

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-907-SB of 2009

Date of Decision: *September 4, 2015*

Balwinder Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

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PRESENT: - Mr. Karamjit Singh Chahal, Advocate, for the
 appellant.

 Mr. Inqlab Singh, Assistant Advocate General,
 Punjab.

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Jaspal Singh, J

1. The instant appeal has been preferred by

Balwinder Singh against judgment of conviction and order of

sentence dated March 25, 2009 passed by the Sessions Judge,

Sangrur, in case FIR No.33 of June 5, 2006 under Sections 7,

13(2) of Prevention of Corruption Act, 1988 (for short, 'Act')

registered at Police Station, Vigilance Bureau, Patiala, whereby he has been convicted and sentenced under Section 7 of the Act to undergo RI for a period of one year and fine to the tune of ₹ 2,000/- and in default of payment of fine, to further undergo RI for three months. The appellant has been further sentenced under Section 13(2) of the Act to undergo RI for a period of two years and fine to the tune of ₹ 5,000/- and in default of payment of fine, to further undergo RI for four months. Both the sentences have been ordered to run concurrently.

2. Briefly stated, the facts of the case are that complainant – Dalbara Singh, in order to get the credit limit of ₹ 1 lac sanctioned in respect of land owned by him jointly with his three brothers, met the Branch Manager, State Bank of Patiala, Katron. Branch Manager demanded a copy of jamabandi of land, for which purpose, he met Patwari – Balwinder Singh (appellant) but he put off him under excuse that he was busy. On June 2, 2006, when complainant again met Patwari Balwinder Singh in his office for getting copy of jamabandi, he raised a demand of ₹ 1,500/- as bribe for issuing copy of jamabandi. However, the matter was settled for ₹ 1,000/- and asked the complainant to come on June 5, 2006. On June 5, 2006, complainant Dalbara Singh accompanied by

his friend Balwant Singh son of Hazura Singh approached DSP Roop Singh, Vigilance Bureau, Sangrur to report the matter regarding demand of ₹ 1,000/- as illegal gratification. As advised by DSP, he handed over the two currency notes worth ₹ 500/- to him for taking action against Patwari Balwinder Singh and DSP recorded statement of complainant (Ex.PA). After making an endorsement Ex.PA/1, he sent the same to Police Station, Vigilance Bureau, Patiala, on the basis of which, formal FIR Ex.PA/2 was registered. Thereafter, DSP associated two official witnesses namely Rakesh Kumar, SDO, Panchayati Raj, Sangrur and Ambu Ram, Junior Assistant, and introduced them with the complainant. DSP noted down the numbers of two currency notes of the denomination of ₹ 500/- each and after having applied Phenolphthalein, entrusted the same to complainant Dalbara Singh with a direction to deliver the same to Patwari Balwinder Singh on his demand, in respect of which, memo Ex.PB was prepared. Thereafter, DSP demonstrated to the persons present there with regard to the procedure to be adopted with the help of a glass tumbler filled with water, mixed sodium carbonate and then dipped a piece of paper into the same after having applied Phenolphthalein, the colour of

water became Pinkish, in respect of which, memo Ex.PC was prepared.

3. Thereafter, raiding party, headed by DSP Roop Singh, consisting of complainant Dalbara Singh, Balwant Singh, SDO Rakesh Kumar, Ambu Rai, Junior Assistant and other officials left for raid in two vehicles; one was official and other was private. DSP had directed Balwant Singh to act as shadow witness and asked him to accompany the complainant to the office of Patwari Balwinder Singh; to hear their conversation and give a signal by coming out of his office by raising his right hand on acceptance of bribe by Patwari Balwinder Singh. On reaching near the office of Patwari, DSP directed the complainant and shadow witness to enter Patwari's office while the other members of raiding party remained present outside in scattered position having concealed their presence. After 15-20 minutes, Balwant Singh came out of office of Patwari and gave the signal, upon which, raiding party entered the office of Patwari. DSP found one Sikh gentleman sitting in the chair talking with Dalbara Singh. DSP introduced himself as well as other members of the raiding to him whereupon, he told that he was Balwinder Singh Patwari (Revenue), Halqa Tibba. DSP arranged a tumbler of glass filled with water and mixed sodium

carbonate into the same, in which, he got the fingers of Patwari Balwinder Singh dipped, whereby colour of water became light Pink. The pink coloured water was transferred into a nip Ex.P3 and the same was taken into possession vide memo Ex.PD after having sealed the same with seal bearing letters 'RS'. On asking of DSP, Balwinder Singh took out two currency notes of ₹ 500/- each from his right back side pocket of trouser, the serial numbers of which were got compared by the DSP from official witnesses namely Rakesh Kumar and Ambu Ram. The currency notes Ex.P4 and Ex.P5 were taken into possession vide memo Ex.PE by the Investigating Officer/DSP.

4. Thereafter, DSP again prepared the mixture of water and sodium carbonate in a glass tumbler and after having made an arrangement of trouser, Balwinder Singh was asked to put off his trouser. Its backside right pocket was got washed with the aforesaid solution and the color of water became light Pink. The coloured water was transferred into a nip and sealed with his seal bearing letters 'RS'. He also prepared a parcel of trouser and sealed it with seal bearing letters 'RS'. Both, nip Ex.P7 and parcel of trouser Ex.P6 were taken into possession by the DSP vide memo Ex.PF. Copy of jamabandi for the year 2000-2001 prepared by Balwinder Singh on June 5, 2006 in

respect of land situated in the area of village Tibba was also taken into possession vide memo Ex.PJ. One receipt book No.7260 produced by the DSP was also taken into possession. Accused also disclosed that no separate receipt was issued to complainant Dalbara Singh, rather, it was issued at No.44 in the name of Inderjit Singh son of Ram Sharan, resident of village Tibba. The receipt book was taken into possession vide memo Ex.PH. The Investigating Officer prepared rough site plan Ex.PS. Accused was arrested after having disclosed him grounds of arrest vide memo Ex.PT. Sanction Ex.PR was obtained from District Collector, Sangrur for prosecution of accused. On completion of investigation, challan was presented in Court having competent jurisdiction.

5. Copies of documents as under Section 207 Cr.P.C. were supplied to the accused, free of costs. Finding a prima facie case, accused was charged under Sections 7 and 13(2) of the Act, to which, he pleaded not guilty and claimed trial.

6. Prosecution examined PW-1 Narinder Pal Singh, Field Kanungo, Circle Sherpur; PW-2 Dalbara Singh (complainant); PW-3 Balwant Singh (shadow witness); PW-4 Ambu Ram, Junior Assistant, Office of XEN, Panchayati Raj,

Sangrur; PW-5 Ramesh Kumar, Junior Assistant, Office of Deputy Commissioner, Sangrur; PW-6 HC Gurbhej Singh, Police Station, Vigilance Bureau, Patiala; PW-7 C – Harpal Singh, Vigilance Bureau, Sangrur; PW-8 HC Jeet Singh, Vigilance Bureau, Patiala; PW-9 HC Bharpur Singh, Vigilance Bureau, Barnala; PW-10 Balbir Singh, Office Kanungo, Barnala; PW-11 DSP Roop Singh (Investigating Officer) and closed its evidence after tendering into evidence Ex.PU, report of Forensic Science Laboratory, Punjab. Incriminating circumstances were put to accused in his statement under Section 313 Cr.P.C. Accused pleaded innocence and complained of false implication. Accused examined DW-1 Jangir Singh and DW-2 Major Singh in his defence.

7. After hearing counsel for the parties, accused was convicted and sentenced, as detailed above, vide the impugned judgment and order.

8. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that same are absolutely against the evidence available on file and settled canons of law. Mis-appropriation of evidence as well as legal proposition applicable to the facts of the case has resulted into miscarriage

of justice. Infact, prosecution has miserably failed to establish the ingredients which constitute an offence under Section 7 & 13(2) of the Act. In the case in hand, neither demand of alleged amount of illegal gratification nor acceptance thereof, is proved, especially in the circumstances that the shadow witness did not support the case of prosecution as he has been declared hostile. The evidence of complainant is that of an accomplice and does not find any corroboration from independent witness(s). As such, much reliance cannot be placed upon his testimony.

9. Learned counsel for the appellant has next argued that there was also no occasion for raising any demand of illegal gratification as the copy of jamabandi already stood prepared and handed over to Inderjit Singh, a friend of complainant – Dalbara Singh as is evident from receipt Ex.P-2. Even otherwise, such a lengthy copy of jamabandi cannot be prepared immediately and supplied within a short span of time. The presence of Inderjit Singh is an admitted fact and it is so reflected in the statement of complainant. As per the version of complainant, copy of jamabandi was required for obtaining Cash Credit Limit from the bank but to the utter surprise, even after expiry of a period of two years, no such bank facility was obtained by the complainant.

10. Next submission made by learned counsel for the appellant is that mere recovery of alleged tainted currency notes to the tune of ₹ 1,000/- and positive result of Phenolphthalein is not sufficient to establish the guilt of appellant. Similarly, presumption provided under Section 20 of the Act cannot be attracted, especially, when the prosecution has miserably failed to establish the demand and acceptance of the amount in question. Apart from these infirmities and illegalities, case of the prosecution suffers from material infirmities and contradictions in the statements of witnesses which belies the entire case of prosecution and shows that all the documents and memos etc. were prepared by DSP while sitting in his office and no proceeding(s) was carried out at the spot.

