.P-11) were checked and they tallied with the numbers noted down on the memo. The other articles, including cash, gold items etc. recovered from the accused were also taken into police possession vide separate memo. Shirt was also washed in the chemical and its color also turned pink. Jamabandi (Ex.P15) taken from complainant Balihar Singh was also taken into possession vide memo Ex.PJ. After obtaining the sanction, challan against the accused was filed. The accused was put to trial.

The accused was charge-sheeted under Sections 7, 13 (1) read with Section 13(2) of the Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as

many as eight witnesses.

PW1 Gurmit Singh proved signatures of Competent Authority on sanction Ex.PA; PW2 Balihar Singh is the complainant; PW3 Gurbachan Singh, the shadow witness, PW4 Munish Kumar, who was joined in the raiding party; PW5 (wrongly written as PW4) Const. Varinder Kumar received the nips and sent the same to FSL through Const. Gurmukh Singh; PW5(wrongly written instead of PW6) Const. Raj Singh handed over the sealed report received from FSL to DSP Vipin Chaudhary; PW7(wrongly mentioned as PW6) Const. Gurmukh Singh tendered his affidavit in evidence and PW8(instead mentioned as PW7) DSP Vipin Chaudhary, the investigating officer of the case.

When examined under Section 313 Cr.P.C., the accused abjured the trial and pleaded false implication. He took the stand that Sarwan Singh transferred the ownership of ancestral property measuring 72 kanals 2 marlas in favour of his son complainant Balihar Singh. On 5.9.2002 complainant and Gurbachan Singh came to him and insisted for entry of mutation immediately. The appellant refused to do it on that day, upon which both of them got annoyed and threatened to teach him a lesson. The mutation was sanctioned in favour of Balihar Singh on 24.09.2002 and copy of jamabandi was supplied to Balihar Singh vide entry No.49 after taking the requisite fee. He denied that complainant ever came to him on 11.10.2002. The appellant further took the stand that he informed Lehmber Singh, brother of complainant Balihar Singh, residing in Canada, through his relative Charanjit Singh about the sale-deed, executed ignoring

the rights of Lehmbur Singh. Charanjit Singh took the jamabandi from him 10.10.2002. Lehmbur Singh came to India and filed a civil suit against Balihar Singh. Balihar Singh and Gurbachan Singh got annoyed with him and threatened to implicate him in a false case and later in connivance with the Vigilance Department he was implicated in this case and there was no demand or acceptance. It was pleaded that Balihar Singh had thrust the tainted notes in his pocket and in the process, the notes fell down on the table and police took the same in possession and implicated him in this case.

In his defence, the accused examined DW1 Sat Pal Daftar Kanugo, Phillaur, DW2 Charanjit Singh son of Sarwan Singh and DW3 Kuldip Singh.

On appraisal of the evidence available on record, the trial Court rejected the defence of the appellant and convicted and sentenced him in the manner indicated above. Hence, the instant appeal by the appellant.

Opening the argument, learned counsel appearing for the appellant submitted that credible evidence was not produced by the prosecution, to prove that the accused had demanded or accepted gratification, other than legal remuneration from complainant Balihar Singh for supplying copy of jamabandi. He urged that the copy of jamabandi of the entire land had already been supplied to the complainant on 30.09.2002 vide entry No.49 (Ex.P18) and there was no occasion with the accused to demand the bribe for issuing jamabandi of land measuring 6 kanals 4-1/2

marlas on 14.10.2002, which was already shown in Ex.P18 and there was no separate sale-deed of that land, as admitted by the complainant. It was urged that when the accused had already done the work prior to the alleged raid, his conviction was not sustainable. Reliance has been placed on **Mehar Chand Vs. State of Haryana 2004(4) RCR(Crl.) 655(P&H)**

