

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

CRA No. S- 453-SB of 2002 (O&M)

Date of decision : May 20, 2015

Rajesh Bhalla

.....Appellant

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate
for the appellant.

Ms. Shivali, AAG, Punjab.

LISA GILL, J.

Appellant Rajesh Bhalla has preferred the instant appeal challenging judgment and order dated 07.03.2002 passed by the Special Judge, Jalandhar. The appellant has been convicted for the offence punishable under Section 7 read with Section 13 (2) of Prevention of Corruption Act (for short 'PC Act').

Prosecution was set in motion on the statement, Ex.PF by the complainant Gurbux Singh, PW5. Statement was made before Amrik Singh, DSP, PW10. Complainant revealed that he purchased a plot measuring 43 marlas in Durga Colony within Municipal Corporation, Jalandhar about 16 years ago. He constructed twenty shops and a godown for storing the shuttering material on this plot.

The same was known as Sidana market. He submitted site plan to

the Municipal Corporation in 1996 but his case for compounding was rejected. Notice dated 24.03.1999 was issued by Jagdish Rai, SO, B&R Municipal Corporation to him and signed by the appellant Rajesh Bhalla then posted as J.E. with the Municipal Corporation. This notice was delivered to the complainant by the accused on 24.03.1999. He replied to the same on that very day. Appellant came to the complainant's shop on 31.03.1999 and said that an order of demolition of his building has been passed by the Municipal Corporation but in case the complainant paid ₹40,000/- as bribe, he could get his case filed in connivance with higher officers. On an ardent request of the complainant, accused agreed to accept ₹10,000/- as bribe for getting the matter settled. He informed the complainant that he would come to his shop Sidana Cement Store, Durga colony on 01.04.1999 for collecting the bribe money. Complainant not willing to succumb to this pressure, approached Amrik Singh, SP Operation then posted as DSP Vigilance Jalandhar, PW10. He disclosed all these facts in his statement, Ex. PF, recorded before the DSP. Twenty (20) currency notes of ₹500/- each were produced before the DSP, who noted down the numbers of the currency notes, applied phenolphthalein powder to the same, handed back said currency notes to the complainant with a direction that he should give the same to the accused only on his demand and should not shake hands with him.

The complainant was accompanied by Labh Singh, PW9, at this time. Labh Singh was nominated shadow witness and was directed to accompany the complainant for watching the proceedings

and give a signal to the raiding party after acceptance of the currency notes by the accused. DSP, Amrik Singh also demonstrated before both witnesses as to how the colour of sodium carbonate turns pink on coming in contact with phenolphthalein powder.

Memo of entrustment of currency notes and demonstration, Ex. PD, was prepared. Ravinder Kumar, Development Organiser, PW6, posted in the office of Block Development and Panchayat Office was joined in the raiding party as an independent official witness. Endorsement Ex. PF/1 was made on the statement of the complainant and sent to the police station on the basis of which formal FIR No. 17 dated 01.04.1999, EX. PF/2 was registered.

Thereafter, the raiding party proceeded to the shop of the complainant and stopped a little distance away from said shop. Complainant and shadow witness, Labh Singh were sent to the shop after repeating the instructions given earlier to them by the DSP. The complainant and shadow witness proceeded to the shop where the accused arrived after some time. He occupied a chair. He was holding a file in his hand at the same time purporting to be the file pertaining to the complainant. Accused assured to destroy the same if he was given ₹10,000/- as demanded. On demand of the accused, complainant delivered the currency notes of ₹10,000/- to the appellant, who started counting the notes.

Shadow witness, Labh Singh in the meanwhile came out of the shop and signalled to the raiding party on which DSP Amrik Singh accompanied by the other persons reached the place. On

seeing the raiding party, accused, who was counting the currency notes, threw the same on the ground and stood up from the chair. DSP Amrik Singh, PW10, disclosed his identity to the accused and caught hold of the accused from his arms.

Solution of sodium carbonate was prepared and on the hands of the appellant being washed, colour of solution of sodium carbonate turned pink from white. This solution was put in a nip sealed by DSP with seal 'AS'. Sealed nip was taken in possession vide memo Ex. PH. Twenty (20) notes of ₹500/- each were recovered from the spot, numbers of these currency notes were tallied by the independent witness Ravinder Kumar with the numbers as already entered in the memo. Said numbers tallied with each other. Currency notes were taken in possession vide Ex. PJ. On personal search, a purse containing ₹3,495/-, an identity card, a driving licence, two NSC certificates and a wrist watch was recovered.

Notice, Ex.PN produced by the complainant was taken in possession vide memo Ex. PL. On demand of DSP, accused produced the file pertaining to the complainant, which was taken in possession vide memo Ex. PM. Rough site plan of recovery Ex. PP was prepared. Accused was arrested. On coming back to the police station, case property was deposited with Varinder Kumar, Moharrar, PW3, without any tampering thereof. Nip parcel was sent to Forensic Science Laboratory, Punjab, Chandigarh through Balbir Singh on 08.04.1999 with the seals intact. On analysis, Director of Laboratory reported that it contained mixture of sodium ion, carbonate ion and phenolphthalein. Prosecution of the accused was sanctioned by the

Additional Secretary-cum-Director, Local Bodies who was competent to remove him from service vide order dated 21.07.1999, EX.PO.

On completion of investigation, report under Section 173 Cr.P.C. was submitted. Charge was framed against the accused on 04.09.1999 to which accused pleaded innocence and claimed trial.

Prosecution examined as many as 10 witnesses to prove its case. While denying incriminating material put to him, accused pleaded false implication and innocence in their statements under Section 313 Cr.P.C. He stated that the complainant had unauthorisedly constructed 20 shops on his plot which were encroaching partly on the municipal land. These shops were ordered to be demolished by the Municipal Corporation, Jalandhar and he was deputed to make measurements of unauthorised construction of the spot and to submit its report. He proceeded to the spot on 31.03.1999 for taking measurements but Gurbux Singh was not present there. Employees of the complainant informed that Gurbux Singh was not present on the spot and he was told to come on the following day. He proceeded to the spot again on the next day with the relevant file for carrying out the measurements. Gurbux Singh tried to put money in his hands by saying that his shop should not be demolished. Accused refused to accept the same while expressing his helplessness in the matter as the Commissioner had already passed the order for demolition of the shops. He refused to accept the currency notes which fell on the ground. Immediately thereon police arrived, picked up the currency notes lying on the floor and falsely implicated him in this case. He denied having demanded or

accepted any illegal gratification from Gurbux Singh, who made a false report to the police as he was holding a grudge against the appellant on account of the fact that the demolition of the shops had been ordered by the Commissioner on his recommendation.

Learned trial Court on considering the facts and circumstances of the case and evidence on record, concluded that the prosecution had succeeded in proving its case beyond reasonable doubt. Hence, convicted and sentenced the accused as mentioned above.

Sh. Kanwaljit Singh, learned senior counsel for the appellant vehemently argues that the appellant is infact victimized for being an honest officer taking action against illegal encroachments. He has been falsely implicated. There is no evidence on record, which would prove the complicity of the appellant in the commission of offence. It is submitted that demand of bribe or its acceptance has not been proved on record. There is no independent witness to prove the demand of illegal gratification by the accused. Shadow witness Labh Singh is an interested witness being father-in-law of the complainant's daughter. Apart from that there are material discrepancies in the statement of the complainant as well as shadow witness, especially in respect to the time when Labh Singh was apprised of the whole situation. It is further argued that there is no motive or reason on the part of the appellant to seek illegal gratification as the order of demolition had already been passed by the appellant's superior officer. The appellant in fact could not vary the said order, therefore, there is no question of any illegal

gratification. Learned counsel for the appellant further submits that so called red handed apprehension of the appellant is a complete farce . All the witnesses are discrepant as to the manner and the place from which the currency notes were recovered. It is not proved by any of them that the appellant had accepted the said currency notes. Doubt is raised on the credibility/veracity of Ravinder Kumar, PW6 inasmuch as his name is mentioned as Varinder in the body of memo taking possession of the currency notes, Ex. PJ. Varinder has then been changed to Ravinder. Therefore, it is submitted that Ravinder Kumar was never a witness to the alleged raid and recovery. He relies on the deposition of PW7 and DW1 to submit that the appellant was infact deputed to take measurement of the property in question carrying out the demolition.

