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

**CRA-S No.1576-SB of 2002
Date of Decision: 21.08.2015**

Parkash Chand (died) through LRsAppellant/s

Vs

State of Punjab ...Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jitender S. Chahal, Advocate
for the appellant.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

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?*

RAJ MOHAN SINGH, J.

[1]. In the present appeal, sole appellant has died and his sons and widow namely Deepak Saini, Pankaj Saini and Raj Kumari have been permitted under Section 394(2) Cr.P.C., to continue with this appeal.

[2]. Appellant Parkash Chand was convicted and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.1,000/- under Section 7 of the Prevention of Corruption Act (hereinafter referred to as 'the P.C. Act'). In the event of default of payment of fine, he was to further undergo rigorous imprisonment for 6 months. He was also sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/- under Section 13(2) of the

P.C. Act and in the event of default of payment of fine, he was to further undergo rigorous imprisonment for 6 months. Both the sentences were ordered to run concurrently.

[3]. Prosecution case started with the allegations that the complainant Dilbagh Rai met Inspector Gurmej Singh, Vigilance Bureau, Gurdaspur along with Lalit Kumar PW-1 and made a statement Ex.PG stating that he had applied for electric connection for a tubewell and also deposited security amount with Punjab State Electricity Board, Dina Nagar. Complainant had also submitted test report on receipt of demand notice and also deposited Rs.1500/- as connection fee. He met the accused last week from the date of making complaint i.e. on 28.04.1993 and the accused told him that the connection file has come to him and if he wants connection then he has to pay Rs.1500/- as illegal gratification.

[4]. The complainant again met the accused on 27.04.1993 in his office and the accused demanded Rs.1,000/- from him. The complainant agreed to pay the amount to the accused. The complainant handed over 10 currency notes of the denomination of Rs.100/- each to the Inspector Gurmej Singh who noted the numbers and smeared the same with phenolphthalein powder (hereinafter referred to as 'the P-powder') and again handed over the same to the complainant vide memo Ex.PD. Complainant was instructed to hand over the currency notes on demand to the accused and should not shake hands with him. Demonstration was

also given to complainant and shadow witness Lalit Kumar PW-1. The statement Ex.PG was sent to the Police for registration of case and accordingly FIR No.71 dated 28.04.1993 under Sections 13(2) of the P.C. Act, Police Station Dina Nagar was registered (Ex.PG/1).

[5]. One Jagir Chand was joined as official witness in the Police party who conducted the raid. On reaching the office of accused, complainant and shadow witness were sent to the accused who accompanied him to a tea stall from where shadow witness gave a prescribed signal. Inspector Gurmej Singh reached the spot and caught the accused. Fingers of the accused were got washed in the solution and the colour turned pinkish. It was put in a nip Ex.P-1 and was sealed with the seal of Investigating Officer i.e. with the impression 'GS'. Tainted amount was recovered from the front pocket of the shirt of the accused. Numbers of the currency notes were tallied. Memo was accordingly prepared. The case property was taken in police possession vide memo Ex.PC. Pocket of shirt was also washed and its colour also changed to pink. Again nip Ex.P-2 was prepared and was taken in Police possession as Ex.P-2. Memo was accordingly prepared as Ex.PC. Shirt Ex.P-3 was also taken in possession by the Investigating Officer. Police also recovered connection file of the complainant from the scooter of the accused. After necessary investigation, Police filed challan and thereafter chargesheeted the accused under Sections 7 and 13(2) of the P.C. Act.

[6]. Prosecuted examined Lalit Kumar as PW-1, Dilbagh Rai as PW-2, Viresh Bhagat as PW-3, Constable Baljinder Singh as PW-4 , Karam Chand as PW-5, Gian Singh as PW-6 and Gurmej Singh, DSP Vigilance as PW-7. The independent witness namely Jagir Chand, who was joined as official witness in the raiding party was not examined by the prosecution.

[7]. Lalit Kumar PW-1 who was shadow witness of the raid has not supported the case of prosecution, rather he stated that the accused neither demanded any illegal gratification, nor accepted the same from the complainant. The accused was sitting at a tea stall. The witness was declared hostile on the request of Additional Public Prosecutor and was accordingly cross-examined.

[8]. Complainant himself appeared as PW-2 and has thrown light on the broad features of the case by narrating the prosecution case upto the stage of recovery.

[9]. Viresh Bhagat PW-3 has proved the sanction Ex.PJ whereas Constable Baljinder Singh PW-4 has filed affidavit Ex.PK to the effect that nips of the case property were handed over to him and the same were deposited in the office of FSL, Chandigarh on 06.05.1993. Karam Chand PW-5 has decided that the file of electric connection of the complainant was handed over to the accused on 26.12.1992 who was working as J.E. at Dina Nagar. The Inspector Gurmej Singh who was subsequently promoted as DSP examined as PW-7, stated that he was the Inspector on 28.04.1993 and

investigated the case as Investigating Officer.

[10]. After the conclusion of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., and he pleaded that he never demanded any illegal gratification nor accepted the same. In his defence, he got examined one Nidhan Singh who was running the tea stall in question. Nidhan Singh DW-1 in his statement denied the factum of taking bribe by the accused. He deposed that two persons of Vigilance Department came to his shop along with one person and they tried to give bribe to the accused.

[11]. Trial Court ultimately convicted the appellant for offences under Sections 7 and 13(2) of P.C. Act 1988 and sentenced him to undergo rigorous imprisonment for 2 years and fine of Rs.1,000/- under each of the offence along with default clauses.

[12]. It is relevant to state here that during pendency of the appeal, appellant-Parkash Chand has died and his Legal Representatives have been allowed to continue with the appeal.

[13]. I have heard the arguments of both sides and have also perused the record.

[14]. Lalit Kumar, the shadow witness while appearing as PW-1 stated that in his presence no talk took place between complainant and the accused. Accused neither demanded nor accepted any illegal gratification from the complainant. The witness was declared hostile and was cross-examined thereafter by Additional Public

Prosecutor.

[15]. Complainant Dilbagh Rai while appearing as PW-2 in Court has deposed in his examination-in-chief that accused demanded Rs.1,000/- four days prior to 28.04.1993. Accused accompanied them to the shop of tea vendor. When the complainant asked Lalit Kumar to serve a cup of tea to the accused, Lalit Kumar gave a signal to the Police party and they immediately came there. At the shop, complainant asked the accused to accept Rs.1,000/- which was earlier demanded by him and the same was accepted by the accused at the shop of tea vendor and thereafter he was apprehended.

[16]. In cross-examination, the complainant pleaded ignorance about the date on which he moved the application for taking connection. He also admitted that he met SDO in connection with the case, but he could not tell the date. He did not make any written complaint to SDO and he did not visit the Police Station after the raid. Many persons assembled at the time of raid in the office of the accused and the Police got signatures of one or two persons from the public.

[17]. From the statement of the complainant it is apparent that no demand was made by the accused on the date of occurrence, rather the complainant admitted this fact that alleged demand was made four days prior to the occurrence and on the day of occurrence it was the complainant who asked the accused to accept Rs.1,000/- which

was earlier demanded by him. Police obtained signatures of one or two persons from the public, but those persons were not cited as witnesses, rather one Jagir Chand, official witness was joined in the raiding party but was not examined as PW at a later stage.

[18]. Statements of Viresh Bhagat, Baljinder Singh, Karam Chand and Gian Singh are formal in nature. Gurmej Singh DSP, the then Inspector Vigilance Bureau has been examined as PW-7 who has stated that the complainant along with Lalit Kumar came to him when he was present in his office and the complainant got his statement recorded. Complainant was directed to hand over the money to the accused on demand. Investigating Officer joined Jagir Chand as official witness and as a raiding party they reached at the tea shop. The Investigating Officer stated about the prosecution case. He has deposed in cross-examination that he conducted the inquiry of Excise Department. Other offices were situated near to the office of Excise and Taxation Department. No public was present at the spot and he did not make any effort to join any independent person from the public. He denied that he joined government official as a witness in order to keep him under pressure. The witness has admitted that there was nothing in the pocket of Dilbagh Rai when he searched him in his office. The witness also admitted that he has not seen the currency notes in the Court. Nips Ex.P-1 and P-2 were found to be broken and there were no contents therein. The witness did not see even the purse recovered from the accused in the Court. The witness further stated that the raid was conducted at about

12.30 p.m. and the police party remained at the spot for about 3½ hours.

[19]. From the statement of Investigating Officer, it has been brought out that the case property was found not intact, as the nips Ex.P-1 and P-2 were found broken and were empty. Even the purse of the accused recovered on that day was not found by the Investigating Officer in the Court. The statement of Investigating Officer was to the effect that he did not make any effort to join any independent person from the public, whereas statement of the complainant himself is contrary to the aforesaid fact when he deposed that the police got signatures of one or two persons from the public.

[20]. Learned counsel for the appellant has contended that the shadow witness has not supported the prosecution case and was declared hostile. He was cross-examined but nothing incriminating could come on record to support the prosecution case. The official witness Jagir Chand who was joined by the prosecution has not been examined by the prosecution for the reasons best known to it. The hand wash obtained vide Ex.P-1 and PC were found to be tampered as seals were found to be broken and the nips were found to be empty.

[21]. Learned counsel further submitted that according to own showing, the complainant has admitted that demand was made four days prior to the occurrence and even on the day of occurrence

there was no demand, but he asked the accused to accept the amount for which demand was already made. Investigating Officer had specifically directed the complainant to make the payment on demand to the accused. The shadow witness has not supported the prosecution case on this pertinent aspect of the case. Learned counsel further stated that there is legal ambiguity in the framing of charge and prosecution story is unsustainable on the said ambiguous charge. Hand wash of the complainant was equally important in corruption case so as to the establish link evidence. Hand wash of the complainant was not taken.