He further argued that it was incumbent upon the prosecution to prove that the demand was made twice, viz., firstly at the time when the work was asked and secondly when the work was done. But neither the complainant nor the shadow witness had deposed that the accused demanded the bribe after handing over the jamabandi. According to him, the essential ingredients of demand and acceptance were conspicuously missing and the benefit must go to the accused. He had referred to **Ram Chander Vs. State (Govt. of NCT of Delhi) 2009(4) RCR(Crl.) (Delhi High Court) 880, Subash Parbt Sonvane Vs. State of Gujarat 2002(3) RCR(Crl.) 188 (SC), A Subair Vs. State of Kerala 2009(3) RCR(Crl.) 371 (SC)**

Continuing with the submissions, he urged that the statements of complainant PW2 Balihar Singh, PW3 Gurbachan Singh, PW4 Munish Kumar and PW8 Vipin Chaudhary, the investigating officer were replete with improvements and contradictions and could not, by any stretch of imagination, be said to be reliable and the trial Court had erred in acting upon the same. It was urged that the evidence of the prosecution witnesses with regard to the story of hand wash was

contradictory, as PW2 complainant Balihar Singh admitted in his cross-examination that his hands were not washed in the office of DSP. He further admitted that the numbers of currency notes were not noted down by him before handing the same to the police. He further pointed out that the complainant deposed that they reached Sub Tehsil Goraya at 2:30 p.m. while the investigating officer PW Vipin Chaudhary deposed that they reached at 3:15 p.m. He further submitted that the trap proceedings were carried out in a haste which speaks volume about its veracity. Reliance has been placed on **V. Venkata Subbarao Vs. State represented by Inspector of Police A.P. AIR 2007 SC 489.**

He further pointed out that Gurbachan Singh, the shadow witness was not an independent witness and being Lambardar of the village, he was a partisan witness. He further urged that presence of shadow witness on 14.10.2002 is doubtful because he deposed about the date of raid as 10.10.2002.

Reference was made to **Kuldip Rai Vs. State of Punjab 2002 (2) RCR(Crl.) 781.**

Continuing with the submissions, it was urged that there was no offer by the investigating officer to get himself searched before the alleged recovery and there is every possibility that the complainant might have thrown the money. He had referred to **State of Punjab Vs. Kushal Singh Pathania 2004(4) RCR(Crl.) 498** and **Suresh Kumar Vs. State of Haryana 200994)RCR(Crl.) 608.** The counsel for the

appellant seriously criticized the recovery and argued that there was no reliable evidence to connect the accused with the crime.

Learned State counsel, on the other hand, supported the judgment and order of conviction and sentence of the accused. He had contended that the contradictions referred to are minor in nature and are bound to occur due to efflux of time. It was urged that there was no ill-will or motive nor it was suggested to PW Munish, whose testimony is independent. It was contended that the accused failed to explain why he had prepared jamabandi Ex.P15 which was recovered at the time of raid.

In order to appreciate the contentions raised, the evidence adduced on record has to be analyzed. The prosecution case rests upon the testimony of PWs Balihar Singh, complainant, shadow witness Gurbachan Singh, official witness Munish Kumar and DSP Vipin Chaudhary, the investigating officer.

While stepping into his witness box, complainant Balihar Singh deposed that on 11.10.2002 he wanted copy of jamabandi and had contacted the accused who demanded Rs.5000/- to supply copy of jamabandi and asked him to come with the amount on 14.10.2002. Then he along with Gurbachan Singh approached the Vigilance and apprised them of the matter. Pre-trap proceedings were carried out and he along with Gurbachan Singh came to the office of accused. He specifically deposed that he enquired about his work and in turn the accused asked about his work. Then they came to the tea shop which was in a tent and handed over the currency notes to the accused.

Gurbachan Singh gave the signal to the police, who reached there and on search the tainted currency notes were recovered from the front pocket of shirt worn by accused. The hands of the accused were washed in the solution, which turned pink. Similarly, shirt of the accused turned pink when dipped in the solution.

PW Gurbachan Singh, the shadow witness also supported the case of the prosecution. Likewise PW Munish Kumar and DSP Vipin Chaudhary deposed about the pre-trap proceedings and consequent recovery of tainted amount from the appellant. Their testimonies remained unshaken despite lengthy cross-examination.

To prove its case, the key ingredients, which the prosecution was required to prove were the demand and acceptance by a public servant by corrupt means and by misusing his official position. It is not in dispute that the appellant was posted as Patwari at that time. Much stress has been laid by defence that there was no occasion with the appellant to raise demand illegal gratification as the copy of jamabandi had already been supplied to the complainant. The argument is not acceptable. It is relevant to refer to the observations made by the learned trial Court while dealing with this issue. Relevant extract of para No.23 of the impugned judgment reads as follows:-

"23. The argument that the complainant was not in need of any copy of jamabandi on 30.9.02, is also not sufficient to create any dent

in the story of the prosecution because the copy of jamabandi taken on 30.9.02, was of the entire land because as per the entry in the Roznamcha, copy of jamabandi for the year 2000-01, pages No. 359, 360, 361, 363, 364, 365 of village Rurki was issued to Balhar Singh whereas the copy of jamabandi Ex.P15 is of some other land and it was regarding the half share of Balhar Singh out of the land 12 kanal 9 marlas and the other half share of some other co-sharer and thus, it was a copy of jamabandi for 6 kanals 4-1/2 marlas only and it was issued on the day of raid on 14.10.02 and this copy of jamabandi has no concern with the other land the copy of which he has already taken on 30.9.02 and it was for 6 kanal 4-1/2 marlas because the half share of 12 kanal 9 marlas comes to 6 kanals and 4-1/2 marlas. Therefore, it cannot be said that the complainant was not in need of the copy of jamabandi or that he had already obtained the copy of jamabandi earlier."

The fact that Ex.P15 was of some other land is duly established from the record. Therefore, the contention that there was no motive on the part of the appellant to raise demand of illegal gratification, is misconceived. **Mehar Chand's** case (supra) cannot come to the rescue of the appellant as in that case the base of payment of bribe was not established because the accused had already done the work. But, as noticed above, it is not the situation in the present case.

Statements of PW2 complainant Balihar Singh and

PW3 Gurbachan Singh, the shadow witnesses are consistent and have been corroborated, the accused raised the illegal demand for issuing jamabandi. As per the complainant, on 14.10.2002 when he enquired about his work, the accused in turn asked for his work. The tenor and manner of deposition of both the witnesses makes it clear that the accused raised a demand and obtained for himself the pecuniary advantage by corrupt means by abusing his position as a public servant. **A.Subair's** case (supra) is distinguishable from the facts of present case.

The tenor and manner of deposition of prosecution witnesses, leaves no doubt that a consistent and reliable version had come forth against the appellant about his raising the demand of illegal gratification and acceptance thereof. The acceptance of bribe by an accused is undoubtedly the most incriminating factor when judging his guilt and this factor has been duly proved by the prosecution witnesses, who are found to be reliable witnesses. The evidence of recovery witnesses speaks volume about the recovery of tainted currency notes from the person of the appellant. When it stands established that the accused was found in possession of the bribe money, then it was for him to explain the possession of the bribe amount. It was for the accused to explain how the same came into his possession, which a short while ago was in possession of the complainant. His plea further falsified from the fact that wash of his hand and shirt proved that he handled tainted currency notes and put the same in his pocket.

In **Subhas Parbt** case (supra) the complainant had turned hostile and did not support the prosecution case on the point of demand and acceptance. It was held that there was no evidence that the accused had demanded money. In the case in hand, it is not the position. Both the witnesses have deposed about the demand of illegal gratification pre-trap and at the time of trap. The factum of consequent recovery from the accused also stands proved from the testimony of PW Munish Kumar, whose evidence can be termed as independent because no ill will or motive has been attributed to him and the accused failed to explain as to why this witness had deposed against him. Therefore, the plea that the prosecution failed to prove the demand at the time of raid is misconceived and **Ram Chander's** case (supra) is of no avail to the defence.

The contradictions referred to by the learned counsel are minor in nature and are bound to occur due to passage of time. Once the main ingredients have been proved by the prosecution, the contradictions lose its significance. So far as the date of raid as mentioned in the statement of PW Gurbachan Singh, the same appears to be a typographical error, especially in the light of the fact that the raid was undisputedly carried out on 14.10.2002. It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the Court to reject the evidence thus provided, in its entirety. The irrelevant details which do not

in any way corrode the credibility of a witness, cannot be labeled as omissions or contradictions. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinize the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. Therefore, **Kuldip Rai** case (supra) will not help the defence especially when the credibility of the prosecution witnesses remains unshaken. Moreover, a parrot like version is not expected from a natural witness. Trivial variation in their statements is bound to occur with efflux of time.

In **Venkata Subbaro's** case (supra) glaring infirmities were found in the pre-trap and post-trap proceedings. Even demand was not proved and sanction accorded to prosecute the accused therein was found vitiated by law and it was observed that the trap was arranged within 40 minutes, which otherwise took 2-3 hours, then the recovery was viewed with doubt. It is not the position here. The statements are consistent so far as demand, acceptance and recovery of bribe money from the appellant is concerned.

In this case, the recovery from the person of the

appellant was effected by PW Munish Kumar, who was not either related to the complainant side or a police official. The position would have been different had the recovery been effected by the police officials. **Kushal Singh's** case (supra) is not applicable to the facts of present case. So far as **Suresh Kumar's** case is concerned, in that case recovery was doubted as the persons who were said to have been associated in the raid appeared in the defence and deposed against the prosecution and there were material contradictions about recovery. In that view of the matter, it was held that the investigating officer did not offer his own search before effecting the search of the accused and was held to be important.

Though the appellant raised the plea of enmity with PWs Balihar Singh and Gurbachan Singh, but it is strange that despite that he accompanied both of them to the tent house outside his office, from where he was apprehended. The accused has denied this fact, but the evidence appearing on record speaks otherwise. PW Gurbachan Singh is the Lambardar of the village and he cannot be said to be a interested witness. He is a village respectable. PW Munish Kumar against whom no ill-will or enmity has been attributed, also deposed about this fact. DW2 Charanjit Singh deposed about obtaining of jamabandi on coming to know from appellant Naranjan Singh about the transfer of ownership of ancestral property in favour of Balihar Singh, ignoring the rights of Lambher Singh. He also deposed that in a quarrel between Balihar Singh and Lahmber Singh, Balihar Singh openly

proclaimed to teach a lesson to the appellant for disclosing the factum of transfer. In his cross-examination he admitted that no application was made to the police regarding any fraud by Balihar Singh. The theory of enmity propounded by the defence is an after-thought and is not proved even by preponderance of possibility. No reliance can be placed on his statement.

There is no dispute that the sanction order was passed by the Competent Authority. The Court cannot look into the adequacy or inadequacy of the material before the Sanctioning Authority and cannot sit as a Court of appeal.

The appellant has been substantively sentenced to undergo rigorous imprisonment for two years. He misused his position as public servant and demanded and accepted the bribe of ₹5000/- for issuing jamabandi, which he otherwise was duty bound to do. In the considered opinion of this Court no leniency can be shown. Corruption at any level, by any person, of any magnitude is condemnable and cannot be ignored by the Courts. No leniency is required to be shown in proved cases under the Prevention of Corruption Act. No sympathetic approach is needed in such cases. In the instant case, the misconduct of the appellants is of such magnitude that no interference is warranted on the quantum of sentence. There exists no mitigating circumstances on account of which the sentence of the appellant can be reduced.

For the above reasons, this Court is of the opinion that there is no merit in the appeal. Consequently, affirming the

judgment and order of conviction and sentence of the appellant, the appeal is dismissed. His bail bonds and surety bonds stands cancelled. He is directed to surrender before the Court of CJM concerned within 15 days from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate action in the matter. A copy of this order be sent to the CJM, Jalandhar for compliance.

July 16, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE