

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

**CRA S-70-SB of 2010.
Decided on : 14.10.2015.**

Sukhwant Singh and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Depender Singh, Advocate,
for the appellants.

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN, J.

This appeal has been filed against the judgment of conviction and the order of sentence dated 15.12.2009, passed by the Additional Sessions Judge (I), Special Judge, Jalandhar vide which the appellants were convicted and sentenced as under:-

Sukhwant Singh

Offence	Sentence	Fine	In default
u/s 7 of PC Act	RI for one year	Rs.2500/-	RI for 3 months
u/s 13(2) of PC Act	RI for one year	Rs.2500/-	RI for 3 months

Arun Kumar

Offence	Sentence	Fine	In default
u/s 9 of PC Act	RI for one year	Rs.2500/-	RI for 3 months

Both the substantive sentences of accused Sukhwant Singh were ordered to run concurrently.

Brief facts of the case of prosecution as noticed in the judgment passed by the Special Judge are as under:-

“Version of the prosecution, as set forth in the final report submitted under Section 173 Cr.P.C and documents appended therewith is that Sukhwinder Singh, a labourer, had purchased a plot measuring 1 Marla 3 Sarsai in the name of his wife Mohinder Kaur from Joginder Kaur on 1.5.2001. Mutation on the basis of that sale deed could not be got entered by November, 2006. In the morning of 29.11.2006 Sukhwinder Singh went to the office of Sukhwant Singh (Revenue Halqa Patwari), Basti Bawa Khel, Jalandhar along with photostat copy of sale deed to ask for mutation to be told by Sukhwant Singh that complainant would have to pay him Rs.1500/- as illegal gratification. Upon complainant pleading with accused that he was a poor man with an injured leg and was not in a position to pay that much of money and ultimately Sukhwant Singh agreed to do the job on being paid Rs.1200/-. The accused asked the complainant to leave photostat copy of sale deed with him and come in the afternoon with Rs.1200/-.

Making a false promise with the accused of returning to him, Sukhwinder Singh instead went to Vigilance Bureau, met DSP Gurdev Singh and narrated entire matter to him. DSP Gurdev Singh recorded statement of Sukhwinder Singh and endorsed it to Police Station Vigilance Bureau, where it led to registration of instant FIR. DSP Gurdev Singh requisitioned services of Inderjit Singh, Assistant Labourer Commissioner and Santokh Ram, a Clerk, in the office of District Treasury Officer, Jalandhar and arranged a trap and both of accused Sukhwant Singh and Arun Kumar were apprehended red handed. Upon completion of ensuing investigations challan was presented against the accused”

The provisions of Section 207 Cr.P.C were complied with and the accused were supplied the copies of challan and other documents, free of cost.

Charges under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 (for short “the PC Act”) were framed against accused Sukhwant Singh whereas, charge under Section 9 of the PC Act was framed against accused Arun Kumar.

In order to prove its case, the prosecution examined

PW-1 Sukhwinder Singh, complainant of the case, PW-2 Inderjit

Singh, Bill Clerk in the office of Sub-Registrar/Tehsildar, Jalandhar, PW-3, Paramjit Singh, Clerk in the office of Sub-Registrar, Jalandhar-II, who identified the signatures of Rajinder Singh, Sub Registrar, Jalandhar on the sale deed dated 27.4.2001, PW-4 Constable Satnam Singh, PW-5 Inderjit Singh, PW-6 Parmod Kumar, Bill Clerk, in the office of Deputy Commissioner, Jalandhar, PW-7 MHC Varinder Kumar, PW-8 Gurdev Singh, DSP, Investigating Officer of this case, PW-9 Gurdeep Singh and closed the prosecution evidence.

Statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In their defence evidence, the accused examined DW-1 Ashwani Kumar, DW-2 Pritam Singh, DW-3 Sukhdev Singh and closed the evidence.

After appraisal of the evidence, the learned trial Court, vide the impugned judgment and the order, convicted and sentenced the accused-appellants as narrated above.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed which was admitted on 12.01.2010.

On behalf of the appellants, it is contended that there is no proof of recovery of the amount from the appellant Sukhwant Singh. PW-9 Gurdeep Singh is the only witness to state about the

recovery made from the co-accused Arun Kumar and not from the

appellant Sukhwant Singh. PW-1, the complainant, Sukhwinder Singh and PW-9 Gurdeep Singh, the shadow witnesses did not support the case of the prosecution to the extent of acceptance of bribe money by the accused. The acceptance of amount was to be proved by the complainant as well as the shadow witnesses. The mere signing of recovery memo by the accused is not sufficient to fasten him with criminal liability.

Learned counsel for the appellants further refers to the statement of DW-1 Ashwani Kumar, Revenue, Patwari, Halqa to demonstrate that the mutation of land had already been sanctioned on 24.11.2006. He further submits that once the work had already been executed, there was no occasion for the accused to demand illegal gratification from the complainant on 29.11.2006. It is next submitted that there is contradiction in the statement of PW-4, Constable, Satnam Singh and PW-8, Varinder Kumar. As per PW-4, Constable Satnam Singh, three sealed nips were handed over to him on 6.12.2006 whereas as per PW-8, Varinder Kumar, the same were entrusted to Satnam Singh on 28.12.2006. He further contends that there is no evidence on record qua conspiracy between both the accused. Even no charge in respect of offence of conspiracy had been framed against the accused. In support of the contentions, he cites (i) Mehar Chand vs. State of Haryana (P&H) 2004(4) RCR (Criminal) 655; (ii) Suryabhan Shrawan Sawitul vs. State of Maharashtra (Bombay) 1996(3) RCR

(Criminal) 35; (iii) State of Punjab vs. Madan Mohal Lal Verma

2013(3) RCR (Criminal) 972 (SC); (iv) Ganga Kumar Srivastava vs. The State of Bihar 2005(3) RCR (Criminal) 707 (SC).

On the other hand, the learned State counsel submits that the accused have been rightly convicted and sentenced by the trial Court. There is no infirmity or illegality in the judgment passed by the Court below. There was no enmity between the accused and the prosecution witnesses. So, there was no question of implicating the accused in a false case. The prosecution has been able to prove its case to the hilt.

I have heard the counsels for the parties and perused the record.

The Hon'ble Supreme Court in **Sat Paul vs. Delhi Administration, AIR 1976 SC 294** held that when a witness is allowed to be cross-examined by the party calling him it does not follow that his testimony is altogether false, and cannot be relied upon by either of the parties for any purpose. Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge in fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony.

Taking note of the observations made by the Hon'ble

Supreme Court, the legislature vide Amendment Act 2 of 2006 inserted

sub section (2) in Section 154 of the Indian Evidence Act, 1872. The inserted sub section reads as “Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.” Thus, this Court is unable to accept the submission of the learned counsel for the appellants that once PW-1 and PW-9 have been declared hostile, their testimony cannot be relied upon. Let the testimony of both the witnesses be scrutinized closely. PW-1 has admitted that when he visited the office of accused Sukhwant Singh on the given day and asked him to do the needful, the accused had demanded illegal gratification of Rs.1500/- from him. PW-8 DSP Gurdev Singh deposed as under:-

“PW-1 Sukhwinder Singh, the complainant produced before me two currency notes of the denomination of Rs.500/- each and two notes of the denomination of Rs.100/- each, totaling Rs.1200/- Ex.P.1 to Ex.P.4. I applied phenolphthalein powder on those currency notes and returned them to PW-1 Sukhwinder Singh asking him to hand over those notes to the accused only on being demanded by him. I noted their serial numbers in the memo Ex.PA and also demonstrated to Sukhwinder Singh, Gurdip Singh, Sukhwant Ram and Inderjit Singh as to how phenolphthalein treated piece of paper would turn milky white colour of solution of water and sodium

carbonate into pink. That pink turned solution was thrown away. I and Sukhwinder Singh (PW.1) washed our hands. Memo Ex.PB was prepared by me in this regard. I directed Gurdip Singh to follow Sukhwinder Singh to the accused and over hear talks between Sukhwinder Singh and the accused Sukhwant Singh and to pass on a signal the moment Sukhwant was to accept tainted currency notes from the complainant.

I led the raiding party and left for the office of the accused, while remaining of the party stayed at some distance short from the office of the accused. Sukhwinder Singh and Gurdip Singh were sent from there on foot. Some time thereafter, Sukhwinder Singh returned the settled signal to me whereafter I led remaining of my party inside the office of the accused where the accused present in the Court today, Sukhwinder Singh and Gurdip Singh were present. Two of the officials of the Vigilance Bureau caught hold of the accused from his arms. I introduced myself as DSP Vigilance Bureau to the accused.

I got prepared solution of water and sodium carbonate in a glass tumbler. When finger tips of

accused Sukhwinder Singh were got dipped in that solution, its milky white colour turned into pink. That pink turned solution was put in a nip Ex.P5 which was lac sealed by me with my seal bearing impression 'HS' and was taken into possession vide memo Ex.PE.

PW Sukhwinder Singh met us and told that tainted currency notes were with accused Arun Kumar. Two of the officials of the Vigilance Bureau caught hold of the accused Arun Kumar from his arms.

Thereafter I also got prepared solution of water and sodium carbonate in a glass tumbler. When finger tips of accused Arun Kumar were got dipped in that solution its milky white colour turned into pink. That pink turned solution was put in a nip Ex.P6 which was lac sealed by me with my seal bearing impression 'HS' and was taken into possession vide memo. Ex.PC.”

So, it stands established that the tainted currency notes were recovered from the person of the accused, Arun Kumar and both the accused tested positive to the phenolphthalein test. It was held in **Madhukar Bhaskarrao Joshi vs. State of Maharashtra AIR 2001**

SC 147 that if a public servant is found in possession of currency notes

smeared with phenolphthalein powder, the prosecution does not have

further duty to prove beyond the fact that prosecution witness has paid the demanded money to the public servant and this in itself is sufficient to raise a presumption under Section 20 (1) of the PC Act that he had accepted the gratification as a motive or reward under Section 7 of the Act. The complainant and the shadow witness resiled from their earlier statements by stating that on the given day, they were under the pressure of DSP Vigilance Bureau to state before the Magistrate on dotted lines. This stand is unacceptable. The Judicial Magistrate before recording statements under Section 164 Cr.P.C ensured that the statements were made voluntarily and there was no pressure upon the witnesses.

The sale deed in question was executed and registered on 1.5.2001. As per DW-1 the mutation was entered on 10.8.2006 and the same was sanctioned on 24.11.2006. Much emphasis was laid on the argument that since the mutation had already been entered and attested on 24.11.2006, there was no occasion to demand illegal gratification. The argument looks attractive but has no force. It is the practice that whenever a copy of sale deed is presented before the Patwari, he keeps it with him. Patwari enters the mutation at his convenient time, gets it attested from the Halqa Kunngo and then presents it before the concerned officer for sanction. Sometimes, at all the stages, the parties are not joined in routine mutations and the Patwari concerned informs the vendee later on. As it was an old sale deed, the accused have bargained with the complainant to get the work

done. Even after the work had been done, the intention of the appellants was to extort money as the complainant was not made aware of sanctioning of mutation. Different modus operandi is adopted by the corrupt officials to extort money from the public. When positive evidence with regard to acceptance of bribe is proved, the acceptance of same before or after is not relevant. So the argument that no work was pending on that day with the appellants, is repelled.

Although, the charge of conspiracy was not framed, yet, the trial Court has not convicted the accused thereunder. The evidence of conspiracy is relevant and admissible under Section 10 of the Evidence Act. PW-4, HC Satnam Singh and PW-8, MHC Varinder Kumar have stated that the sample remained intact in their possession. There was no tampering with the same. So, the delay, if any, in depositing the sample does not assume much importance. The judgments cited by learned counsel for the appellants are distinguishable as the facts of the present case stand on different footing.

In view of the observations made above, the present appeal is dismissed. The impugned judgment and the order are upheld. The accused are on bail. They be taken into custody to serve the remaining part of the sentence.

14.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE