IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-932-SB of 2010
Date of Decision: *September 02, 2015*

Surinder Singh

..... APPELLANT

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Ashwani Bhardwaj, Advocate, for the appellant.

Mr. Anil Mehta, Deputy Advocate General, Haryana.

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Jaspal Singh, J

1. The instant appeal has been preferred by Surinder Singh against judgment of conviction and order of sentence dated March 29, 2010 rendered by Additional Sessions Judge, Sirsa, in case FIR No.65 dated December 7, 2006, under Sections 7 & 13 of Prevention of Corruption Act, 1988 (for short, 'Act'), registered at Police Station,

Vigilance Bureau, Hisar, whereby he has been convicted and sentenced to undergo RI for one year alongwith fine ₹ 2,000/- and in default of payment of fine to further undergo Simple Imprisonment for two months, under Section 7 read with Section 13 of the Act.

2. Briefly stated, the facts of the case are that accused Surinder Singh was posted as Halqa Palwari of village Bijuwali, District Sirsa. On December 7, 2006, complainant Jai Gopal son of Mange Ram, resident of Massi Maira, Tehsil Pehowa, District Kurukshetra alongwith Balwan Singh son of Amrit Singh, resident of Ishak, District Kurukshetra, moved an application (Ex.P9) before Kharaiti Lal, Inspector, Vigilance, Sub Unit, Sirsa, alleging therein that complainant and his cousin brother Pirthi Ram son of Damela Ram had purchased 26 acres of agricultural land of village Bijuwali from Baljinder Singh and Mehar Singh vide registered sale deed dated October 16, 2006, and had obtained possession thereof at the spot. Original sale deeds were handed over to Surinder Singh, Halqa Patwari but he was not entering the mutation in their names despite the fact that a period of 1 ½ months elapsed. The Patwari demanded ₹ 30,000/- as bribe for sanction of mutation but the complainant expressed his inability. However, deal was struck at ₹ 12,000/-.

3. Thereafter, Inspector formed a raiding party having joined HC Shabudeen, EHC Surinder Pal and C – Sahab Ram. The raiding party alongwith complainant – Jai Gopal and shadow witness – Balwan Singh, reached the office of Deputy Commissioner, Sirsa and produced an application in writing for permission to conduct a raid and to

appoint some Gazetted Officer. The Deputy Commissioner accorded permission and Om Parkash, Executive Magistrate was asked to join the raiding party. Thereafter, raiding party consisting of vigilance staff, complainant, Balwan Singh and DRO left for Dabwali in Government vehicle bearing No.HR-57-1863 driven by Anil Kumar. When raiding party reached near village Dabwali, complainant produced before the Inspector currency notes of ₹ 12,000/- out of which 10 notes were of the denomination of ₹ 1,000/- each and four notes were of the denomination of ₹ 500/- each. The Inspector and DRO put their initials on the currency notes and applied Phenolphthalein power. After taking personal search of complainant, the said currency notes were entrusted to him with direction to hand over the same to Surinder Singh, Halqa Patwari, on demand. Shadow witness – Balwan Singh was directed to transmit the signal to the police party by raising his hand on his head, as and when the tainted money was paid by complainant to Surinder Singh, Patwari. Thereafter, a solution of clean water, Phenolphthalein and sodium carbonate was prepared in a clean utensil to demonstrate to the witnesses, whereafter the colour of solution turned Pinkish. The solution in the quarter was converted into a parcel, sealed with the seal of 'KL' and was taken into police possession vide recovery memo. Since, Surinder Singh, Patwari asked the complainant to come to his house at 3.00 PM, the raided party proceeded. At about 3.15 PM, the shadow witness transmitted the pre-disclosed signal. On receipt thereof, Inspector alongwith the members of raiding party attracted to the spot and on pointing out of complainant, apprehended the accused in his room.

4. On inquiry, accused disclosed himself to be Surinder Singh son of Amar Singh, caste Arora Sikh, resident of Meena Bazar, House No.1853, Dabwali, the then Halqa Patwari of village Bijuwali. Search of the accused was conducted. Tainted amount, was recovered from the left hand of accused, consisting of ten notes of denomination of ₹ 1,000/- each and four notes of the denomination of ₹ 500/- each. The currency notes were the same which were handed over to complainant initialed by the Inspector and DRO. The currency notes were converted into a parcel, sealed with the seal 'KL' and were taken into possession vide a memo. Thereafter, both the hands of accused were got washed in a clean utensil with a solution of water and sodium carbonate was and the colour of solution turned to light Pink. The hand-wash was put in a glass quarter, sealed with the seal of 'KL' and taken into possession vide recovery memo. Sample seal impression was prepared separately and seal after use was handed over to the DRO. All the memos (Ex.P12 to P16) were attested by the witnesses.

5. Ruqa Ex.P5 was sent to Police Station, SVB Hisar through C - Sahab Ram for registration of case, on the basis of which formal FIR (Ex.P6) was jotted down by SI Balbir Singh. Rough site plan Ex.P23) was prepared by the Inspector with correct marginal notes. Statements of witnesses were recorded and the accused was formally arrested. Thereafter, the Inspector deposited the case property with MHC of Police Station SVB Hisar with seal intact.

6. On December 8, 2006, accused produced sale deeds Nos.3732 and 3733 dated October 16, 2006, Mutation No.258 and

register of mutations to the Inspector in his office. These documents were taken into possession vide recovery memo Ex.P17. The Inspector, then, recorded supplementary statements of complainant – Jai Gopal and shadow witness – Balwan Singh. On January 2, 2007, scaled site plan was got prepared by the Inspector from Draftsman – Radhey Sham. After obtaining necessary sanction for launching the prosecution against the accused from Collector, Sirsa vide sanction order Ex.P20 and completion of investigation, accused was challaned by Ramesh Kumar, Inspector/SHO, Police Station, SVB Hisar.

7. Copies of documents as required under Section 207 Cr.P.C. were supplied to the accused, free of costs. Finding a prima facie case, accused was charge-sheeted under Sections 7 read with Section 13 of the Act, to which, he pleaded not guilty and claimed trial.

8. The prosecution examined as many as 10 PWs. Incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement under Section 313 Cr.P.C. Accused denied prosecution allegations, pleaded innocence and false implication. He stated that his duty was only to enter the mutation in the mutation register on the basis of sale deeds. As per the record, mutation No.1434, on the basis of sale deed No.3733 dated October 16, 2006 and mutation No.1435, on the basis of sale deed No.3732 dated October 16, 2006 was entered in the mutation register. After entrance of the mutations, it was the duty of Kanungo to compare the same with the sale deed and revenue record and after that, when the Revenue Officer comes in the village, then he attested the mutation in the presence of parties. Pirthvi was

pressurizing him to get the mutations attested from the office of Tehsildar which was not within his powers. He stated that he never demanded any bribe nor any bribe was given to him. Nothing was recovered from him. He was falsely implicated in this case and entire proceedings of this case were fabricated in the vigilance office.

9. After hearing counsel for the parties, accused was convicted and sentenced, as detailed above, vide the impugned judgment and order.

10. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by learned counsel for the appellant that same are absolutely against the evidence available on file and settled canons of law. Mis-appropriation of evidence as well as legal proposition applicable to the facts of the case has resulted into miscarriage of justice. Infact, prosecution has miserably failed to establish the ingredients which constitute an offence under Sections 7 & 13 of the Act. In the case in hand, neither demand of alleged amount of illegal gratification nor acceptance thereof, is proved, especially in the circumstances that neither complainant Jai Gopal (PW-5) nor the shadow witness Balwan Singh (PW-6), did support the case of prosecution. They have been declared hostile at the instance of learned Special Public Prosecutor.

11. Adverting to the facts of the case, it has been vehemently argued by learned counsel for the appellant that prosecution has failed to establish the requisite ingredients which constitute the offence under Section 7 read with Section 13(2) of the Act. Neither, there is evidence to

prove the demand of any amount as illegal gratification nor the same was voluntarily accepted by the appellant. The demand and acceptance of the amount as illegal gratification is the foundation of the case which is lacking in the instant case for the simple reason that neither complainant Jai Gopal nor shadow witness Balwan Singh has supported the case of the prosecution. When examined as witnesses by the prosecution, they did not toe the line of the prosecution and ultimately, at the request of learned Special Public Prosecutor, they were declared hostile. Though, they were subjected to lengthy cross examination and were confronted with their statements recorded by the Investigating Officer during the investigation of this case but they categorically denied the same. Meaning thereby that there is no evidence that any amount was demanded by the appellant as illegal gratification or that the same was voluntarily accepted by him.