Learned counsel relies upon the judgment of the Hon'ble Supreme Court in **Satvir Singh versus State of Delhi through CBI 2014 (4) RCR (Criminal) 40** to urge that once demand, acceptance and recovery of gratification from the accused is not proved, there is no presumption under Section 20 of the Act. He also relies on judgment of this Court in **Karnail Singh versus State of Punjab 2009 (1) RCR (Criminal) 403** to suggest that once the DSP had not offered himself for search before conducting the search of the accused, it is not justified to convict the appellant. He places reliance upon judgment of this Court in **Shiv Narain Sharma versus State of Haryana 2009 (2) RCR (Criminal) 372** to submit that once demand is not proved, recovery of tainted money as a result of trap is irrelevant.

Learned counsel for the State while refuting the submissions on behalf of the appellant submits that there is overwhelming and cogent evidence on record to sustain the conviction and sentence imposed upon the appellant vide impugned judgment and order. She submits that necessary ingredients of the offence for which the appellant is charged are proved on record. Demand of illegal gratification as well as its acceptance is evident on the fact of it. She, thus, prays for upholding the impugned judgment and order.

Having heard learned counsel for the parties and minutely going through the record with their able assistance, it emerges that complainant Gurbux Singh PW5, shadow witness Labh Singh PW9 as well as Ravinder Kumar PW6 an independent witness have given a clear and consistent version of the events as they unfolded. Complainant has specifically stated that he had raised construction of 20 shops and godown over his plot measuring 43 marlas in Durga Colony, Jalandhar. A site plan was submitted before the Municipal Corporation for raising the construction. He started raising construction though his application was rejected and construction raised by him was, thus, rendered unauthorised. His application for compounding the case was rejected. He admittedly received notice dated 24.03.1999, EX.PN, in which it is mentioned that on a report dated 24.03.1999 by the accused appellant Rajesh Bhalla, J.E., it has come to notice that unauthorised construction has been raised by the complainant without permission/sanctioning of the site plan.

Complainant was asked to submit reply within three days and to

show cause as to why an order for demolition of unauthorised construction be not passed. It was mentioned that in case no reply is received within two days it is understood that he has nothing to say. Liberty was given to the complainant to produce any proof, evidence in support of his claim personally or through an attorney. It was also informed that any expenses which may be incurred for demolishing the unauthorised construction would be recovered from him.

It is admitted that the appellant visited the site of the shops etc. on 31.03.1999. This visit is admitted by the appellant though he states that he had gone to the spot for taking measurements. There is nothing on record to prove that he was deputed to take measurements of the area. DW1, Ajit Singh Tuli, Senior Town Planner has admitted that there is no order on the file deputing accused to visit the spot for taking measurements for the purpose of demolition. It has come on record that the appellant was indeed concerned Building Inspector and before demolition of such construction measurements are taken on the spot as per Ajit Singh Tuli. Allegation of the complainant is that the appellant demanded illegal gratification for destroying the file in question itself. Fact that he was indeed handling the file is proved on record and is not in dispute. Plea taken is that he was not competent to have passed any order setting aside the demolition or otherwise, therefore, there was no occasion for him to demand illegal gratification. This plea is clearly untenable. Firstly, there is no order of demolition which has been proved on record. It is only a show cause notice, Ex. PN, dated 24.03.1999 which was served upon the complainant. At the time of

raid, appellant was found in possession of the original file pertaining to unauthorised construction raised by the complainant. Said file is on record of this case. It is indeed highly improbable that he would have gone to the premises for measurement on his own without any accompanying official. Furthermore, necessary material for carrying out the measurement was not recovered from the possession of the appellant clearly corroborating the complainant's version. Demand of illegal gratification by the appellant from the complainant is duly proved when the complainant has supported the prosecution version to the hilt. There is never any insistence on the presence of an independent witness at the time of demand being raised at the first instance. At the time of raid, demand by the accused is further corroborated by shadow witness Labh Singh PW9, who also stood by the prosecution version. Labh Singh being father-in-law of the complainant's daughter cannot be a ground in itself to reject his testimony.

