

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-947-SB of 2010
Date of Decision : July 29, 2015

Ashwani KumarAppellant
VERSUS
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Gorakh Nath, Advocate.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

In order to challenge the judgment of conviction and order of sentence passed by the Special Judge, Gurgaon on 26.3.2010, the appellant has filed the present appeal.

Vide impugned judgment and order, the trial Court convicted the appellant under Section 7 of the Prevention of Corruption Act, 1988, hereinafter referred to as 'the Act', and sentenced him to undergo rigorous imprisonment for a period of one year. He was also convicted under Section 13(1)(d) of the Act and sentenced to undergo rigorous imprisonment for a period of two years. Both the sentences were ordered to run concurrently.

The case of the prosecution is that complainant Gulab Singh owned motorcycle bearing registration No.HR-26-AF-5791 make Bajaj Platina and on 1.9.2007 had lent his motorcycle to one Ajit Singh for going to Gurgaon. When Ajit Singh was proceeding towards

Gurgaon on the said motorcycle, he was challaned by the traffic police for not wearing helmet and also not possessing the driving licence. Ajit Singh handed over the challan to the complainant for getting it disposed of. On 30.9.2007, the complainant went to the Court of the Special Judicial Magistrate, Gurgaon for disposal of challan where he met the appellant, who was posted as a Clerk in the said Court and was custodian of the traffic challan. The appellant asked the complainant to come on 1.10.2007 for disposal of the challan and also demanded Rs.200/- as bribe and made it clear that if he did not pay the bribe, besides the fine amount, he would not allow his challan to be disposed of. The complainant submitted application Ex.PA on 1.10.2007 before the Superintendent of Police, State Vigilance Bureau, Gurgaon which application was assigned to Jagdish Prashad, Deputy Superintendent of Police for doing the needful. The Deputy Superintendent of Police forwarded the application to the Vigilance Bureau for registration of a case. Accordingly, FIR Ex.PB was recorded by Inspector Chhotu Ram.

Further case of the prosecution is that the Deputy Superintendent of Police organised a raiding party for nabbing the appellant red handed while accepting Rs.200/- as bribe from the complainant. Constable Satish Kumar, Constable Jogender Singh and EHC Mukesh were made part of the raiding party. After the raiding party reached the Court complex, request was made by the Deputy Superintendent of Police to the District and Sessions Judge, Gurgaon for permission to conduct the raid and to depute an officer to

associate with the same. Vide order Ex.PQ, the District and Sessions Judge granted the permission and deputed Shri Surya Partap Singh, Additional Chief Judicial Magistrate, Gurgaon to supervise the raid. One Baljeet Singh was also joined in the raiding party. The raiding party went to the chamber of the Additional Chief Judicial Magistrate, Gurgaon and produced before him the order Ex.PQ of the District and Sessions Judge. Pursuant thereof, the Additional Chief Judicial Magistrate joined the raiding party. In his chamber, the complainant handed over two currency notes of the denomination of 100/- each which were initialled by the Deputy Superintendent of Police and the Additional Chief Judicial Magistrate and also treated with phenolphthalein powder. The tainted notes were then handed over to the complainant with a direction to hand over those notes to the appellant only on demand. The complainant was further directed to give a signal to Baljeet Singh, who was nominated as a shadow witness, once the money was handed over to the appellant. The shadow witness was also directed to hear the conversation between the complainant and the appellant and to pass on the signal received from the complainant by placing his hand on his head.

It is also the case of the prosecution that the raiding party left the chamber of the Additional Chief Judicial Magistrate, Gurgaon and proceeded for the Court of Special Judicial Magistrate. On reaching there the complainant went inside the Court room while the shadow witness stationed himself at its entrance. The remaining members of raiding party stood outside to await the signal from the

shadow witness. The complainant met the appellant and asked him to get his challan disposed of. On this, the appellant demanded Rs.200/- from the complainant and also asked him to bring the photocopy of the challan. The complainant handed over the photocopy of the challan to the appellant alongwith the tainted notes. Once the bribe amount was handed over, the complainant gave the requisite signal to the shadow witness to pass it on to the raiding party. On receipt of the same, the raiding party entered the Court room and nabbed the appellant. On the asking of the Deputy Superintendent of Police, the appellant took out the tainted notes from the pocket of his shirt and handed them over to the Deputy Superintendent of Police. The tainted notes, hands of the complainant, hands of the appellant and the pocket of the shirt worn by the appellant were got washed separately in a solution of sodium carbonate. The colour of the solution, on each wash, turned slightly pink. The various washes were put into nips and taken into possession. Photocopy of the challan, which was handed over by the complainant to the appellant, was also taken into possession. Rough site plan of the place of raid was prepared. Later on, the nips of the various washes were sent to the Forensic Science Laboratory and on examination phenolphthalein and sodium carbonate were detected therein.

Upon completion of the investigation, the appellant was charged for committing the offences punishable under Sections 7 and 13 (1)(d) of the Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1

Inspector Chhotu Ram, PW2 Constable Hariom, PW3 Manoj Kumar, Draftsman, PW4 ASI Surender Kumar, PW5 HC Sarwan Kumar, PW6 Baljeet Singh, shadow witness, PW7 Harish Kapoor, English Clerk, PW8 DSP Jagdish Prashad, PW9 Inspector Ram Phal, PW10 Satish Kumar, Superintendent to Distirct Judge, Gurgaon, PW11 SI Daya Nand, PW12 Constable Ashok Kumar, PW13 Ajit Singh, who had borrowed the motorcycle from the complainant, PW14 Gulab Singh, complainant, PW15 Rakesh Kumar, Clerk-cum-Typist and PW16 Shri S.P. Singh, the then Additional Chief Judicial Magistrate, Gurgaon.

When examined under Section 313 Cr.P.C., the appellant claimed that the witnesses had deposed falsely against him. In reply to question No.16, he took specific stand regarding his innocence, which is reproduced here-in-below :-

"That I am innocent. I have been falsely implicated in this case because earlier Ram Kumar was the peon in the Court of Shri M.C. Nagpal, Special Judicial Magistrate, Gurgaon and I had made a complaint against him and on my complaint, Ram Kumar was dismissed from the services by the learned District and Sessions Judge, Gurgaon. After that Ram Kumar is running a company under the name and style of Bajaj Auto Finance, earlier brother of Ram Kumar was running the above said company but after the death of the brother of Ram Kumar, namely, Baljeet, Ram Kumar is taking care of the above said company and the complainant Gulab Singh was an employee in the above said company and in the collusion with complainant Gulab Singh, Ram Kumar had foisted a false case upon me to take revenge from me for

getting him dismissed from the services. Complainant had been introduced by Ram Kumar as a complainant in this case to involve me falsely. I was lifted from the Court room and later on a false case has been foisted upon me."

In defence, the appellant examined DW1 Garima Chaturvedi, Fine Clerk in the office of District and Sessions Judge, Gurgaon, DW2 Madhu Bala, Accountant in the office of District and Sessions Judge, Gurgaon, DW3 Abhishek Singh, Company Secretary, New Horizons India Limited, UGF, South Wing, Lodhi Road, New Delhi, DW4 EHC Ajay Pal, DW5 Lallu Ram, Additional Ahlmad-cum-Summary Clerk and DW6 Shri M.C. Nagpal, Special Judicial Magistrate, Gurgaon.

After going through the evidence brought on the record and hearing learned Public Prosecutor as well as learned counsel representing the appellant, the trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above.

This Court has heard learned counsel for the parties and with their able assistance minutely scanned the evidence brought on the record.

Merely because complainant Gulab Singh had stated in his application Ex.PA that it was he who was challaned by the police whereas it was Ajit Singh to whom he had lent his motorcycle for going

to Gurgaon, who was challaned by the traffic police for not wearing helmet and also not possessing the driving licence, the very substratum of the prosecution case is not shaken. It was complainant Gulab Singh who owned the motorcycle and had lent it to Ajit Singh. Apparently, it was Ajit Singh who had been challaned as he was not wearing the helmet and did not possess the driving licence when he was intercepted by the traffic police. Ajit Singh, to whom complainant Gulab Singh had lent his motorcycle, while returning the motorcycle to the complainant, also apprised him about his being challaned by the traffic police for not wearing the helmet and not possessing the driving licence. Thereafter, said Ajit Singh left the task of getting the challan disposed of, to complainant Gulab Singh. Accordingly, complainant Gulab Singh went to the Court of Special Judicial Magistrate where he came across the appellant who demanded a sum of Rs.200/- as bribe for getting the challan disposed of. Therefore, merely because complainant Gulab Singh mentioned in his complaint Ex.PA that it was he who was challaned by the police but while appearing before the trial Court, he testified that it was Ajit Singh to whom he had lent his motorcycle who was challaned by the traffic police, would not make the story of the prosecution doubtful.

The defence laid much stress on the testimony of DW6 Shri M.C. Nagpal, Special Judicial Magistrate, Gurgaon who stated that he had conducted a fact finding enquiry regarding missing of 35 traffic challans and held one Ram Kumar, Peon of his Court responsible for the same and one more enquiry as ordered by the

District and Sessions Judge, Gurgaon on the application submitted by the appellant but in order to establish that complainant Gulab Singh could not have appeared for getting the challan disposed of or that only Ajit Singh who was challaned could appear for the said purpose, nothing was brought on record. Therefore, even if Ajit Singh had been challaned by the traffic police, complainant Gulab Singh who owned the motorcycle could appear for getting the challan disposed of.

As regards the enmity with Ram Kumar, who remained posted as a Peon in the Court of Special Judicial Magistrate and was said to have been got dismissed by the appellant, suffice it to state that at his instance, the vigilance authorities could not have foisted a false case against the appellant who stood posted as a Clerk in the Court of Special Judicial Magistrate and custodian of the traffic challans, especially when Ram Kumar was posted as a Peon only. Even otherwise, enmity is a double edged weapon which may be used to foist a false case against the appellant or the appellant being got trapped on account of demanding bribe for getting the challan disposed of. On the other hand, there is the testimony of PW16 Shri Surya Partap Singh, who on 1.10.2007, stood posted as Additional Chief Judicial Magistrate, Gurgaon and testified that pursuant to the order Ex.PQ issued by the District and Sessions Judge, Gurgaon he was briefed by DSP Jagdish Parshad about a complaint having been received against the appellant. He deposed that he had put his initials on the two currency notes of Rs.100/- each, besides phenolphthalein powder being applied on those notes. Later on, on receipt of the signal

from the shadow witness he and other officials of the raiding party went inside the Court room and after being asked, the appellant took out the tainted currency notes from the pocket of his shirt. Those tainted notes were found to be the same which were earlier initialled by him and handed over to the complainant. Further, the currency notes, hands of the appellant, hands of the complainant and the pocket of the shirt worn by the appellant were separately washed and the colour of the solution on each wash turned pink. While cross-examining him, the defence could not elicit anything from which it could be inferred that he had not seen the recovery of the tainted currency notes from the appellant. It may be worthwhile to mention here that PW16 Shri Surya Partap Singh, Additional Chief Judicial Magistrate deposed that he had entered Court No.13 of the Special Judicial Magistrate at about 2.45/3.00 p.m. and stayed there upto 5.15/5.30 p.m. Also, he had attended the computer training programme for the Judicial Officers of Gurgaon which used to be held from 4.00 p.m. to 5.30 p.m. The witness, however, stated that he did not remember about the computer training programme or of his undergoing said training. At the same time, he testified that the exact timings of the training were not from 4.00 p.m. to 5.00 p.m. but some times it used to continue upto 6.00/6.30 p.m. Apparently, DSP Jagdish Parshad had met the Judicial Officer at about 2.15/2.30 p.m and the raiding party proceeded for carrying out the raid after about 15/20 minutes. Once the Judicial Officer had been asked by the District and Sessions Judge to associate himself with the raid and, that too, much before the time when the training was to start, he was

required to participate in the raid till all the necessary formalities had been completed. Later on, he could have joined the computer training programme. In order to explain as to why he was marked present for the said training which was to be held between 4.00 p.m. and 5.00 p.m. PW16 Shri Surya Partap Singh stated that the training used to continue upto 6.00/6.30 p.m.

PW14 complainant Gulab Singh supported the case of the prosecution almost in entirety. However, he could not state as to whether the various washes were taken into possession and the other formalities were completed at the spot. For that reason the prosecution got him declared hostile and cross-examined him. During such cross-examination he testified that all the four washes were put into nips and taken into possession vide memos. Ex.PH, Ex.PJ, Ex.PK and Ex.PL. When cross-examined by the defence, he stated that he was employed in Bajaj Auto Finance Limited of which Ram Kumar was its owner after the death of his brother Baljeet Singh who earlier owned the company. PW14 Gulab Singh feigned ignorance about Ram Kumar being posted as a Peon in the Courts and whether his services were terminated by the Sessions Judge, Gurgaon on account of mis-placing various challans. He denied the suggestion that at the instance of Ram Kumar he had falsely involved the appellant in order to take revenge for getting him dismissed from service.

Baljeet Singh, who was set up by the prosecution as a shadow witness, stepped into the witness-box as PW6. However, he failed to support the prosecution version and was got declared hostile.

In his cross-examination by the learned Public Prosecutor, no material could be brought on the record from which it could be inferred that he had seen the handing over of the tainted currency notes by complainant Gulab Singh to the appellant or his giving necessary signal to the raiding party. In fact, he denied the entire prosecution case. He even disowned the statement Ex.PF made by him during the investigation of the case. However, there is consistent evidence in the shape of the testimonies of PW14 complainant Gulab Singh and PW16 Shri Surya Partap Singh, the then Additional Chief Judicial Magistrate, Gurgaon, who had deposed about the demand and acceptance of the bribe amount by the appellant and the recovery of the bribe thereafter from the pocket of the shirt worn by the appellant. Various washes taken during the investigation of the case are sufficient to establish that the appellant had demanded and received the bribe amount from complainant Gulab Singh and following the raid conducted by PW8 DSP Jagdish Parshad, those currency notes were recovered from the pocket of the shirt worn by the appellant.

In view of the above, no case is made out for any interference in the impugned judgment of conviction passed by the trial Court.

Coming to the quantum of sentence, this Court finds that the appellant has been facing the agony of criminal prosecution for the last about eight years. During his examination under Section 235 Cr.P.C., the appellant had pleaded before the trial Court that he was unmarried and a poor person. His mother was a heart patient and

generally remained ill. Learned counsel for the appellant has also informed the Court that on account his conviction in the present case, the appellant has since been dismissed from service. Prayer has, accordingly, been made for reducing the sentence of imprisonment imposed upon the appellant.

Learned State counsel has vehemently opposed the prayer by submitting that the sentence of imprisonment awarded to the appellant is commensurate with the crime committed by him.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the sentence of imprisonment of two years imposed upon the appellant for the offence under Section 13(1)(d) of the Act is on the higher side and needs to be reduced.

Resultantly, the conviction of the appellant under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 is upheld. The sentence of rigorous imprisonment for two years imposed upon the appellant under Section 13(1)(d) of the Act is reduced to rigorous imprisonment for one year. The sentence of rigorous imprisonment for one year imposed under Section 7 of the Act is maintained. Both the sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

July 29, 2015
satish

(T.P.S. MANN)
JUDGE

