

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-698-SB of 2006 (O&M)
Date of decision: 19.09.2015

Roop Singh Patwari

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. A.P.S Deol, Senior Advocate with
Mr. A.S. Brar, Advocate
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and the order of sentence ordered by learned Special Judge, Moga, vide judgment of conviction and order of sentence dated 01.04.2006. The appellant was convicted under Sections 7 and 13 (2) of the Prevention of Corruption Act 1988 (for short 'the Act') and sentenced to undergo rigorous imprisonment for four years with fine of Rs.5000/-, in default of payment of fine, to further undergo rigorous

imprisonment for six months under Section 7 of the Act. He was further sentenced to undergo rigorous imprisonment for four years with fine of Rs.5000/-; in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 13(2) of the Act.

The case of the prosecution, as set out from the judgment of the Trial Court, is as under:-

“On 28.09.2001, Ajay Kumar son of Krishan Lal, resident of Mohalla Sodhian, Old Moga got recorded his statement before Ramandeep Singh, DSP Vigilance Bureau, Moga. As per his statement, he is resident of Mohalla Sodhian, Old Moga. Gurjant Singh son of Teja Singh resident of Mohali was friend of his father. He had got a plot measuring 85 marlas in front of Focal Point, G.T. Road, Moga. He was desiring to sell such plot. He had given special power of attorney dated 14.09.2001 in his name for obtaining copy of jamabandi of such plot and for getting correction made in revenue record before sale of such plot. He had obtained copy of jamabandi on 24.09.2001 from Roop Singh Halqa Patwari. Copy of jamabandi it was found that in such copy of jamabandi for the year 1997-98 against Khewat No. 1189 khatauni No. 1426 after mentioning the name of proprietor in second line name of father of proprietor was mentioned as Tota

Singh instead of Teja Singh. It was necessary to get such mistake corrected. Such entry might have caused problem at the time of sale of plot and also in sanction of mutation. For correction of such name he had approached Roop Singh Patwari of Halqa several times but he was putting off on one pretext or another. On 27.09.2001, he again approached the same Patwari in his office and requested him for making correction of name. He replied that such work was not done empty handed. He demanded Rs. 3000/- as bribe. Thereto he said that the demanded money is excessive. After making entreaties settlement was arrived at Rs. 2000/-. He told him that such money was not in his possession at that time. Then he said that he should come at any time on 28.09.2001 in his office and to pay Rs. 2000/-. He further told that after making correction of name in jamabandi register he would supply copy of jamabandi. He was not willing to pay bribe. He made false promise with patwari and came back to his house. On 28.09.2001, in the morning he met with Vijay Kumar son of Bhagwan Dass, resident of Sardar Nagar Moga. He was already knowing him. He had narrated whole episode of demand of bribe by patwari. He suggested him that such a corrupt employee should be got trapped by vigilance Department. By taking him along, he came to office of Vigilance Bureau, Moga. He had presented

Rs. 2000/- before DSP and desired that action be taken against patwari. Statement of complainant Ajay Kumar was accordingly recorded. He had presented four currency notes each of denomination value of Rs. 500/-. Phenolphthalein powder was applied to such currency notes. DSP had ensured that no other currency note was possessed by Ajay Kumar. Then tainted currency notes were returned back to Ajay Kumar in the presence of Vijay Kumar. Delivery memo was prepared in this regard. Numbers of currency notes were recorded in such delivery memo. Vijay Kumar was assigned the task as shadow witness. He was instructed that he would go to office of Roop Singh Patwari accompanying with complainant Ajay Kumar and when patwari had demanded and accepted bribe he should come out and would move his right hand on his head as a signal to the remaining members of raiding party stood behind. Demonstration of reaction of solution of Sodium carbonate with phenolphthalein was given to witnesses. Such solution was thrown away. Ramesh Chander Arora ETO Moga and Amanual Masih Clerk were joined as Govt., witnesses. They were introduced with complainant and shadow witnesses. After preparing ruqa, it was sent through C. Resham Singh to PS Vigilance Bureau, Ferozepur and FIR was got lodged. Raiding party headed by Ramandeep Singh, DSP including complainant, shadow

witness and Govt., witnesses left office of vigilance Bureau, Moga on official jeep. Jeep was stopped near office of Roop Singh patwari. Complainant and shadow witness were made to leave them. Remaining members of raiding party stood scattered near office of accused Roop Singh. On signal was given by shadow witness raid was conducted on accused at his office as Sodhian Wala Mohalla, Old Moga Mehla Singh and he was apprehended red handed while accepted Rs. 2000/- as bribe from complainant Ajay Kumar. Solution of Sodium Carbonate was prepared in water in a glass tumbler. Ramesh Chander ETO Moga was made to wash his hands in such solution. Then Emanuel Masih washed his hands in such solution. Solution did not change its colour. Then Roop Singh Patwari accused was made to wash his both hands in solution. Then colour of solution turned pinkish. Such solution was collected in a clean nip and it was sealed by DSP with his seal of description RS. It was taken into possession vide a recovery memo which was witnessed by witnesses. In the presence of witnesses search of accused was made. From left front pocket of his shirt tainted currency notes were compared with already noted down numbers of currency notes. Numbers of recovered currency notes were found agreeing with already noted down numbers of currency notes. Such currency

notes were taken into possession vide separate recovery memo. Accused was made to put off his shirt. Another portion of solution of sodium carbonate was prepared. Front pocket of shirt of accused was washed in such solution with the help of Ramesh Chander Arora, ETO and Emanuel Masih Clerk. Colour of solution turned pinkish. Such solution was collected in a clean nip and it was sealed by DSP with seal of description RS. Parcel of shirt of accused was prepared and it was also sealed by DSP with his name seal. Separate sample seal was prepared. Seal after used was entrusted to Ramesh Chander ETO. Parcel of such nip and parcel of shirt were taken into possession vide recovery memo. Copy of jamabandi and record were taken into possession vide recovery memo. Personal search of accused was conducted and in this regard further personal search memo was prepared. Office of accused was searched and in this regard search memo was prepared. Rough site plan of place of incident was prepared. Statements of prosecution witnesses were recorded. Accused was taken into custody. He was produced before Court. Later on he was released on bail. After completion of investigation, Ramandeep Singh DSP had prepared challan on 25.10.2001 for sending the accused to be put to trial. Later on, on request of accused, S.P., Vigilance, Ludhiana had conducted an enquiry and gave report

dated 07.01.2002. On the basis of such report, cancellation report was prepared and it was presented before Special Judge, Moga. He had disagreed with cancellation report vide order dated 15.01.2003. Sanction for prosecution of accused was obtained. Then challan under Section 173 Cr.P.C., was prepared. After completion of investigation, ultimately challan under Section 173 Cr.P.C., was presented before Court and accused was sent for trial.”

On presentation of challan, the trial Court finding a prima facie evidence against accused-appellant, framed charges for the offences punishable under Sections 7 and 13(2) of the Act. The accused pleaded 'not guilty' and claimed trial.

In support of its case, the prosecution examined the following witnesses:-

PW-1, Jaswant Singh, was an attesting witness of power of attorney given by Gurjant Singh in favour of the complainant;

PW-2, Sukhdev Singh Saddar Kanungo, had proved service record of the accused and also sanction Ex.PD for his prosecution;

PW-3, Ajay Kumar, complainant, testified the entire story of the prosecution.

PW-4, Constable Jasvir Singh, tendered into evidence his affidavit Ex.PN;

PW-5, Vijay Kumar, shadow witness, had also corroborated the sequence of investigation and toed the lines as stated by PW-3, Ajay Kumar, the complainant;

PW-6, Ramesh Chander, ETO, a Govt., witness had also corroborated the sequence of investigation that how and in what manner, the accused was caught while taking bribe from the complainant;

PW-7, MHC Harinder Singh, tendered into evidence his sworn affidavit Ex.PN;

PW-8, Ramandeep Singh DSP, the Investigation Officer, Investigating Officer, corroborated the sequence of investigation being carried out by him. .

PW-9, Gurjant Singh, deposed to the effect that he had given special power of attorney in favour of Ajay Kumar;

PW-10, Constable Resham Singh, tendered into evidence his duly sworn affidavit Ex. PU;

PW-11, Constable Dilbagh Singh, had also tendered into evidence his sworn affidavit Ex. PV;

PW-12 Constable Jasvir Singh, tendered into evidence his duly sworn affidavit Ex. PW.

The statement of the accused under Section

313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, the accused examined DW-1, Jaspal Singh, Patwari Halqa Moga Mehla Singh-II.

After hearing the Public Prosecutor for the State, the counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant by holding that “from the statements of all these witnesses supported by documentary evidence and other items led in prosecution evidence, the prosecution case is fully substantiated for both the offences under Sections 7 and 13(2) of the Act, beyond reasonable doubt.”

