

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1090-SB of 2014 (O&M)

Date of Decision: 27.7.2015.

Satpal Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Ms. G.K. Mann, Advocate for the appellant.

Mr. P.S. Grewal, DAG, Punjab for the respondent.

NAVITA SINGH, J.

1. This appeal is filed against the judgment of conviction and order of sentence dated 25.2.2014 handed down by Special Judge, Gurdaspur against the appellant in FIR No.11 dated 14.6.2011 registered under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 (Act for short) in Police Station Vigilance Bureau, Amritsar.

2. The case against the appellant was that on 14.6.2011, complainant Harjit Singh went to the police and made a statement on 8.6.2011 that he had gone to the complainant to get mutation entered in the revenue record regarding a mortgage deed, which was in favour of the complainant but the appellant, who was Patwari, demanded Rs.3000/- as illegal gratification. The matter was settled at Rs.2000/- as the appellant was not ready to make the entry unless his palm was greased. He called the complainant in the office on 14.6.2011.

3. The complainant informed his father Dalbir Singh about the entire affair, who advised him to approach the Vigilance Department. Both the father and son accordingly went to the concerned officials and

requested for taking legal action against the appellant. At that time, Dr. Kuldeep Singh, Agriculture Officer and Veer Singh, Senior Assistant of that office were present on duty.

4. Four currency notes of the denominations of Rs.500/- each were given to the complainant after smearing those with phenolphthalein powder and noting down the numbers by way of a memo. After completing the formalities and nominating father of the complainant as a shadow witness, raid was conducted. The complainant had handed over the money to the appellant and on signal received from the shadow witness, the appellant was apprehended. The currency notes were recovered from the pocket of his shirt. The pocket of the shirt was dipped in sodium carbonate solution and it turned pink. Copy of the mortgage deed, which had been handed over to the appellant at the time of making the deal, was also recovered.

5. The appellant was tried for the offences punishable under Sections 7 and 13 (2) of the Act and on completion of trial, he was convicted and sentenced.

6. Counsel for the appellant argued that the demand by the appellant and acceptance by the complainant was not proved because both the complainant and the shadow witness were declared hostile. She referred to the statement of the complainant, who said that he had gone to the office of Patwari at Kalanaur, where he met one person, who told him that the entry would be made regarding the mortgage if he paid Rs.3000/- to the Patwari and the matter was settled for Rs.2000/-, which money was handed over to that person, who was working in that office. She contended that the witness was declared hostile as he did not implicate the appellant in any manner and even on cross examination by the Prosecutor he replied in

a negative to all the questions put to him. Similar was the situation with shadow witness Dalbir Singh (PW3). Reliance was also placed by the counsel on the judgment reported as Banarsi Dass Vs. State of Haryana 2010 (2) RCR (Criminal) 553 where the Supreme Court had held that the complainant and the other witness having been declared hostile, the accused was entitled to acquittal.

7. It may be mentioned here that every case has its own peculiar facts. In the reported case, the complainant had stated that she had an apprehension that the appellant wanted illegal gratification. Here the case is different because the complainant categorically stated that the demand was made by somebody in the office of the Patwari but then said that Satpal, Patwari i.e. the present appellant had not met him and had not demanded the money. It is clear from the statement of Harjit Singh and his father Dalbir Singh that they deposed in a manner which was clearly indicative of the fact that they wanted to save the appellant from conviction. The complainant did not name the person, who was present in the office of the Patwari and who had struck the deal with him. It is not understandable as to why that person, who was allegedly an employee of that office, would demand the money if he had himself had no power to enter the mutation and also would make the demand on behalf of the complainant. In the office of Patwari at Kalanaur, the presence of the appellant was expected. The complainant talked about demand and a deal being made and then cleverly tilted towards the appellant stating that he was not the person who was made the demand.

8. The appellant wants that the story of the complainant should be believed but the fate of the case would remain the same even if that story is actually believed. It is deposition of the complainant himself that the person, who had struck the deal, had told that an amount of Rs.3000/- would have

to be paid by the complainant to the Patwari i.e. the appellant, if he (complainant) wanted the mutation to be entered in his name. The main role was, therefore, still of the appellant as the person present in the office as per the complainant said that the money was to be given to the Patwari. Ultimately, in whatever manner the deal was made, the money was to be received by the appellant himself. It may, however, be mentioned here, though at the cost of repetition, that the complainant changed his stand for helping out the appellant and that would be another factor going against the latter because it must have been he, who approached the complainant and his father, to convince them for not deposing against him.

9. Shadow witness Dalbir Singh is the father of the complainant and it is quite understandable that both of them decided to help the appellant and turned hostile. Had the shadow witness not been so closely related to the complainant, he might have supported the prosecution version. In the FIR, the complainant mentioned that he was advised by his father to approach the Vigilance Department and, therefore, there is every possibility that his father later on advised him not to depose against the complainant as he (Dalbir Singh) himself did.

10. Counsel for the appellant could not point out any material contradictions in the statements of Kuldeep Singh, Pardeep Malik and Veer Singh, PW4, PW5 and PW10 respectively. Minor contradictions can safely be ignored. Rather it is seen that no effective cross examination was conducted on these witnesses. Much stress was laid on the point that since the shirt which the appellant was wearing at the relevant time had been taken in possession of the police, where was another shirt arranged from, for the appellant to wear. The witnesses replied that they did not remember. Even otherwise this is a point which pales into insignificance in view of the

cogent evidence and the prosecution evidence cannot be discarded merely because the witnesses did not know from where any shirt was brought and given to the appellant to wear.

11. The evidence on record would show that all the proceedings were meticulously conducted. The complainant was searched before handing over the currency notes to him, which were sprinkled with phenolphthalein. Also it came in the statement of Veer Singh that the person of Kuldeep Singh, who searched the appellant, had been searched before that. Nothing at all was set up in defence by the appellant as to why and how he had been falsely implicated. No particular defence was even otherwise set up by him either in the cross examination of the witnesses or in his statement under Section 313 Cr.P.C. He did not lead any evidence whatsoever. It remained unexplained as to what was the reason for which the police would have acted and got into the entire rigmarole. Both the complainant and his father admitted their signatures on the documents prepared in relation to the search and apprehension of the appellant but, with an intention to help the appellant, cooked up a story that some other person in the office of appellant had made the demand.

12. It is amply clear reasons given above that the appeal must fail and is accordingly dismissed.

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Note:-

This order be conveyed immediately to Chief Judicial Magistrate, Gurdaspur, for issuing warrant of arrest of the appellant and to commit him to jail for serving the sentence.

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