IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No. S-2446-SB of 2010

DATE OF DECISION: 11.3.2015

Dharam Pal ....Petitioner

Versus

State of Haryana ....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. Akshay Jain, Advocate
for the appellant.

Mr. Munish Sharma, AAG, Haryana.

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DAYA CHAUDHARY, J.

The present appeal has been filed to challenge judgment of conviction and order of sentence dated 4.10.2010 passed by Special Judge, Sirsa, vide which, the appellant has been convicted for offence punishable under Sections 7 and 13 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') and has been sentenced to undergo rigorous imprisonment for a period of one year with a fine of ₹ 2,000/- with default clause.

Briefly, the facts of the prosecution story are that FIR No. 5 dated 15.2.2006 under Sections 7 and 13 of the PC Act was registered at Police Station SVB Hisar against accused-appellant Dharam Pal, who was posted as UDC in Electricity Board, Sub Division, Rania on the allegation that he demanded an amount of ₹ 2500/- as an illegal gratification from complainant-Pal Singh for increasing the load of electricity connection of tubewell installed in the land, which was taken on lease by him from one Raj Kaur. The complainant was not interested in giving said illegal gratification to the accused and as such he moved an application against the accused to Inspector Ramesh Kumar stating all the facts. A raiding party was constituted under the orders of Deputy Commissioner and he deputed Naib Tehsildar, Rania as Gazetted Officer to join the raid. Five currency notes of the denomination of ₹ 500/- each were given by the complainant to Inspector Ramesh Kumar to put initials and for applying phenolphthalein powder. Thereafter the Inspector handed over the currency notes to the complainant and directed him to hand over the same to accused on demand by giving signal to Gurmail Singh, who was made a shadow witness. Gurmail Singh was also directed to pass the signal to the raiding party after receipt of the amount by the accused-appellant from the complainant. When amount was given to accused-appellant, the shadow witness-Gurmail Singh gave signal to raiding party and raid was conducted. The currency notes were put in the liquid where sodium carbonate was added and its colour turned into pinkish. The case property was taken into possession and on the basis of ruqa, the FIR was registered by ASI Balbir Singh.

The accused was chargesheeted under Section 7 read with Section 13 of the PC Act, to which, he pleaded not guilty and claimed trial. The prosecution in order to prove its case examined as many as 12 witnesses.

On completion of prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded, wherein, he denied the allegations and pleaded innocence. Accused-appellant has stated in his statement that Raj Kumar and Pawan Kumar have filed a case against him pertaining to a land and he has been falsely implicated as father-in-law of said Pawan Kumar and Raj Kumar were having cordial relations with complainant-Pal Singh. The accused in his defence examined Ramesh Kumar, Driver as DW-1, Bhagwan Dass as DW-2 and Sher Singh as DW-3.

On appraisal of evidence led from both the sides, the accused-appellant was convicted and sentenced by the trial Court vide judgment dated 4.10.2010, which is subject matter of challenge in the present appeal.

Learned counsel for the appellant contends that the appellant has falsely been implicated in the case as the complainant was having interest in land given on lease, whereas, he was not involved in any manner and has no concern to increase the load of the electricity, therefore, question of demand of bribe and its acceptance does not arise at all. Learned counsel further contends that it has not been proved on record that complainant was cultivating the land of Smt. Raj Kaur given on lease and he ever applied for extension of the load. The statements of PW-5 and P-6 are not trustworthy as they are neighbours of the complainant. Learned counsel for the appellant also contends that there are material contradictions and discrepancies in the statements of prosecution witnesses. The trial Court has not considered the defence set up by the appellant as Ramesh Kumar, driver of the then Naib Tehsildar (PW-11), has proved on record the log book of the vehicle to show that on that very day said Naib Tehsildar was not even present in the office. It is also the argument of learned counsel that as per statement of DW-3, the application for increasing the load of the electricity was made under the orders of SDO Operation and amount was got deposited by Bhup Singh, Cashier. Harbans Lal, LDC was on duty on that day and the appellant was neither concerned with the extension of the load nor concerned with the file for extension of the load. In the end, learned counsel for the appellant contends that neither the demand nor its acceptance has been proved and, therefore, provisions of the PC Act are not attracted. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Banarsi Dass Vs. State of Haryana** 2010 (3) JT 552, **C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala** 2009 (2) RCR (Criminal) 134, **V. Venkata Subbarao Vs. State represented by Inspector of Police, A.P.** 2007 (1) RCR (Criminal) 519, **State of Punjab Vs. Sohan Singh** 2009 (7) JT 355, **B. Jayaraj Vs. State of A.P.** 2014 DGLS (Soft.) 192, of this Court in **Pawan Kumar Vs. State of Punjab** 2004 (2) RCR (Criminal) 272, **Jaspal Singh Vs. State of Punjab** passed on 21.1.2015 in Crl. Appeal No. S-958-SB of 2005, Madras High Court in the case of **T.M. Shanmughavelu and another Vs. State rep. by Inspector of Police, Vigilance and Anti-Corruption, Coimbatore** and of Himachal Pradesh High Court in the case of **Dalip Singh Thapa Vs. State of Himachal Pradesh** 2014 (2) Crimes 754, in support of his contentions.