Feeling aggrieved, against the judgment of conviction and sentence ordered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 20.04.2006.

The learned counsel for the appellant has contended that the learned trial Court has grossly erred on the facts as well as in law while convicting and sentencing the appellant/accused. The version of the complainant is not corroborated by the testimony of the shadow witness PW-5, Vijay Kumar, who had specifically deposed that he was made to stand at the outer gate by the complainant and he did not hear the conversation between the accused and the complainant.

Therefore, the learned counsel has contended that in the absence of any positive statement of the shadow witness, Vijay Kumar regarding the alleged demand of bribe by the appellant or hearing the conversation between the duo, his evidence, does not render corroboration to the evidence of the complainant. In the absence of any corroboration of the alleged demand of money on the record, the appellant cannot be convicted under the above said sections, which is contrary to the ingredients of the offences. Further, PW-5, Vijay Kumar was working at the photostat shop of Ajay Kumar, complainant for the last 10/12 years, thus, he being an employee of the complainant cannot be treated to be an independent witness.

The learned counsel for the appellant/accused has further argued that there is no cogent evidence on record to connect the appellant with the charges framed against him. The complainant Ajay Kumar used to work as a property dealer and had been visiting the Patwar Khana for analyzing the record. The appellant did not permit him to inspect the revenue records without permission. The learned counsel has referred to Annexure P-6, whereby recovery of an amount of Rs. 81,375/- on account of deficiency in stamp duty under Section 47-A

of Stamp Act from Ajay Kumar and others was made, and it is asserted that the complainant was annoyed with the appellant on account of his pressurizing him to deposit the said amount of deficiency in his official capacity.

The learned counsel for the appellant has referred to Annexure P-9, and has submitted that after conducting a detailed enquiry by the Superintendent of Police, Vigilance Bureau, Ludhiana Range, the cancellation report was recommended to be filed in the instant case and the Addl. Director General, Vigilance had already recommended that disciplinary action may be initiated against Ramandeep Singh, DSP for falsely implicating the present appellant. During the enquiry, all the witnesses as cited in the report under Section 173 Cr.P.C., were examined and finding no truth in the allegations levelled by the complainant, the cancellation report had been filed. Therefore, the learned counsel has contended that the trial Court has not taken into consideration this aspect of the matter.

The next contention of learned counsel for the appellant is that when the corroboration is not proved on record, the testimony of other official witnesses cannot be assumed to be reliable. The learned counsel has referred to the testimony of PW-8, Ramandeep

Singh, wherein he has specifically stated that Vijay Kumar was assigned the task of shadow witness and he was instructed to hear the conversation between the accused and the complainant, however, as per the testimony of PW-5, Vijay Kumar, he was made to stand at the outer gate by the complainant and he did not hear the conversation between the accused and the complainant. There are material discrepancies in the statements of the prosecution witnesses. The learned counsel has further argued that a raiding officer was neither the witness of the demand nor that of the acceptance. Merely handing the money or counting the currency notes is not a proof of acceptance of bribe by the accused. Thus the appellant is entitled to be acquitted for the offences charged.

The learned counsel for the appellant has referred to Annexure P-3 to state that the overwriting in copy of jamabandi for the year 1997-98 was not done by the appellant, rather it was done by his predecessor. The appellant had taken the charge as Patwari of Mehal Singh-I on 29.06.2001. On 24.07.2001, the appellant had issued copy of jamabandi to Ajay Kumar, by way of entry in rojnamcha at serial No.1177 and then again issued copy of jamabandi on 24.09.2001 to one Vimal

Kumar. Thus, there was no reason left for the appellant to ask for any gratification for issuing a fresh copy of jamabandi.

The learned counsel has further referred to the testimony of DW-1, Jaspal Singh, revenue patwari, Moga Mehla Singh-II, who has categorically stated that on 28-9-2001 at about 2/2.30, Ajay Kumar, the property dealer had come to him and had said that he had come to discharge an obligation as he had obtained copy of jamabandi 4/5 days before from the appellant to which, the appellant said that he had simply performed his official duty and there was no obligation on the complainant. However, the complainant forcibly put the money into the pocket of the accused, Roop Singh and the appellant held the hand of Ajay Kumar and the money fell down on his table and subsequently, he was arrested by the vigilance officials. Therefore, the learned counsel has contended that the trial Court has not taken into consideration the evidence of DW-1, Patwari Jaspal Singh, who is also a public servant.

