

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

Crl. Appeal No.S-958-SB of 2005

Date of Decision: 21.01.2015

Jaspal Singh

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. K.S. Boparai, Advocate
for the appellant.

Mr. Premjit S. Ghumman, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 11.05.2005 passed by the Judge, Special Court, Patiala, whereby, the appellant has been convicted for offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (here-in-after referred to as 'the PC Act') and has been sentenced to undergo rigorous imprisonment for a period of one year with a fine of ₹ 2500/- with default clause.

Briefly, the facts as per prosecution version are that FIR No.1059 dated 14.11.2001 under Sections 7/13(2) of the PC Act at Police Station Vigilance Bureau, Patiala was registered on the basis of

complaint made by Jaswinder Singh, wherein, it was stated that there was litigation pending between him and his brother regarding the partition of their house. A suit was also pending in this regard before the Civil Court. The accused-appellant contacted the complainant and assured that he will get his dispute settled and for that he demanded a sum of ₹ 10,000/- from him. The complainant paid a sum of ₹ 7,000/- in presence of his wife and assured to pay the remaining amount of ₹ 3,000/- on completion of job. It was also mentioned in the complaint that the accused-appellant neither got the dispute settled nor returned the amount. The complainant, when demanded his money back, the accused threatened to get him implicated in some false case. The accused also threatened to get the son of the complainant kidnapped and killed. A complaint was also made to DIG, Patiala Range, Patiala in this regard. On the basis of complaint made by complainant-Jaswinder Singh, the accused was arrested after lodging a formal FIR.

On completion of investigation, the challan was presented against the accused and thereafter, charge was framed for offences under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act, to which, he pleaded not guilty and claimed trial.

The prosecution examined as many as seven witnesses i.e PW1- ASI Jagdish Chand, PW2- Constable Rattan Singh, PW3- Jaswinder Singh, PW4- Kuldip Kaur, PW5-Bhupinderjit Singh Virk, PW6-Sandeep Kumar Sharma and PW7-ASI Sukhdev Singh.

On completion of prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded, wherein, he denied the allegations and pleaded his innocence.

On appraisal of evidence led from both the sides, the accused-appellant was convicted by the trial Court and sentenced accordingly vide

its judgment dated 11.05.2005, which is subject matter of challenge in the present appeal.

The judgment of the trial Court has been challenged mainly on the grounds that neither the demand nor acceptance of the alleged amount has been proved on record. The accused-appellant was only a Constable in the Department and he was having no authority for getting the work done in any manner. The only allegation against the accused-appellant was that he was having good relation with higher officers, which appears to be a concocted version and is not worth believing. Learned counsel also submits that the statements of the complainant-Jaswinder Singh and his wife-PW4-Kuldip Kaur are untrustworthy in absence of corroboration by any independent witness. The demand of money at the time of occurrence has not been proved and the appellant has been convicted without proper appreciation of evidence. He also submits that the civil suit was also pending between them and there was no occasion to demand money when the litigation was pending. Even the work, to be done, was not specified in the complaint. Moreover, the complainant, being educated person, was having no reason to believe that work would be done by the accused-appellant. Learned counsel further submits that earlier also, a complaint was made to the police and thereafter, no such complaint was made to any higher authority.

Learned counsel for the appellant has also relied upon the judgment of Hon'ble the Apex Court in case **State of Punjab vs Sohan Singh 2009(3) RCR (Criminal) 971**, judgments of this Court in cases **Pawan Kumar vs State of Punjab 2004(2) RCR (Criminal) 272** and **Gurmeet Singh vs State of Punjab 2010(1) RCR (Criminal) 324**, in support of his contentions.

Learned counsel for the respondent-State submits that the

judgment of trial Court is well reasoned and is based on proper appreciation of evidence. It is not necessary that the work was to be of the same Department as the complainant was an official of a police department and by giving this impression that he could get the work done, the amount of bribe was given. There was no motive to falsely implicate him.

Heard the arguments of learned counsel for the parties and have also perused the evidence on record as well as other documents of the trial Court.

As per statement of the complainant-PW3-Jaswinder Singh, an amount of ₹ 10,000/- was settled to be paid to the accused for getting his dispute settled with his brother. A sum of ₹ 7,000/- was paid and the remaining amount of ₹ 3,000/- was promised to be paid on completion of work. The said amount was stated to be paid in presence of wife of the complainant, who is also a witness in the present case. In cross-examination, he has admitted that when he has handed over the demanded amount of ₹ 7,000/-, none from the locality was called for. Even he did not remember the denomination of currency notes given to the accused. It has also been admitted that he suffered a statement before the police that his application be treated as not pressed. It has also been admitted that the statement was made before the police when the amount was returned to him.

Similarly, as per statement of Kuldip Kaur-PW4, wife of Jaswinder Singh, in whose presence, the amount was alleged to have been paid by the complainant, an amount of ₹ 7,000/- was paid to the accused but the work for which the alleged bribe was given was not completed. Even the money was not returned. She has also admitted in her statement that she cannot tell the denomination of currency notes paid to the accused. She has stated that the amount paid to the accused was

borrowed by her from her mother.

PW-6-Sandeep Kumar Sharma, the Investigating Officer has stated that on 05.01.2002, complainant-Jaswinder Singh filed an affidavit stating therein that the accused has returned the bribe money. In cross-examination, it has been stated that the statement of Jaswinder Singh was recorded on 18.12.2001 but his signatures were not obtained.

On perusal of the statements of prosecution witnesses, neither it has been proved on record that any demand was made by the accused nor the fact that how he was in a position to get the dispute of the complainant settled as the dispute was between the complainant and his brother, who was residing in the neighbourhood of the accused. The accused-appellant was working as a police constable and has been alleged to have demanded an amount of ₹ 10,000/- by misusing his official position and has assured to help the complainant. There was no reason to demand money as he was not an instrument in solving the dispute between the parties as a civil litigation was also pending. How an assurance was given by the accused for helping the complainant when the case was pending before the Civil Court has not been proved. There is no independent corroboration of the statement of the complainant except the statement of Kuldip Kaur, who is wife of the complainant. Even the statement of mother-in-law of the complainant has not been recorded as she was not cited as a witness, whereas, the money was stated to be taken from her for making payment to the accused-appellant.

It cannot be believed that the money was to be paid to the accused for solving the dispute between the complainant and his brother as the accused-appellant was not having any authority as no case was pending before the police and litigation was pending before the Civil Court.

The complainant himself has admitted that he made a statement before the

police for withdrawal of the complaint as money was returned to him. An affidavit was given by the complainant-Exhibit PW6/F, wherein, the complainant has deposed that his money was returned by the accused and now he did not want to proceed further with the complaint. Although that document was the part of file but no inquiry, whatsoever, was conducted regarding that document.

On perusal of statement of the complainant as well as his wife, it appears that neither the demand nor acceptance of money at the time of alleged occurrence has been proved. It has not been proved from the statement of prosecution witnesses as to how the accused has misused his official status being a police constable when no complaint was pending before the police. Accused-appellant has specifically stated in his statement recorded under Section 313 Cr.P.C that he had a dispute with Sub Inspector Sikander Singh and there was a reason to falsely implicate him. In absence of corroboration by any independent witness and not citing witness, from whom, the amount was received, creates doubt in the prosecution version. No date and time has been mentioned as to when the alleged amount was paid and when it was demanded. The prosecution has to prove its case beyond reasonable doubt but it has failed to do so as it has not been proved on record as to when the amount of bribe was demanded and when it was paid. Even it has not been proved as to how the accused-appellant was instrument in solving the dispute between the complainant and his brother.

In **Anand Parkash Vs. State of Haryana** 2008 (2) RCR (Criminal) 335, tainted money was recovered from the almirah and not from the personal search of the accused. The prosecution version was not corroborated by independent witness. It was held that neither the demand, nor acceptance of currency notes Ex. P1 to P-26 by accused from Sube

Singh complainant is established.

In **Ganapathi Sanya Naik Vs. State of Karnataka**, 2007 (4) Recent Criminal Reports (Criminal) 184, the prosecution case was that the accused had demanded money from the complainant for effecting entry of mutation in the revenue record. A trap was laid. The currency notes were recovered from table of the accused beneath office files. The defence version that no demand was made and currency notes had been surreptitiously put on the table, while the appellant was otherwise engaged in some activity was held plausible by the Apex Court. To my mind, the factual situation in the case at hand is somewhat identical with **Anand Parkash's case** (*supra*).

Hon'ble the Apex Court in **V. Venkata Subbarao Vs. State represented by Inspector of Police**, A.P. (2007) 3 SCC (Criminal) 175 has held that in absence of proof of demand, the question of raising the presumption would not arise as Section 20 of the Act provides for raising of a presumption only if a demand is proved.

In **M.S. Narayana Menon alias Mani v. State of Kerala and Another**, 2006(3) R.C.R.(Criminal) 504 : (2006) 6 SCC 39 : AIR 2006 SC 3366, Hon'ble the Apex Court has held as under:

"Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding."

In **Union of India v. Purnandu Biswas**, (2005) 12 SCC 576, it was opined:

" In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of

the Act."

In view of the facts and law position as discussed above, it is apparent that the judgment of the trial Court is not based on proper appreciation of evidence as it has not been proved on record that there was a demand of bribe or any acceptance of the same. The allegations against the accused-appellant have not been proved, not only for want of corroboration by any independent witness but the motive for giving any bribe has also not been proved. The benefit of doubt goes in favour of accused-appellant.

Accordingly, this petition deserves to be allowed and as such, the judgment of conviction and order of sentence dated 11.05.2005 passed by the Judge, Special Court, Patiala is set aside and the accused-appellant is acquitted of the charge framed against him by the trial Court. The bail bonds stands discharged.

21.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE