

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-730-SB of 2005

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Date of decision:2.9.2015

Parmal Singh

...Appellant

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Atul Lakhanpal, Senior Advocate with Mr. R.S. Chahal,
Advocate for the appellant.

Mr. B.S. Bhullar, Assistant Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellant-Parmal Singh challenging the judgment of conviction and order of sentence dated 31.3.2005 passed by learned Judge, Special Court, Jalandhar, whereby he has been held guilty and convicted for the offence under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for one and a half years and to pay a fine of ₹2,000/- and in default of payment of fine to further undergo rigorous imprisonment for one and a half months for the offence under Section 7 of the Act.

The brief facts of the prosecution case are that on 6.8.2001, complainant-Pawan Kumar went to the Vigilance Bureau, Hoshiarpur along with Vijay Kumar and suffered a statement before Saroop Singh, DSP, Vigilance Bureau, Hoshiarpur that he is a contractor. In February, 2001, he submitted a tender with MARKFED Canneries, Jalandhar for supply of wooden crates and he received the order on 19.4.2001. Till May, 2001, he supplied 2636 crates to the said concern. For the supply of said crates, he had received ₹3,71,151/- as part payment thereof. He prepared the bill for payment of ₹1,09,880/- with respect to supply of crates and went to Parmal Singh, Senior Manager, MARKFED Cannery, Jalandhar on 2.8.2001 with the said bill and submitted the same for payment to him. The accused told him that he had supplied wooden crates to their department and had received payment of ₹5 Lacs and that he would make his cheque only if the complainant gives bribe of ₹30,000/-, which was later on settled at ₹20,000/- from him as illegal gratification, which the complainant did not want to pay. After making a false promise with the accused and that he did not want to get the work done by paying illegal gratification, the complainant came to the DSP. Then the complainant produced forty currency notes of the denomination of ₹500/- each before the DSP, total being ₹20,000/-. The DSP applied phenolphthalein powder on the said currency notes. Demonstration of this phenolphthalein powder was also given. Then Kulbir Singh, ADO and Jaswinder Singh, Clerk, office of CAO, Hoshiarpur were also joined and the raiding party proceeded to Jalandhar. Pawan Kumar-complainant along with Vijay Kumar shadow

witness went to the accused. After the accused received the bribe, signal was given to the raiding party and the accused was apprehended. His hands were got put into the water which became pink and solution was put into the nip and the nip was sealed. The accused opened the lock of the drawer of his table and handed over forty currency notes of the denomination of ₹500/- each to the Police. The number of the currency notes were tallied with the earlier prepared memo and the same tallied. Memo of recovery of currency notes was prepared. The accused was arrested. The statements of the witnesses were recorded. After necessary investigation, the challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charge for the offence under Section 7 read with Section 13(2) of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Pawan Kumar-complainant, PW-2 Balbir Singh, Vijay Kumar PW-3, Bhupinder Singh PW-4, Varinder Kumar PW-5, Kulbir Singh PW-6, Joginder Singh PW-7, Satnam Singh PW-8 and Harnek Singh PW-9.

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. The accused also stated that neither he demanded nor accepted any illegal gratification. The complainant had falsely implicated him by planting money in the almirah lying in the visitors'

room and that too without his knowledge during lunch time. Pawan Kumar and his brother Ram Bilas were holding a labour contract in the MARKFED Rice Mill at Nawanshahr for the year 1992-93, where he was then posted as In-charge. Since they did not comply with the terms and conditions of labour contract, therefore, their labour contract was made to operate according to the rules as a result of which they complained against him that they had suffered losses in that contract. He also stated that in the year 1997-98, the complainant had obtained a contract with MARKFED Canneries, where he was posted as Senior Manager and he had terminated that contract and security deposited by the complainant was forfeited.

In defence, the accused examined DW-1 Tarlochan Singh Kohli, DW-2 Onkar Nath Sharma, DW-3 Ashok Kumar Munjal and DW-4 Sohan Singh.

After going through the evidence on record, the learned Judge, Special Court, Jalandhar, vide impugned judgment and order, convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved against this judgment and order, the present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that the appellant has been falsely implicated in the present case. The prosecution has failed to prove its case beyond a reasonable doubt. There is motive for the complainant against the appellant/accused as his contract had already been cancelled by the appellant. Learned counsel for the appellant further argued that the recovery in this case is doubtful. As per

report under Section 173 Cr.P.C., the accused got recovered bribe money from the drawer of his table. In the recovery memo, it is written that the amount has been recovered from the almirah lying in the visitors' room. One PW has stated that it was recovered from the almirah and the other PW has stated that it was recovered from the almirah in the visitors' room whereas the other PW has deposed that the almirah was lying in the retiring room. He argued that in the site plan prepared by the Investigating Officer, the almirah was shown near the table in the same office from where the recovery has been effected. He argued that these are material contradictions in the prosecution version and further the complainant might have placed these currency notes in the almirah of visitors' room without the knowledge of the appellant/accused. He further argued that the Investigating Officer has not been examined in the present case as he had already died.

On the other hand, learned Assistant Advocate General, Punjab argued that the case of the prosecution has been duly proved by the complainant, shadow witness and recovery witness. The demand and acceptance of the bribe and recovery of the bribe from the appellant has also been duly proved. PWs are consistent on material points. The prosecution has duly proved its case by leading cogent evidence. He argued that there is no merit in the appeal and it should be dismissed.

After hearing learned counsel for the parties and going through the record, I find merit in the arguments of the learned counsel for the appellant. Firstly, in the report under Section 173 Cr.P.C. it is written that the bribe money was recovered from the drawer of table of the accused. In

the site plan produced on the record, which is Ex.PJ, whereas in the recovery memo Ex.PD it is written that accused-Parmal Singh, General Manager after bringing the keys from the drawer of his table got recovered 14 currency notes of 500 denomination each from the almirah lying in the adjoining room which means that as per the recovery memo these currency notes were recovered from the almirah which was lying in the visitors' room and that was adjoining room. Ex.PJ is the site plan. A perusal of this site plan shows that no visitors' room or retiring room has been shown in the site plan. The almirah at Point-'D' has been shown in the same room where the appellant was having his chair and table and this almirah is shown near to the office table of the appellant. Therefore, there is material contradiction in the report under Section 173 Cr.P.C. where it is stated that the amount was recovered from the drawer of the table of the accused and in the recovery memo where it is stated that recovery was effected from the almirah lying in the visitors' room, whereas no visitors' room has been shown and the almirah was lying near the office table of the appellant. The Investigating Officer only could explain this material discrepancy creating a reasonable doubt in the prosecution version, but the Investigating Officer was not examined as he is stated to have already died. The prosecution is to prove its case by leading cogent evidence. PW-1 Pawan Kumar in his statement has stated that at the time of raid, he handed over the currency notes to him. The appellant counted the currency notes and after being satisfied, he put the same in the almirah. In the meanwhile, PW-Vijay Kumar gave a signal to the Police party. No where in the examination-in-chief it has been stated

as to where the almirah was lying. Whether the accused went to the adjoining room i.e. visitors' room to place the currency notes in the almirah and if it is so whether the complainant as well as the shadow witness went behind him to see that he had kept the currency notes in the almirah. Nothing is in the examination-in-chief. In the examination-in-chief, the complainant further stated that when the DSP inquired from the accused as to where he kept the currency notes he replied in negative that he does not have any money. The complainant further stated that he (complainant) then told the DSP that the money was lying in the almirah. This statement further supports the defence version that it is possible that the accused had kept the currency notes in the almirah in the adjoining room i.e. visitors' room. The complainant in the cross-examination admitted that he was working as a Labour Contractor in the MARKFED. The complainant stated that he was not holding any labour contract in the Rice Mill in Nawanshahr and he never worked for the Rice Mill at Nawanshahr. The complainant also stated in cross-examination that he submitted the bills only on 6.8.2001, but in the examination-in-chief he stated otherwise and it was also the case of the complainant that he submitted the bills on 2.8.2001 as per FIR.

Further, I find that in cross-examination, PW-1 Pawan Kumar stated that there is a room in front of the office of the accused where the people sit, who intend to meet him. He had not seen any almirah in that room. The almirah as found mentioned in Ex.PD was not lying in the room situated in the front side of the office of the accused. He also stated that he

remained sitting during that period at the place situated in front of the office of the accused. He also stated that no keys were taken into Police possession in his presence. Some people were sitting in the room where he sat prior to the raid. PW-3 Vijay Kumar also stated that the accused placed the tainted currency notes in the almirah. The DSP obtained keys from the accused and opened the almirah, from where tainted currency notes numbering 40 of the denomination of ₹500/- were recovered. The DSP conducted search of the accused after apprehending him. The DSP asked Pawan Kumar where the tainted notes were, when the same were not found from the person of accused. Pawan Kumar told that the accused had kept the money in the almirah. He stated that almirah was kept in the same office. PW-6 Kulbir Singh, District Training Officer in the cross-examination stated that DSP did not inquire from Pawan Kumar when the currency notes were not found from the person of the accused. He stated that the almirah was lying in the retiring room adjoining the office of the accused. He admitted that in the memo Ex.PD it is mentioned that the almirah was lying in the visitors' rooms.

Keeping in view the above facts, I find that there are material discrepancies and contradictions in the statements of the PWs as to where the almirah was lying from which recovery was effected. Whether it was lying in the office of the accused, whether it was lying in the visitors' room or whether it was lying in the retiring room of the accused? As already discussed, neither retiring room nor visitors' room has been shown in the site plan and the almirah was shown in the office of the accused near the

office table, whereas in the recovery memo, it was written that the currency notes were recovered from the almirah lying in the adjoining visitors' room. As already discussed, the Investigating Officer has not been examined in the present case. These facts create a reasonable doubt in the prosecution version.

Keeping in view the fact that a reasonable doubt exists in the prosecution version, hence benefit of doubt is to be given to the appellant. Therefore, by giving benefit of doubt to the appellant, he is acquitted of the charges framed against him.

In view of above discussion, I find merit in the appeal and the same is allowed. The impugned judgment of conviction and order of sentence recorded by the learned trial Court are set aside and the appellant is acquitted of the charges of which he was convicted. Since, the appellant is on bail, his bail and surety bonds stand discharged.

September 2, 2015.

(Inderjit Singh)
Judge

hsp