

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.S-532-SB of 2005
Date of Decision: February 25, 2015

Pirthi Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Tara Chand, Advocate
for the appellant.

Mr.S.S.Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The appeal has been filed by the appellant against the judgment of conviction dated 09.03.2005 and order of sentence dated 11.03.2005, passed by learned Special Judge, Jhajjar, whereby the accused-appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 3½ years and to pay a fine of ₹2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month under Section 7 of the Prevention of Corruption Act, 1988.

The brief facts of the prosecution case are that present case was registered on the basis of application given by Ram Mehar Singh complainant to DSP Jhajjar on 18.09.2000, in which it is mentioned that the complainant is running a shop of fertilizer seeds

and pesticides in the name of Godara Beej Bhandar in Brahman Dharamshala, Rewari Road Silani Gate, Jhajjar. Pirthi Singh is a Quality Control Inspector appointed in Agricultural Department and he on one pretext or the other, used to come to his shop and harassed him by saying that he will take the sample of the pesticides. On 18.09.2000, accused came and told to complainant to keep his stock register ready, otherwise he will send the sample. He demanded ₹1000/- in case the complainant wanted to save himself from sending the sample. On the basis of this application, FIR was registered. Deputy Commissioner, Jhajjar was asked for appointment of some Executive Magistrate for raid. Hanuman Singh, Naib Tehsildar was sent for this purpose. One Jagdish was appointed as shadow witness. After demonstration and other formalities, a raid was conducted. Ram Mehar Singh went to the office of Pirthi Singh and on receipt of signal from the shadow witness, Pirthi Singh was apprehended by police party. His personal search was conducted and from the front left pocket of his shirt, ten hundred rupee notes duly initialed were recovered. The numbers of the notes were tallied by the Naib Tehsildar with the list. After completion of investigation, 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, accused-appellant was charge-sheeted under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988, to which he pleaded not guilty and

claimed trial.

In support of its case, prosecution examined PW-1 Constable Jai Chand, who mainly proved the scaled site plan Ex.PA. PW-2 Zile Singh, Clerk mainly brought the summoned record regarding posting of Pirthi Singh as Quality Control Officer and proved order Ex.PB. PW-3 Hanuman Singh, Naib Tehsildar, who is official recovery witness, deposed that on 18.09.2000, he was posted as Naib Tehsildar, Jhajjar. On that day, Deputy Commissioner, Jhajjar directed him on telephone to join the investigation along with DSP Jhajjar. Then he along with DSP and other police officials went to the Agriculture Office, Jhajjar but no person was found there at about 1.00 P.M. and they returned. Again, on the same day, DSP telephonically informed him to join the investigation. Ex.PD list of notes was prepared in the office of DSP duly initialed by DSP at the time of handing over notes to him, which bears his signatures. They all went to the Agriculture Office and personal search of accused was conducted. A sum of ₹1000/- (ten notes of the denomination of ₹100) were recovered from the possession of the accused, which were found to be same as per Ex.PD. He further deposed regarding preparing of solution and memo and further deposed regarding arrest of the accused on the spot. PW-4 Head Constable Inder Singh, is a formal witness, who tendered into evidence his affidavit Ex.PJ. PW-5 Ram Mehar, complainant, deposed as per prosecution version. PW-6 Jagdish, who was the shadow witness, also deposed as per prosecution version. PW-7 ASI Om Parkash deposed regarding

recording of FIR Ex.PL on receipt of ruqa Ex.PK. PW-8 Inspector Surinder Kumar, who was with the police party, deposed regarding the investigation as per prosecution version. PW-9 Mahender Singh (retired Inspector) mainly deposed regarding preparing of report under Section 173 Cr.P.C. PW-10 Constable Rajbir Singh deposed regarding delivering of special report to Illaqa Magistrate. PW-11 DSP Bijender Singh, who is Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW-12 Sube Singh Behmani, Superintendent mainly brought the summoned filed pertaining sanction order for prosecution of Pirthi Singh and proved sanction order Ex.PO.

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. Appellant Pirthi Singh further pleaded that a false case has been made out against him as he was having a cordial relations with complainant Ram Mehar and they used to sit daily. He further stated that he has given a loan of ₹10,000/- to the complainant on his request and when he asked to repay the loan amount, complainant started quarreling with him and was nursing a grudge against him on that account. In order to grab the money and to teach him a lesson, complainant got lodged this false case against him in connivance with the local police. He further stated that witnesses have deposed falsely being interested and official witnesses.