Accused was caught red handed while accepting illegal gratification from the complainant. Argument by learned senior counsel for the appellant that discrepancies in the statements of the complainant, shadow witness, independent witness Ravinder Kumar and the DSP impinge upon the credibility of the prosecution version is not tenable. It is urged that according to Labh Singh, PW9, DSP picked up the currency notes from the ground whereas DSP Amrik Singh, PW10, states that the accused was counting the currency notes when they raided. Therefore, both versions are contradictory and discrepant. Said contention is clearly fallacious as the perusal of

statement of Labh Singh reveals that he clearly stated that accused threw the currency notes on the ground upon seeing the DSP Amrik Singh. DSP Amrik Singh disclosed his identity to the accused displaying his identity card. He picked up the currency notes from the ground. PW10, DSP Amrik Singh has not stated anything different when he says that they went inside, accused was counting the currency notes and upon seeing him he threw the said currency notes. He picked up the currency notes from the ground. There is, thus, no discrepancy in the statements of material witnesses as sought to be projected.

Ravinder Kumar, PW6, Development Organizer from the Block Development and Panchayat Office, an independent witness has also stated that the accused threw the currency notes on the ground. He has clarified that the accused had thrown the said notes on the ground before he was caught hold of from his arms. There is nothing on record to suggest that the abovesaid held any malice towards the appellant or had an axe to grind against him.

Furthermore, sodium carbonate solution had turned pink when hands of the accused were washed. Report of the Forensic Science Laboratory, Ex. PR, is also on record. In case, the version of the appellant is accepted that he did not accept the money which had fallen to the ground, there is no explanation as to why sodium carbonate solution turned pink. It is clearly an afterthought on the part of the appellant and does not cut any ice. Evidence of all the witnesses is consistent and without any contradiction.

Reliance by learned counsel for the appellant on the

judgment in the case of Satvir Singh (supra) is clearly misplaced as the facts of the said case were totally different. Demand, acceptance and recovery of gratification from the appellant therein had not been proved. It is in this situation that the Hon'ble Supreme Court had held that presumption under Section 20 of the Act does not arise.

Similarly in the judgments rendered by this Court in Karnail Singh's and Shiv Naraina Sharma's cases (supra), the complainant as well as independent witness had not supported the prosecution case, which led to the acquittal of the appellants therein.

It has been held by the Hon'ble Supreme Court in **Kallappa Mallappa Kamble versus State of Karnataka 2015 (2) RCR (Criminal) 50** that once demand and voluntary acceptance of illegal gratification knowing it to be bribe are proved by evidence then conviction necessarily has to follow.

Essential ingredients of Section 7 of the PC Act are that:

- (i) person accepting the gratification should be a public servant.
- (ii) He should accept the gratification for himself and gratification should be a motive for reward for doing or forbearing to do any official act and for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person.

All necessary ingredients, as mentioned above, stand proved. Demand and acceptance having been proved, presumption under Section 20 of the Act is clearly applicable. Appellant has been unable to rebut the same. Contention of learned counsel for the appellant that he has absolutely clean record and is still in service cannot in isolation be a ground to set aside his conviction and

sentence.

Keeping in view the discussion as above, the prosecution has indeed succeeded in proving its case beyond reasonable doubt against the appellant.

No ground is made out for setting aside the conviction and sentence imposed upon the appellant vide the impugned judgment and order dated 07.03.2002. Consequently, this appeal is dismissed.

(Lisa Gill)
Judge

May 20, 2015
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