12. It has been next argued by learned counsel for the appellant that mere recovery of tainted currency notes from the possession of the appellant is not sufficient to hold that the appellant demanded and accepted the amount. Mere recovery by itself cannot prove the charge of the prosecution against the appellant, especially in the absence of any evidence to prove the payment of bribe or to show that the accused voluntarily accepted it. Similarly, when the prosecution has failed to establish the basic ingredients which constitute offence under Section 7 of the Act, presumption provided under Section 20 of the Act cannot be drawn that amount recovered from the possession of the public servant was demanded and accepted by him as illegal gratification

other than legal remuneration. Rather, the said presumption is rebuttable and even cannot be attracted in the absence of proof of demand and acceptance. Moreover, the appellant was arrested illegally by the police, taken to his office by Inspector (Vigilance) and it was only thereafter the entire writing work was done. Nothing was done at the spot.

13. The next contention put-forth by learned counsel for the appellant is that there was no occasion for the appellant to raise any demand of money from the complainant. As per the case of prosecution, amount was demanded by the appellant for getting a mutation entered and sanctioned on the basis of sale deed dated October 16, 2006. The demand is alleged to have been made by the appellant as per the case of prosecution on December 7, 2006 whereas mutation was entered much prior to it by the appellant on October 28, 2006. So, there was no occasion for the appellant to raise any demand. Moreover, he was not competent to sanction the mutation being a Patwari only. He was only obliged to make an entry in the Mutation Register which was to be recommended by the Kanungo and then submitted to the Tehsildar concerned for its sanction. Thus, Tehsildar was the competent authority and was having dominion to sanction the mutation.

14. Learned counsel has further contended that there are major contradictions in the statements of witnesses examined by the prosecution. PW-9 Kharaiti Lal (IO), while subjected to cross examination has stated that raiding party remained at the spot till 5.15 PM whereas PW-10 Om Parkash Verma, DRO Sirsa, has stated that

raiding party stayed at the spot only for 15/20 minutes. There are also contradictions with regard to other major factors.

15. While concluding his arguments, learned counsel for the appellant has contended that taking the case of the prosecution from any of the angles, it has miserably failed to establish the case. Thus, conviction and sentence imposed upon by learned Special Judge are absolutely against the evidence and are not sustainable in the eyes of law and the accused – appellant is entitled to acquittal by way of acceptance of the instant appeal.

16. On the other hand, learned State counsel has contended that in the present case, prosecution was able to prove that complainant gave ₹ 12,000/- (ten currency notes of the denomination of ₹ 1,000/- and four currency notes of ₹ 500/-) to Investigating Officer, which were returned to him after applying Phenolphthalein powder, which were subsequently recovered from the possession of accused- appellant. The recovery of currency notes from the possession of accused is one of the glaring circumstances that the amount was demanded and accepted by the appellant. In such a situation, presumption under Section 20 of the Act can also be drawn without any hesitation. Learned trial court has rightly come to the conclusion that demand of money as alleged by prosecution at two stages is proved: firstly at the initial stage when complainant approached the accused for sanction of mutation; and secondly, when the amount was handed over by the complainant to accused – appellant which was subsequently recovered from latter's. The mere fact that the

complainant and shadow witnesses have turned hostile, the testimony of official witnesses cannot be brushed aside.

17. While parting with his arguments, it has been submitted by learned State counsel that even if the complainant and shadow witness have turned hostile, the factum of recovery of tainted money is proved by the official witnesses. It is well settled that the testimony of official witnesses cannot be disbelieved, discarded or brushed aside simply due to the colour of their office or status. They are as good witnesses as others especially when there exists no animosity or ill will in between the accused - appellant and Investigating Officer, and other official witnesses who enjoy official gazetted status. None of the official witness(es) can be said to have sprung from any tainted source(s). Thus, so far as the conviction and sentence awarded by the trial court are concerned, they do not call for any interference by this Court. Instant appeal being devoid of merits is liable to be dismissed.

18. After bestowing due consideration to the rival submissions made by learned counsel for the parties, scrutinizing the impugned judgment and appreciating the evidence available on file, this Court is of the considered view that prosecution has not been successful to bring home the guilt of the accused under Section 7 read with Section 13 of the Act.

19. Broadly speaking, to constitute an offence under Section 7 read with Section 13 of the Act, the prosecution is obliged to prove that there was a demand of money and the same was voluntarily accepted by the accused – appellant. The demand and acceptance of the money for

doing a favour in discharge of its official duties, is *sine-qua-none* to the conviction of the accused. Now, in the light of aforesaid principles, it is to be seen whether the prosecution has been successful to establish the case against the appellant and the answer to this question is in the negative.

20. The case of prosecution solely hinges upon the testimony of complainant – Jai Gopal (PW-5) and shadow witness – Balwan Singh (PW-6) and other witnesses examined by the prosecution are official witnesses who are otherwise interested in the success of the case. Complainant as well as shadow witness when examined by prosecution did not toe the line of prosecution and ultimately they were declared hostile at the question of learned Special Public Prosecutor. Though they have been thoroughly cross examined and confronted with their statements during investigation of this case but nothing fruitful to the prosecution could be elicited from either of them.

21. In case of **M.K. Harshan v. State of Kerala**, *1997(2) RCR (Criminal) 16*, the Hon'ble Supreme Court has observed that in all type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish offence. Therefore, the other aspect namely acceptance is very important and when the accused has come forward with a plea that currency notes were put in his pocket without his knowledge, then there must be clinching evidence to show that it was

with the tacit approval of the accused that the money had been handed over to him as illegal gratification.

22. Adverting to the facts of the case in hand, since the complainant as well as shadow witness have turned hostile, the demand and acceptance cannot be said to have been established in this case. In this regard, we can also have a reference of the pronouncement in **Banarsi Dass Vs. State of Haryana**, *2010(2) RCR (Criminal) 553* wherein the Hon'ble Apex Court has gone a step further while holding that when demand and acceptance are not established, mere recovery of tainted currency notes by itself cannot prove the charge of prosecution against accused in the absence of any evidence to prove payment of bribe or to show that accused voluntarily accepted the money. In this regard, we can also have a reference of the pronouncement in case **C.M. Giri Bapu Vs. CBI, Cochin, High Court of Kerala**, *2009(2) R.C.R. (Criminal) 134*. Similarly, in case **Suraj Mal vs. State (Delhi Admn.)**, *1979(4) SCC 725*, Hon'ble Supreme Court took a view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. Similarly, in case **M. Narsinga Rao Vs. State of Andhra Pradesh**, *2001(1) R.C.R. (Criminal) 95*, while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it

acceptance of gratification, the prosecution has further duty to prove that what was paid amounted to gratification.

23. As far as the raising of presumption envisaged under Section 20 of the Act is concerned, same is rebuttable. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established, inference to be drawn is that the said gratification was accepted as "motive or reward" for doing or forbearing to do any official act. But when the prosecution fails to prove acceptance or demand, the presumption under Section 20 of the Act cannot be drawn just to fasten a liability upon the public servant. In case **C.M. Girish Bapu (supra)**, a case was registered under the Act, section 7 of which is pari-materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raised a rebuttable presumption where the public servant accepts gratification other than legal remuneration which presumption is absent in the 1947 Act. Despite this, the Hon'ble Apex Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid, would not be sufficient to convict the accused despite presumption and infact, acquitted the accused in that case.

24. Not only this, even there was no occasion for the appellant – accused to raise a demand of bribe from the complainant. The demand is alleged to have been raised for getting the mutation entered and sanctioned in the revenue record of sale deed dated October 16, 2006. The demand is alleged to have been made on December 7, 2006

whereas the entry was incorporated by the appellant – accused in the mutation register on October 28, 2006 i.e. much prior to the alleged date on which the demand of bribe was raised. The sanction of the mutation on the basis of sale deed was not within the domain of the appellant, rather, it was solely with the Tehsildar. The Patwari is only obliged to make an entry which has to be recommended by Kanungo and it was only thereafter, the mutation was to be sanctioned by the Tehsildar. So, when there was no occasion for the appellant to put-forward a demand of any amount as bribe, the question of raising such demand does not arise and the false implication of the appellant cannot be ruled out in the instant case and on this score only, the conviction and sentence were set aside by this Court while rendering pronouncement in case **Karambir Singh vs. State of Haryana**, *2014(1) R.C.R. (Criminal) 734*.

25. For the reasons recorded above and particularly in view of the fact that prosecution has not been able to successful to establish the necessary ingredients which constitute an offence under Section 7 read with Section 13 of the Act, judgment of conviction and order of sentence March 29, 2010 rendered by the Special Judge, Sirsa are set aside by way of acceptance of the instant appeal. Consequently, appellant – accused stands acquitted of the charge. Bail bond(s) and surety bond(s), if any, furnished by the appellant/surety shall stand discharged.

(Jaspal Singh)
September 02, 2015 **Judge**
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