IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-2586-SB of 2010
Date of Decision: November 18, 2015

Ram Kishan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for the appellant.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

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INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 15.10.2010 passed by learned Special Judge under P.C. Act, Hisar, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months under Section 7 of the Prevention of Corruption Act, 1988.

The brief facts of the case are that on 07.01.2008, complainant Satyawan along with Ram Sarup visited the office of SP, Vigilance Hisar and moved application Ex.P9 before S.P. Vigilance, which was marked to Inspector Ramesh Kumar. It was alleged in the complaint that a case of theft of electricity was registered against the complainant at Police Station Barwala and in this connection, he was called by ASI Ram Kishan 3-4 times, who told him regarding registration of theft case but was not in mood to arrest him and was demanding ₹2000/- for helping him (complainant) to obtain bail without being arrested. The complainant expressed his inability to pay the said amount but Ram Kishan was adamant on the aforesaid demand of bribe amount. It is further in the complaint that complainant was called at Court complex, Hisar with amount of ₹2000/-. He did not want to pay the bribe but ASI Ram Kishan was not in a mood to do his work without obtaining the bribe. The application was marked to Inspector Ramesh Kumar and he formed a raiding party and reached the office of ADC Hisar and presented the application. ADC Hisar appointed Mr.Attar Singh ETO to join the raiding party. On this, Inspector Ramesh Kumar reached the office of ETO Attar Singh and he was joined in the raiding party. The complainant and shadow witness were introduced to Attar Singh. Complainant took out one currency note of denomination of ₹1000/- and ten currency notes of ₹100/- denomination from his pocket in the presence of the witnesses. Phenolphthalein powder was applied on currency notes and their numbers were recorded in the memo. The demonstration was also given. Then the raid was conducted. At about 1.15 P.M., on receiving signal from the shadow witness, the police party raided and apprehended accused Ram Kishan. During search, the said currency notes were recovered from the left side pocket of his jacket. All the currency notes recovered from the accused were found to be having initials of ETO Attar Singh and Investigating Officer and numbers of those tallied with the numbers of the notes which were handed over to the complainant. The recovered currency notes were taken into police possession. Both hands of the accused were got washed in sodium carbonate solution. Ruqa was sent to the police station, on the basis of which, the FIR was registered. After necessary investigation, the challan was presented against the accused-appellant.

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 7 and 13(1) (d) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Sultant Singh, who mainly deposed regarding remand paper in case FIR No.399 dated 19.11.2007 under Sections 135/138 of Electricity Act and 379 IPC. PW-2 Constable Jasbir mainly deposed regarding delivering of special report. PW-3 Constable Subhash Draftsman proved the scaled site plan Ex.P4. PW-4 EASI Narender Kumar and PW-8 ASI Ram Phal, are the formal witnesses, who tendered into evidence their affidavits Ex.P5 and Ex.P18 respectively. PW-5 EASI Hari Singh deposed regarding recording of FIR. PW-6 Satyawan, complainant and PW-10 Ram Sarup, shadow witness, did not support the prosecution case and were declared hostile. They also disowned complaint Ex.P9 and statement Ex.P19 by stating that the police obtained their signatures on blank papers. PW-7 ASI Om Parkash mainly deposed that Ram Kishan was transferred from Police Lines Hisar to P.S.Barwala vide order dated Ex.P17. PW-9 Head Constable Ram Singh proved the FIR regarding electricity theft. PW-11 Sh.Kuldeep Singh, JMIC, Hisar deposed regarding recording of statements of Satyawan and Ram Sarup under Section 164 Cr.P.C. PW-12 ESI Balraj Singh mainly deposed regarding sanction Ex.P24. PW-13 ETO Attar Singh deposed regarding recovery of currency notes. He stated that he stood along with raiding party under the tree in the open lawn of Judicial Complex, Hisar and after some time he was called to the corner near the last court room towards the judicial parking. He saw the inspector having money in his hand and one official was already secured by the other police man in civil dress. They told them that the money was taken out from the left side pocket of Ram Kishan accused. This witness was declared hostile by learned Public Prosecutor. PW-14 Inspector Ramesh Kumar, Investigating Officer, deposed regarding investigation conducted by him in the present case.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. and he denied the correctness of the evidence and pleaded himself as innocent.

No evidence was led in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments learned counsel for the appellant argued that prosecution has failed to prove its case by leading cogent evidence. Neither demand nor acceptance has been proved as the complainant and shadow witness have turned hostile. He further argued that recovery of currency notes has also not been proved beyond reasonable doubt as the official witness i.e. recovery witness ETO Attar Singh has also not supported the prosecution case and turned hostile. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, it should be allowed and the appellant should be acquitted.

On the other hand, learned State counsel argued that in view of the presumption under Section 20 of the Prevention of Corruption Act, it was for the accused-appellant to rebut the presumption. He further argued that the version of the prosecution has been duly proved from the statements of complainant and shadow witness recorded under Section 164 Cr.P.C. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, I find that in the present case, there is no cogent evidence on record to prove the demand of bribe nor there is any evidence on record to prove the acceptance of bribe money. The complainant as well as shadow witness have turned hostile and have not supported the prosecution version. Even they disowned the statements Ex.P19 and application

Ex.P9 and stated that their signatures were obtained on blank papers. Even the recovery witness ETO Attar Singh has not supported the prosecution version regarding recovery of the currency notes. He was also got declared hostile by learned Public Prosecutor. Nothing has come out in support of the prosecution during the cross examination by learned Public Prosecutor. When the demand and acceptance of bribe money has not been proved and the recovery witness also did not support regarding the recovery, then the presumption under Section 20 of the Prevention of Corruption Act will not come into play. The presumption under Section 20 of the Act will be raised only when acceptance of the bribe is proved. As already discussed, neither demand nor acceptance has been proved by the prosecution. Even the recovery from the accused is doubtful in view of the fact that the official recovery witness has not supported the prosecution version. The other witnesses are mainly formal witnesses. Only on the statement of Investigating Officer, the accused-appellant cannot be convicted.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***Prabhat Kumar Gupta vs. State of Jharkhand, 2015(1) SCC (Cri) 427***, wherein it is held that where demand and acceptance in trap case is not proved and witnesses turned hostile, it is held that even if we assume that currency note was recovered from his possession there is no evidence that he had voluntarily accepted the same. Learned counsel for the appellant also cited judgment passed by the Hon'ble Supreme Court in

M.R.Purushotham vs. State of Karnataka, 2014(4) RCR (Criminal) 444, in which it is held that mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 13(1) (d) of the Act. It is further held that accused cannot be convicted on the basis of evidence of shadow witness. In the present case, even the shadow witness has also not supported the prosecution version.

Learned counsel for the appellant has further placed reliance upon the judgment passed by Three Judges' Bench of Hon'ble Supreme Court in ***B.Jayaraj vs. State of A.P., 2014(2) RCR (Criminal) 410***, in which accused was acquitted despite the fact that tainted money recovered from his pocket but demand not proved. In that case, the prosecution has not examined any other witness to prove demand. It is held in that case that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1) (d) (i) (ii) of the Act. It is also held in that case that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.

I have gone through all the above cited judgments and the same fully apply to the facts of the present case.

From the above discussion, I find that the prosecution has failed to prove its case by leading cogent evidence beyond reasonable doubt and the presumption under Section 20 of the Act cannot be raised in view of demand and acceptance being not proved and recovery also being doubtful. Otherwise also, from the evidence on record, the presumption is rebutted from the evidence of the prosecution itself.

Therefore, the judgment of conviction and order of sentence dated 15.10.2010 passed by learned Special Judge, under P.C. Act, Hisar, is not as per law and the same is set aside. The accused-appellant is acquitted of the charges framed against him.

Resultantly, finding merit in the present appeal, the same is allowed.

Since, appellant Ram Kishan is on bail, his bail bonds stands discharged.

November 18, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**