Lastly, the learned counsel has contended that there is no credible evidence against the appellant, rather the facts on record go to establish the false implication of the accused in the instant case on

account of honest official, who did not oblige the complainant Ajay Kumar, who is a property dealer.

On the other hand, the learned State counsel contended that the case of the prosecution has been duly proved beyond reasonable doubt. The complainant PW-3, Ajay Kumar has supported the prosecution version. His statement is duly supported and corroborated by other witnesses of the present case. The accused was caught red handed while taking bribe from the complainant in his official capacity. Therefore, the learned State counsel prays for the dismissal of the present appeal.

I have heard learned counsel for the parties and with their able assistance, have gone through the evidence on record minutely and carefully.

The main allegations against the appellant is that while he was posted as patwari in halqa Mehla Singh Moga-I, he had made a demand of Rs. 3000/- as bribe for carrying out correction in the revenue record from the complainant. In the instant case, earlier the cancellation report had been filed on the recommendation of Superintendent of Police (Vigilance), who after conducting a detailed enquiry had reached to the conclusion that the name of proprietor had been

correctly recorded as Gurjant Singh son of Teja Singh son of Ishar Singh and thus, there would be no reason for demanding bribe on that account.

As per record, the appellant being in the official capacity of patwari of Mehla Singh, Moga-I on 29-6-2001 had issued a copy of jamabandi to the complainant, Ajay Kumar on 24-7-2001 by way of entry in Rojnamcha at Serial No. 1177 and then again a copy of jamabandi was issued on 24-9-2001 to Vimal Kumar pertaining to land of Gurjant Singh son of Teja Singh son of Ishar Singh and Veerpal Kaur wife of Gurjant Singh son of Teja Singh owners of Khewat No. 1189, khatoni no. 1426 as well as Khewat No. 2824 khatoni No. 3594 as per record. The appellant had already issued the copy of jamabandi, therefore, there was no reason left for the appellant to ask for any illegal gratification or bribe for issuing a fresh copy of jamabandi after making correction in the revenue record with regard to father's name of Gurjant Singh. In fact, as per record, the correction had been carried out by the predecessor of the appellant which is duly established from both the registers i.e. Parat Patwar and Parat Sarkar, where, the father's name of Gurjant Singh is reflected in both 'Parat Patwar' and 'Parat Sarkar' as

evident from the original copy of jamabandi for the year 1997-98 pertaining to both khewat no. 1189 as well as 2824. Similarly, correction is also reflected in the copy of register of jamabandi for the year 1997-98 (Ex.P8), wherein in khewat No. 1189, the correction with regard to name of Gurjant Singh's father as Teja Singh had already been made prior to joining Roop Singh as Patwari Halqa Mehal Singh Moga-I.

Furthermore, it has been proved on record that PW-3, Ajay Kumar, the star witness was aggrieved against the appellant for pressing him to deposit a sum of Rs. 81,375/- as deficiency towards stamp fees with regard to sale deed No. 5723 dated 15-10-1993. Roop Singh Patwari was executing the notices issued in reference proceeding to Ajay Kumar-complainant as well as his cousin brother Vinay Kumar by way of notice no. 351 dated 07.08.2001 as well as notice No. 361 dated 19.9.2001 as per his official duty. Thus, the complainant, Ajay Kumar had a definite motive to falsely implicate Roop Singh Patwari in a trap case on a false pretext.

In **A. Subair vs. State of Kerala**, (2009)6 SCC 587, the Hon'ble Apex Court while dwelling on the purport of the statutory prescription of Sections 7 and

13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction. The relevant para of the judgment is reproduced as under:-

“Mere recovery of currency notes (Rs. 20/- and Rs.5/-) denomination, in the facts of the present case, by itself cannot be held to be proper or sufficient proof of the demand and acceptance of bribe. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. It is true that the judgments of the courts below are rendered concurrently but having considered the matter thoughtfully, we find that the High Court as well as the Special Judge committed manifest errors on account of unwarranted inferences. The evidence on record in this case is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt.”

Further, Hon'ble Apex Court in **State of Kerala and another vs. C.P. Rao**, (2011) 6 SCC 450, reiterating its earlier dictum, vis-à-vis the same offences,

held that mere recovery by itself, would not prove the charge against the accused and in the absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

There is no corroboration on record to the allegation of demand made on 27.9.2001 by the appellant from Ajay Kumar, the complainant. There is no independent witness to corroborate this demand as alleged by complainant for making necessary correction in the revenue record. PW-5, Vijay Kumar, who is introduced as a shadow witness is an employee of Ajay Kumar working at the photostat shop of Ajay Kumar for the last 10/12 years. Thus, the testimony of Vijay Kumar proved to be incredible and untrustworthy. Even the said Vijay Kumar while appearing in court has not supported the prosecution case with regard to the demand and acceptance of bribe by the appellant. Rather he has stated that he did not hear the conversation between the accused Roop Singh Patwari and Ajay Kumar since he was made to stand at the outer gate by Ajay Kumar and did not go inside the patwarkhana. Further more, Vijay Kumar has admitted that when he gave signal to the police party, two

persons of the police party were quite near him and caught hold of the accused from his arms before arrival of DSP. This witness has also admitted that Vinay Kumar is the cousin of the complainant. He has further admitted that he had appeared before SP Vigilance, Ludhiana and his statement was recorded during enquiry proceedings. He has further stated that he visited the office of Vigilance Bureau on 27-9-2001 along with Ajay Kumar-complainant and met DSP in his office. Ajay Kumar had narrated the entire matter to the DSP one day prior to the raid. All these facts are not only contrary to the statement made by Ajay Kumar but also falsify the allegations regarding demand and acceptance of bribe money on 28-9-2001 and also prior to the incident. Moreover, Vijay Kumar was not accompanying the complainant at the time of alleged demand made by Roop Singh Patwari, the appellant.

Otherwise also, Ajay Kumar, the complainant has failed to produce any copy of jamabandi in which father's name of Gurjant Singh was recorded as 'Tota Singh' instead of 'Teja Singh'. No such copy of jamabandi was prepared on the date of raid i.e. 28-9-2001 for which Patwari would have asked for bribe money from the complainant. In the absence of any copy

of jamabandi showing correct name of Gurjant Singh's father, there was no need to seek any correction in revenue record from Patwari.

As per Rule 7.60 Punjab Land Records Manual (CHAPTER 7) copies of jamabandi are prepared in duplicate and first copy is filed in District Collector's Office called as 'Parat Sarkar' and second copy is retained by Patwari called as 'Parat Patwar'. Roop Singh Patwari was not competent to make any correction in the revenue record as per *Punjab Land Records Manual Rule 7.29*. The correction in the revenue record could only be done by the Collector by preparing 'Fard Badar' for which the procedure is laid down and Field Kanungo's report is sought to be obtained before any correction of clerical mistake is to be made in the entries of jamabandi. The copy of 'Parat Sarkar' goes to show that necessary correction was already made in the entries of Khewat No. 1189 khatoni no.1426 at the time of redrafting of jamabandi record in the year 1997-98 in both '*Parat Patwar and Parat Sarkar*' much prior to the joining of Roop Singh as Halqa Patwari of Mehla Singh Moga-I. No fact finding departmental enquiry had been conducted before registration of the present FIR as to who had made this correction or as to whether it was an

unauthorized correction.

There is no corroboration to the prosecution story even from the official witnesses namely Ramesh Chander Arora, PW-6 who was joined in the raiding party. He had deposed that DSP was ahead of them, when they entered the patwarkhana. First of all DSP caught hands of the accused when he entered into the office of accused followed by him who saw money lying on the table. This admission by official witnesses completely demolishes the case of the complainant with regard to the hand wash as well as demand and acceptance of bribe from the complainant.

Moreover, PW-8, the Investigating Officer DSP Ramandeep Singh has been established to be a tainted officer. ADGP-cum-Chief Vigilance Officer Punjab had found enquiry report dated 07.1.2002 prepared by SP Vigilance, Ludhiana to be reliable in which cancellation report was recommended in this case and the ADGP-cum-Chief Director, Vigilance recommended that Ramandeep Singh, DSP, Moga be proceeded by taking disciplinary action for falsely implicating Roop Singh Patwari in this case.

For the reasons recorded above, it is held that the prosecution has failed to prove its case against the

accused/appellant beyond a reasonable shadow of doubt. The benefit of doubt is extended to the appellant.

Accordingly, the present appeal is accepted, the judgment of conviction and order of sentence dated 01.04.2006, passed upon the accused/appellant Roop Singh Patwari, are set aside. He stands acquitted of the charges leveled against him by giving him the benefit of doubt. The appellant is on bail. His bail bond stands discharged.

Original Lower Court record be sent back. The original revenue registers be returned to the District Revenue Officer/Collector, Moga as these are public documents, after preserving on LCR the photostat copies of exhibited pages from the jamabandi register, by the Incharge, Judicial Record Room, Moga. The appeal stands allowed.

19.09.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No