In defence, accused-appellant examined DW-1 Suresh

Kumar, who mainly deposed that on 18.09.2000, he was sitting in the office. Deputy Superintendent along with Krishan Kumar Dalal, Zile Singh, Establishment Clerk and Kashmir Singh Hooda, Accountant were also sitting at that time. In the meantime, at about 4.15/4.30 P.M., a police Gypsy came. There was one ASI and 3-4 Constables in that Gypsy. They took Pirthi Singh by saying that DSP is calling him in the office. Upto 5.00 P.M., Pirthi Singh did not return and they closed the office and went to their homes. DW-2 Krishan Kumar Dalal deposed as per DW-1. DW-3 Zile Singh, Clerk also deposed same facts as deposed by other two DWs.

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 accused-appellant has been falsely implicated in the present case. The defence version is more probable and has been duly proved by the DWs, which creates reasonable doubt in the prosecution version. He further argued that the dispute between the accused and the complainant was regarding loan amount of ₹10,000/- and on that ground, accused-appellant has been falsely implicated in this case. He next argued that as per the evidence on the record, even if sample fails, only the company will be liable. So, why the complainant would pay bribe money to the accused. He also argued that the shadow witness stated that he has not heard the conversation at the time of raid between the complainant and accused. Learned counsel for the appellant further contended that there are

discrepancies in the statements of the PWs regarding the presence of other officials of the department in the office. The Investigating Officer says that they were not present whereas other witness says that they were present. He further argued that there are discrepancies regarding the time of the raid, which also created doubt in the prosecution version. He next argued that statement of Hanuman Singh, Naib Tehsildar is also discrepant and not as per the prosecution version. He argued that reasonable doubt exists in the prosecution version. Learned counsel for the appellant, therefore, argued that there being merit in the appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the complainant, shadow witness, official recovery witness and other official witnesses. There are no material contradictions or improvements in the statements of the witnesses, which may go to the root of the case. He next argued that the minor discrepancies are likely to occur in the statements of the witnesses due to gap of time as they were deposing after a long time. He further argued that defence version has not been proved by leading cogent evidence. There is no documentary evidence to show that any loan amount was given to the complainant by the accused. Learned State counsel further contended that if the DWs were present when Pirthi Singh appellant was taken away by the police and false case was planted, then why they have not made any representation or complaint to the higher authorities. He next argued that there is no

such version given by the accused in the statement recorded under Section 313 Cr.P.C. that he was taken away by ASI from the office in the presence of DWs. He further contended that PWs have duly proved the demand, acceptance and recovery of bribe money from the appellant. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record minutely and carefully.

From the evidence on the record, first of all, as regarding false implication of the accused-appellant, I find no merit in the arguments of learned counsel for the appellant. There is nothing on the record to show that accused-appellant is innocent and has been falsely implicated. There is no document on record to prove his version that he has given a loan of ₹10,000/- to the accused and there was dispute regarding the same with the complainant. Even if, it is taken for the sake of argument, as correct, then why shadow witness, recovery witness and police officials including DSP, would depose against the accused falsely. They have no enmity or motive to falsely implicate the accused. There is also no evidence on the record to show that as to why these official witnesses would depose falsely at the instance of Ram Mehar complainant.

Further, I find that in the statement under Section 313 Cr.P.C., it is nowhere stated by the accused that at 4.15/4.30 P.M., ASI along with 3-4 Constables came and took him in a Gypsy to the

office of DSP in the presence of the DWs. The statements given by DWs cannot be believed and look as an afterthought version. If the police has taken away accused-appellant and no raid was conducted, as alleged by the eye witnesses, then the natural course for these officials including Deputy Superintendent in that office, was to bring it to the notice of the higher officers of their department and to make the complaint to the higher police/vigilance officials and also to make the complaint to other higher authorities but no such step has been taken, which shows that the version given by DWs cannot be believed. The defence version is not supported by any documentary evidence. The oral evidence of the DWs after a gap of long time, can be managed/obtained. Otherwise also, DW-1 to 3 are the colleagues of accused in the office and interested witnesses. Therefore, from all this, I find that the defence version cannot be believed nor it creates any doubt in the prosecution version. The mere fact that one witness says that officials of the department were present and the Investigating Officer says that no person was present, is minor discrepancy. Similarly, the discrepancy regarding the time cannot be held as material discrepancy. PWs have deposed regarding conducting of the raid at about 5.00 P.M. and they have deposed that they remained there upto 7.00/8.00 P.M. Such type of minor discrepancies occur in the statements of the witnesses due to gap of time. So, none of the discrepancy is material one or goes to the root of the case to create reasonable doubt in the prosecution version.

As regarding the argument that as per the Rules, only

company would be liable and the complainant was not liable if the sample fails, I find that this argument has also no force because it is the observation of the advocate regarding the Rules. An ordinary person does not know regarding the technicalities of law. Otherwise also, if a sample is failed, the person who is selling the insecticide/anything, is also become liable under so many circumstances. So, only on this ground, it cannot be held that no bribe money was demanded. PWs have consistently deposed regarding the demand and acceptance of bribe and also the recovery of the currency notes, which were given as bribe. The mere fact that official recovery witness stated in the cross-examination that DSP has already recovered the currency notes does not create any doubt as at the same time, he has also stated that he along with DSP went for raid and he denied the suggestion given by the defence counsel that he was not present at the time of raid and no proceedings were done in his presence. The statements of the witnesses are to be read as a whole and one line cannot be read in exclusion to the other statement. So, from the evidence on record, I find that prosecution has duly proved its case beyond reasonable doubt by leading cogent evidence.

Learned counsel for the appellant cited judgment passed by this Court in ***Amar Nath vs. State of Haryana, 2011(2) RCR (Criminal) 374***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case, demand of bribe has not been proved. Learned counsel for the appellant further cited judgment passed by this Court in ***Sanjiv***

Kumar vs. State of Haryana, 2010(4) RCR (Criminal) 891. This citation also having distinguished facts will not apply in the present case as in the case in hand, official recovery witness was present and in no way, it can be held that witnesses are interested witnesses. Learned counsel for the appellant further placed reliance upon the judgment passed by this Court in ***Om Parkash vs. The State of Haryana, 2010(4) RCR (Criminal) 350.*** I have gone through this cited judgment also and the same will not apply to the facts of the present case as this Court has reached to the conclusion that demand, acceptance and recovery of bribe has been duly proved by the PWs.

Learned counsel for the appellant also cited judgment passed by this Court in ***State of Punjab vs. Kushal Singh Pathania, 2004(4) RCR (Criminal) 498,*** in which the independent witness has deposed that accused was not accepting the tainted money and money was being put in pocket of his shirt, which are not the facts in the present case. Learned counsel for the appellant also placed reliance upon the judgment passed by this Court in ***Amrik Singh vs. State of Punjab, 2005(4) RCR (Criminal) 310.*** I have also gone through this judgment and the same having distinguished facts will not apply in the present case as in that case, independent witness was not examined and shadow witness and complainant were related to each other.

Learned counsel for the appellant cited judgment passed by this Court in ***Gurcharan Singh vs. State of Haryana, 1993(3)***

RCR (Criminal) 450. This cited judgment will not apply in the present case as in the case in hand, the Executive Magistrate was joined in whose presence the money has been recovered.

Therefore, all the above-cited judgments having distinguished facts will not apply in the present case.

From the perusal of the evidence on record, I find that motive for demand of bribe, acceptance and recovery of bribe has been duly proved. The accused's posting as Quality Controller has also been proved. The sanction granted by the competent authority has been duly proved. The investigation conducted by the Investigating Officer along the official witnesses, has fully supported and corroborated the prosecution version. Therefore, the judgment of conviction dated 09.03.2005 passed by learned Special Judge, Jhajjar is upheld.

Learned counsel for the appellant, in the alternative, has also prayed for reduction of the sentence.

Keeping in view the facts and circumstances of the present case, the fact that the appellant is facing long criminal proceedings since the year 2000 i.e. for the last about 15 years and keeping in view the age of the appellant, the sentence imposed upon the appellant is reduced to rigorous imprisonment for a period of 1½ years from 3½ years under Section 7 of the Prevention of Corruption Act, 1988. However, the sentence of fine and default sentence shall remain the same.

With the above-said modification in the sentence, the

present appeal stands dismissed.

Since, appellant Pirthi Singh is on bail, his bail bonds stand annulled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

February 25, 2015
Vgulati

(INDERJIT SINGH)
JUDGE