11. While concluding his arguments, it has been submitted by learned counsel for the appellant that all the factors referred to above coupled with each other shatter the basic version of the prosecution and make the case of prosecution highly doubtful and suspicious. Thus, in these circumstances, the conviction and sentence imposed by the trial court are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal. Consequently, the appellant – accused deserves acquittal.

12. On the other hand, learned State counsel has contended that in the present case, prosecution was able to prove that complainant – Dalbara Singh and Balwant Singh had given two currency notes of ₹ 500/- each to DSP Roop Singh, Vigilance Bureau, Sangrur, which were returned to Dalbara Singh by DSP after applying Phenolphthalein powder, which was subsequently recovered from the possession of appellant – accused. The recovery of currency notes from the possession of accused is one of the glaring circumstance that the amount was demanded and accepted by the appellant. In such a situation, presumption under Section 20 of the Act can also be drawn without any hesitation. Learned trial court has rightly come to the conclusion that demand of money as alleged by prosecution at two stages is proved: firstly at the initial stage when complainant approached the accused for obtaining the copy of jamabandi; and secondly, when the amount was handed over by the complainant to appellant – accused which was subsequently recovered from latter. The mere fact that the shadow witness has turned hostile, the testimony of complainant – Dalbara Singh coupled with testimony of official witnesses as well as that of DSP cannot be brushed aside.

13. While parting with his arguments, it has been submitted by learned State counsel that even if the shadow witness turned hostile and independent witness was not examined, the fact of recovery of tainted money is proved by the official witnesses and also by complainant and in the absence of any reason of false implication, the conviction can be upheld. Instant appeal being devoid of merits is liable to be dismissed.

14. After bestowing due consideration to the rival submissions made by learned counsel for the parties, scanning the impugned judgment as well as the evidence and appreciating the law applicable to the facts and circumstances of the case in hand, this Court is of the considered view that the arguments put-forth by learned counsel for the appellant carry legal weight.

15. To constitute an offence under Section 7 of the Act, it is obligatory upon the prosecution to prove that there was first demand, second demand, voluntary acceptance of the illegal gratification and recovery thereof. In order to prove the demand of an amount as an illegal gratification, there is only the bald statement of complainant – Dalbara Singh, as the alleged shadow witness did not support the case of prosecution and was declared hostile. When he was cross examined by learned

Special Public Prosecutor, no material favourable to the prosecution could be elicited from him. Thus, testimony of PW-2, Dalbara Singh does not find corroboration with regard to the fact that accused had demanded money for providing certified copies of jamabandis or that the same were supplied by the accused after accepting bribe money.

16. In case of Sat Pal Singh (died) through L.Rs Vs. State of Punjab, 2004(1) RCR (Criminal) 830 (P & H), the accused was working as Patwari and had allegedly raised a demand of ₹ 200/- from the complainant for supplying copies of jamabandi. A trap was laid and ₹ 200/- were recovered from him. One of the PWs was given up as won over whereas shadow witness stated that no demand was raised in his presence. This Court was pleased to hold that the essential ingredients of Section 13(2) of the Act were missing. Similarly, in Meena (Smt.) wife of Balwant Hemke Vs. State of Maharashtra, 2002(2) RCR (Criminal) 661, it was held by the Supreme Court that mere recovery of currency notes and the positive result of Phenolphthalein test is not enough to establish the guilt of appellant on the basis of perfunctory nature of materials and prevaricating type of evidence. In R.V. Subha Rao Vs. State represented by Inspector of Police, Anti Corruption Bureau,

Kakinada Range, 2005(4) RCR (Criminal) 716 (A.P.), there was no witness to the demand of bribe except the complainant. It was held that in case of bribery, mere recovery of amount from the accused is not sufficient for conviction when the substantive evidence is not reliable. Similar observation was made in Pritam Singh vs. State of Haryana, 1992(3) RCR (Criminal) 139 (P & H), and it was observed that since there was no evidence of shadow witness to establish that accused had made a demand, the complainant was held not trustworthy. Same view was expressed in Prem Kumar Vs. State of Punjab, 1976 CLR 366 and Jagjit Singh Vs. State of Punjab, 1980 CLR 93 by holding that no implicit reliance can be placed on the testimony of trap-witnesses in the absence of independent corroboration because the trap-witnesses are interested and partisan witnesses and on that account, they spring from tainted source. Need for seeking independent corroboration of the testimony of the complainant and that of shadow witness was also emphasized. In Dalip Singh Vs. State of Punjab, 1988(1) RCR 122, Hon'ble Apex Court observed that it was repeatedly laid down that the giver of bribe is normally to be treated as accomplice and before recording the conviction of delinquent official, independent corroboration of the evidence of accomplice i.e. complainant and the shadow

witness is normally sought for, if not as a matter of law, then atleast as a matter of prudence.

17. Adverting to the fact of present case, Balwant Singh, shadow witness, did not support the case of prosecution who has been declared hostile. So, it can be safely concluded that there was no independent witness to prove the first demand as well as the second demand, alleged to have been raised by the appellant.

18. It would also be important to note that in the present case, there was no occasion for the appellant – accused to have raised demand of illegal gratification for supplying copy of jamabandi to complainant – Dalbara Singh (PW-2). The copy was supplied to Inderjit Singh as is evident from the records available and this fact is also evident from the testimony of DW-1 and DW-2. Such a lengthy copy of jamabandi cannot be prepared immediately within a short span of time. Moreover, presence of Inderjit Singh is an admitted fact and it is also so reflected in the statement of complainant. As per the version of complainant, copy of jamabandi was required for obtaining Cash Credit Limit from the bank but even after a period of two years, no such bank facility was obtained by the complainant. Moreover, a joint receipt Ex.P2 was already lying prepared in

the name of Inderjit Singh who had also obtained copy of jamabandi in respect of his land as well as in respect of copy of jamabandi prepared for supplying the same to complainant – Dalbara Singh. This is one of the glaring circumstances which belies the version of complainant and falsifies the case of prosecution that demand of illegal gratification was made by the appellant.

19. As far as the contention of learned State counsel that tainted currency notes were recovered from possession of the appellant or that test of Phenolphthalein powder on hand-wash as well as pocket-wash of the trouser were found to be positive, is concerned, same carries no legal weight, especially in the circumstances that demand and acceptance of amount is not established. Similarly, in such a situation, presumption provided under Section 20 of the Act also cannot be made applicable.

20. It is pretty settled that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence for the demand and acceptance. In Suraj Mal v. State (Delhi Admn.), [1979 (4) SCC 725], Hon'ble Supreme Court took the view that 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. A three-Judge Bench in M. Narsinga Rao v. State of A.P., [2001 (1) SCC 691], while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification, prosecution has a further duty to prove that what was paid amounted to gratification.

21. Now coming to the facts of the present case, statement of complainant – Dalbara Singh (PW-2) does not find corroboration from any independent source on the record as Balwant Singh, shadow witness, did not lean in favour of prosecution and remaining prosecution witnesses are official witnesses. There is no categoric or trustworthy evidence of first demand as well as that of second demand and acceptance thereof. So, in such circumstances, positive result of Phenolphthalein test and recovery of tainted notes deserve no ground to hold prosecution to be successful in bringing home the guilt of accused.

22. Not only this, case of the prosecution suffers from material infirmities and irregularities. From the statements of the witnesses examined by prosecution, it is proved that no memo or any other document was prepared at the spot, rather, appellant – accused was intercepted in his office and was brought to the Police Station, Vigilance Bureau, Sangrur where all the formalities were completed and signatures of witnesses were obtained. Otherwise also, witnesses were called in his office by DSP – Roop Singh (PW-11) on the next day for the reasons best known to him. PW-4, Ambu Ram, Junior Assistant, Office of XEN, Panchayati Raj, Sangrur, has deposed that DSP tallied the currency notes recovered from the possession of accused whereas DSP while appearing in witness box has stated that he got compared the currency notes from the official witnesses. Similarly, as per the version of DSP, raid was conducted at about 4.15 PM and raiding party left the spot at 7.45 PM, whereas, official witnesses and complainant Dalbara Singh (PW-2) have stated that they returned to the office at 6.30 PM. Similarly, all the witnesses are also discrepant and contradictory with regard to conducting of raid. There are material contradictions which lead to the conclusion that nothing has happened in the manner as has been unfolded by

DSP – Roop Singh (PW-11). Infact, all the writing work appears to have been done while sitting in the premises of police station.

23. In the light of what has been discussed above, this Court is of the considered view that prosecution has failed to establish the ingredients which constitute an offence under Sections 7 and 13(2) of the Act. As such, conviction and sentence imposed by the trial court are not sustainable in the eyes of law and are liable to be set aside. Accordingly, judgment of conviction and order of sentence dated March 25, 2009 are set aside by way of acceptance of the instant appeal. Consequently, the appellant – accused is acquitted of the charge.

September 4, 2015
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(Jaspal Singh)
Judge