Learned counsel for the respondent-State submits that judgment of trial Court is well reasoned and is based on proper appreciation of evidence. The amount was recovered from the pocket of accused-appellant by the raiding party in the presence of shadow witness and the accused-appellant has to explain as to how amount was found in his pocket but he has failed to do so.

Heard the arguments advanced by learned counsel for the appellant as well as State and have also gone through the record of the lower Court.

Complainant-Pal Singh while appearing as PW-5 stated that he alone went to the office of Superintendent of Police and a written complaint was made against accused-Dharam Pal stating therein that a demand of ₹ 2500/- was made from him for getting the work done. He further stated that he had taken three acres of land on lease belonging to one Raj Kaur, which was being cultivated by him for the last eight years. He has also stated that accused-Dharam Pal demanded ₹ 2500/- as bribe for getting the load increased and as he did not want to give bribe, he moved an application to Inspector Ramesh Kumar in this regard. Thereafter, the complainant accompanied Ramesh Kumar, Inspector to the office of Deputy Commissioner, Sirsa, who deputed Ram Kishan, Tehsildar to join the raiding party. Ram Kishan-Tehsildar as well as Ramesh Kumar-Inspector put their initials on currency notes given by the complainant to Inspector Vigilance. In cross-examination, the complainant has stated that his name does not find mention in Khasra Girdwari regarding land on lease. He further stated that the receipts regarding payment of lease money was not brought on that day. He has also admitted that protest was lodged against imposition of fine of ₹ 5000/- which later on was reduced to ₹ 2500/- by the SDO and was deposited vide receipt which was lying at his house. He has also admitted in cross-examination that Inspector Ramesh Kumar did not sign any document in his presence. It has also been admitted by him that he knew Gurmail Singh being neighbour for the last 20-25 years. He also submits that accused-Dharam Pal was having seat in a big hall on the centre table where many clerks were sitting and the hall was not visible to anybody from the main road. He has also admitted in cross-examination that he did not make any complaint to the higher authorities inspite of alleged demand and no criminal case was registered against him till that date.

Gurmail Singh while appearing as PW-6 has stated that his signatures were obtained on document Exs. P10 and P-18. He further stated that he was standing outside the room near the gate and complainant-Pal Singh asked for his file but accused Dharam Pal demanded ₹ 2500/- which were paid. A signal was given by the complainant and raiding party reached at the place of occurrence. He has also admitted in cross-examination that complainant-Pal Singh was residing in his neighbourhood. He further stated that the members of the raiding party were sitting in their vehicle on the main road and on receiving signal they reached to the office of the accused, whereas, as per statement of complainant, the members of the raiding party were standing at the gate of the hall. Gurmail Singh has also stated that the seat of the accused was visible, whereas, as per statement of complainant the seat of the accused was not visible from the gate of the hall.

Om Parkash Poonia (PW-12) who was working as UDC in the office of Superintending Engineer produced original record regarding sanction order issued against accused-Dharam Pal. He has admitted in his cross-examination that powers relating to extension of load of a transformer was with SDO/ XEN and other senior officers but the clerical staff was having no concern with it.

Ramesh Kumar (DW-1) who was working as driver with Naib Tehsildar Ram Kishan has stated that he left Rania at 7.00 am and reached back at 3.00 pm on 15.2.2010 and an entry was also made in log book in this regard. He has also produced original log book and photocopy of which is Ex. DW1/A.

Similarly Sher Singh (DW-3) has stated that electricity connection of Pal Singh-complainant was disconnected on 21.5.2004 due to non-deposit of electricity charges. Raj Kaur was the consumer of the Nigam having account No. 35830-AP of her tubewell. An application for increasing load was made under the orders of SDO (Operation) and an amount of ₹ 500/- was got deposited vide receipt Ex. DW-3/A-4.

From the statement of complainant-Pal Singh (PW-5), it has been proved on record that he was a lessee and was cultivating the land of Raj Kaur and even applied for extension of load. It has also been proved from the statements of prosecution witnesses that PW-5 and PW-6 are the neighbours. Even from perusal of statement of PW-12, it has been proved on record that the lower staff was having no concern with the extension of load and no occasion was there for the appellant to receive any illegal gratification from the complainant as the electricity load was not to be increased by him. Similarly, it has been proved on record from the statement of Ramesh Kumar, who was working with the then Naib Tehsildar that the said officer remained on tour from 7.00 am to 3.00 pm on 15.2.2010 and the said officer even was not present in the office on the date of occurrence. Similarly from the statement of Sher Singh (DW-3), it has also been proved on record that an application for increasing of load was made under the orders of SDO (Operation) and the amount was also deposited by Bhup Singh, Cashier. He has also stated that Harbans Lal, LDC was on duty on that date for getting the amount deposited for increase of the load. There are material contradictions in the statements of PW 5 and PW-6. PW-5-Pal Singh has stated in his cross-examination that he went to Rania to find out some witness, Gurmail Singh met him in the Bazaar and he was taken to Tehsil Office, Rania, whereas, Gurmail Singh (PW-6) has stated in his cross-examination that on 15.2.2006 at 9.00 am, he was asked by the complainant to meet him in the Tehsil office at 2.00 pm and he reached there at about 1.30 pm where complainant-Pal Singh was also present.

