

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-373-SB of 2010

DATE OF DECISION: NOVEMBER 4, 2015

RAKESH KUMAR

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. ANIL KSHETARPAL, SR.ADVOCATE
WITH MR. MANINDER SINGH, ADVOCATE
FOR THE APPELLANT.

MR. GAURAV JINDAL, ADDL.A.G., HARYANA.

M. JEYAPPAUL, J.

1. Appellant Rakesh Kumar has challenged the judgment of conviction and sentence recorded by the trial Court for the offence under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act').

2. It is the case of the prosecution that on 5.2.2008, the accused visited the house of the complainant in connection with the mobile phone provided to him by the company when he was serving and on the asking of the policeman he visited the police lines office where accused Rakesh Kumar met him and informed the complainant that the mobile phone was in his possession a stolen property and that he had received a complaint with respect thereto. He demanded a sum of ₹1000/- as bribe and assured the complainant that he would exonerate him from the criminal case. PW2

expressed his inability to pay the bribe of ₹1000/-. Accused agreed to take a sum of ₹500/-. A complaint was lodged with State Vigilance Bureau, Ambala as he had chosen not to give bribe to Constable Rakesh Kumar. PW2 Yudhvair Singh who was the complainant, PW3 Parkash Chand who was the shadow witness deputed to accompany PW2, have completely turned hostile to the case of the prosecution. The trial Court chose to record conviction drawing presumption under Section 20(1) of the Prevention of Corruption Act, 1988.

3. Learned senior counsel appearing for the appellant vehemently submitted that in the light of the ratio laid down by the Hon'ble Supreme Court, a presumption that an employee had received bribe can be drawn under Section 20(1) of the Act only when the demand and acceptance have been established by the prosecution.

4. Learned counsel for the State argued that the complaint lodged by PW2 gave a graphic account of demand of bribe made by the accused. Immediately after accepting the bribe, the recovery had been effected in the presence of PW6 Ishwar Chand, Tehsildar, Kalka. Inasmuch, as the acceptance has been established, the trial Court has rightly invoked the presumption under Section 20(1) of the Act and convicted the accused.

5. The fact remains that the evidence of PW2 who was the complainant in this case does not unambiguously establish either the demand made or the acceptance of bribe by the accused. He failed to identify the accused as the Police Constable who demanded bribe and accepted the same from him. PW3, the shadow witness, has also failed to

support the prosecution case.

6. It is true that the prosecution established through the evidence of PW6, the official witness Ishwar Chand who was serving as Tehsildar, Kalka that recovery of the tainted currency notes were recovered from the possession of the accused. The question that arises for consideration is whether a presumption under Section 20(1) of the Act can be drawn by the Court in the above special facts and circumstances of the case to record conviction as against the accused.

7. On a careful reading of Section 20(1) of the Act, I find that the presumption could be drawn only when an accused accepted or agreed to accept or attempted to obtain for himself or any other person any gratification or any valuable thing.

8. It is a well settled proposition of law that mere acceptance of tainted money or recovery of tainted money does not *ipso facto* establish the charges under Section 7 of 13(1)(d) of the Act. The prosecution is bound to establish that there had been a demand which preceded acceptance of gratification, as otherwise the above charges do not stand legal scrutiny.

9. In **B.Jayaraj Vs. State of Andhra Pradesh, (2014) 13 SCC 55**, it has been held by the Hon'ble Supreme Court as follows:-

“8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that

the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.”

10. The above ratio has been verbatim followed in the later decision in **P.Satyanarayana Murthy vs. The Dist. Inspector of Police and Another, Criminal Appeal No.31 of 2009 decided on 14.9.2015** which

reads as follows:-

“20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.”

11. It has been categorically held in the above decisions that there shall be a proof for demand and acceptance of gratification to draw presumption that the accused had accepted bribe as per Section 20(1) of the Act.

12. In the instant case, though there is proof to show that tainted money was recovered from the possession of the accused, there is virtually no evidence that the accused did demand and accepted gratification to do official favour.

13. In view of the above, I am of the considered view, that the trial Court has misconstrued the application of Section 20(1) of the Act and draw presumption of acceptance of bribe by the accused when there was no evidence to draw such presumption. Therefore, the accused is entitled to acquittal on the above ground.

14. Learned senior counsel for the appellant drew the attention of the Court to the complaint lodged by PW2 and submitted that material corrections had been made therein. It is his further submission that the place where the illegal gratification was accepted has been contradictorily projected by the prosecution.

15. PW8, who investigated the case, admitted that there had been such over-writing found in the complaint. But he categorically deposed that he had not made such alteration. In other words, it is found that such alteration had been introduced only by complainant before the complaint was filed. In the site plan, it was mentioned that the bribe was handed over to the accused outside the office of the accused. But the prosecution has

projected through evidence that the gratification was received by the accused in the office. I do not find that there is any material contradiction as regards the place where money was recovered from the accused.

16. I find that the prosecution miserably failed to establish the charges under Section 7 and 13(1)(d) read with Section 13(2) of the Act framed as against the accused. The trial Court has erred in drawing presumption under Section 20(1) of the Act to convict the accused for the aforesaid charges. Therefore, the accused is not found guilty of the charges and is acquitted of the same. Consequently, the judgement of conviction and sentence passed by the trial Court is set aside and the appeal is allowed.

17. The appellant is on bail. His bail bond stands discharged.

November 4, 2015
Gulati

(M. JEYAPPAUL)
JUDGE