It is a settled canon of criminal jurisprudence that conviction of an accused cannot be confined on the basis of inferences. The offence should have been proved against accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence. The prosecution has to lead cogent evidence in this regard but in the present case neither the link evidence nor consistency is there in the statements of prosecution witnesses. Mere recovery of tainted amount is not sufficient to convict the accused unless there is substantive and reliable evidence. In absence of any such evidence, it cannot be said that amount was accepted as a bribe. This view has been taken by Hon'ble the Apex Court in the case of **Suraj mal Vs. State (Delhi Administration)** 1979 (4) SCC 275. Similarly three Judges Bench in **M. Narsinga Rao Vs. State of Andhra Pradesh** 2001 (1) RCR (Criminal) 95 has held that it is not enough that some currency notes were handed over to a public servant to make it acceptance of gratification but it is to be proved by the prosecution that the amount was paid as gratification. It is also not disputed that evidence of an entrusted witness cannot be accepted without corroboration but the statements of such witnesses are required to be corroborated by the statements of other witnesses.

The Hon'ble Apex Court in **T. Subramanian v. State of Tamil Nadu reported in 2006 (1) SCC (Cri.) 401** has held as under:-

> "The evidence in this case no doubt proves that a sum of Rs. 200/- was paid by P.W.1 to the appellant. But the crucial question is whether the appellant had demanded the said amount as illegal gratification to show any official favour to P.W.1 and whether the said amount was paid by P.W.1 and received by the appellant as consideration for showing such official favour. Mere receipt of Rs. 200/- by the appellant (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the

absence of any evidence of demand and acceptance of the amount as illegal gratification."

The Hon'ble Apex Court in **Venkata Subbarao V. State reported 2007 (3) SCC (Cri.) 175** has held as follows :

24. .... In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under :

"20. Presumption where public servant accepts gratification other than legal remuneration - (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

The Hon'ble Apex Court in **State of Maharashtra v. Dnyaneshwar Laxman Rao Wandhede reported in (2010) 2 SCC (Cri.) 385** has held as under :

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-'-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

The Hon'ble Apex Court in **C. M. Girish Babu's case (supra)** by placing reliance on the earlier decision in **Suraj Mal's case (supra)** has held that:-

"16.... mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

In ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wandhede reported in (2010) 2 SCC (Cri.) 385,*** the Hon'ble Apex Court has held as hereunder :

> "21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts. (See ***Noor Aga v. State of Punjab [(2008) 16 SCC 417]*** and ***Jayendra Vishnu Thakur v. State of Maharashtra [(2009) 7 SCC 104]."***

In **Anand Parkash Vs. State of Haryana** 2008 (2) RCR (Criminal) 335, tainted money was recovered from the almirah and not from the personal search of the accused. The prosecution version was not corroborated by independent witness. It was held that neither the demand, nor acceptance of currency notes Ex. P1 to P-26 by accused from Sube Singh complainant is established.

In **Ganapathi Sanya Naik Vs. State of Karnataka,** 2007 (4) Recent Criminal Reports (Criminal) 184, the prosecution case was that the accused had demanded money from the complainant for effecting entry of mutation in the revenue record. A trap was laid. The currency notes were recovered from table of the accused beneath office files. The defence version that no demand was made and currecy notes had been surreptitiously put on the table, while the appellant was otherwise engaged in some activity was held plausible by the Apex Court. To my mind, the factual situation in the case at hand is somewhat identical with **Anand Parkash's case** *(supra).*

In ***M.S. Narayana Menon alias Mani v. State of Kerala and Another, 2006(3) R.C.R.(Criminal) 504 : (2006) 6 SCC 39 : AIR 2006 SC 3366***, Hon'ble the Apex Court has held as under:

"Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding."

In ***Union of India v. Purnandu Biswas, (2005) 12 SCC 576***, it was opined:

" In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act."

In view of facts and law position as discussed above, it is apparent that judgment of the trial Court is not based on proper appreciation of evidence as it has not been proved on record that there was a demand of bribe and amount was accepted in lieu of any work done by the accused. The allegations against accused-appellant have not been proved, not only for want of corroboration by any independent witness but the motive for giving any bribe has also not been proved. The benefit of doubt, therefore, goes in favour of the accused-appellant.

Accordingly, this appeal is allowed and the judgment of conviction and order of sentence dated 4.10.2010 passed by Special Judge, Sirsa is set aside and the accused-appellant is acquitted of the charges framed against him by the trial Court. The appellant is hereby discharged from the bail/surety bonds furnished by him.

11.3.2015 **(DAYA CHAUDHARY)**
pooja **JUDGE**