[21]. Learned counsel for the appellant submitted that the Investigating Officer was not gazetted officer at the time of raid. At the time of deposition in the Court the Investigating Officer was promoted as DSP and his deposition as DSP at the time of evidence cannot be treated to be an investigation conducted by Deputy Superintendent of Police in the case. No Executive Magistrate was appointed by the Deputy Commissioner to associate with the raiding party.

[22]. Demand is *sine qua non* for the offences under Sections 7 and 13 of the P.C. Act in corruption cases. No independent witness has been examined to prove the factum of demand and acceptance thereof. Shadow witness has already been declared hostile. In such situation, great degree of corroboration is required to be done on the point of demand having been made by the accused for illegal

gratification. Admittedly as per complainant, alleged demand was made four days prior to the date of occurrence. Even on the date of occurrence there was no demand from the accused side, but it was the complainant who asked him to receive the amount as per his earlier demand. Statement of Investigating Officer has been quoted to show that complainant was supposed to make payment on demand of the accused. Since the shadow witness has already been declared hostile and there is no other independent corroboration of the prosecution version, therefore, the case has to be tested on the threshold of independent corroboration, if any.

[23]. Perusal of record reveals that except the complainant PW-1 there is no independent corroboration from the prosecution side, rather on the fact of joining independent person, statements of complainant as well as the Investigating Officer are at variance. On this aspect reference can be made to **Kanail Singh v. State of Punjab, 2009(1) RCR (Crl.) 403** and **Jarnail Singh v. State of Haryana, 1991(1) RCR (Crl.) 391.**

[24]. Testimony of shadow witness is always a statement of interested witness. Even the shadow witness has become hostile in the present case. His statement is always inferior to the ordinary witness. Since there is no independent witness in the case, therefore, factum of demand and acceptance remained uncorroborated.

[25]. Mere recovery of currency notes from the accused without

any proof of demand cannot be considered sufficient for bringing culpability under P.C. Act. In **M.R. Parshottam v. State of Karnataka 2015 (Criminal) Law Journal 72**, the Hon'ble Apex Court has observed that in the absence of any proof of demand the alleged act cannot bring the culpability of accused in the offence under Section 13(1)(d) of the P.C. Act.

[26]. In **B. Jayaraj v. State of Andhra Pradesh, 2014(2) RCR (Crl.) 410**, the Hon'ble Apex Court held that mere possession or recovery of currency notes from the accused without proof of demand will not bring the offence under Section 7 of the P.C. Act. Demand of illegal gratification is *sine qua non* for constituting the offence. Mere recovery of currency notes cannot constitute the offence under Section 7 of the P.C. Act unless it is proved beyond all reasonable doubts that accused voluntarily accepted the money knowing it to be bribe.

[27]. In **Banarasi Dass v. State of Haryana, 2010(2) RCR (Crl.) 553**, the Hon'ble Apex Court has also held that when the shadow witness becomes hostile then on technical ground of the witness turning hostile, benefit has to be given to the accused. This is more so in view of the fact that in case under P.C. Act, the accused not only loses the job but the same is stigmatic qua family of the accused. The family has to undergo rigor of the case and which has great impact on the prospect of the family. Corruption cases are to be treated differently so far as the appreciation of evidence is

concerned. If conviction takes place, it is not only the accused goes to jail, but he also loses livelihood and earns ignominy. In view of aforesaid, the testimony of shadow witness if goes hostile to the prosecution case may be read in favour of the accused.

[28]. On the aspect of link evidence, the case property has not been proved in Court. The nips Ex.P-1 and P-2 were found to be tampered with, nor any contents were found in the aforesaid nips as the same were found to be empty. In view of aforesaid, link evidence was found to be lacking in the case. Moreover the purse allegedly recovered at the time of incident has not been produced in the Court.

[29]. The hands of the complainant should have been washed in the solution of sodium carbonate after the alleged handing over of currency notes to the accused. No such course has been adopted in the present case. Had Investigating Officer got the hands of the complainant washed in the solution of sodium carbonate, had he sent the contents of the same to the chemical examination for scientific test and had a report of Chemical Examiner being forwarded to the prosecution, it would have been certainly proved that complainant had actually given the said currency to the accused on the spot immediately before recovery of the same from his possession. In the absence of such an obligation, link evidence is not established. On the aforesaid proposition, I am fortified in my view on the basis of **Abdul Rashid Ansari v. State of U.P. 1993(ii) Crimes 26 (Allahabad).**

[30]. In view of discrepant demand which has not been proved on the day of occurrence, the amount cannot be presumed to have been handed over on demand of the accused. Therefore, presumption in terms of Section 20 of the P.C. Act cannot be attracted, because mere possession and recovery of currency notes from the accused without there being any proof of demand will not bring the culpability under Section 7 of the P.C. Act, in view of **B. Jayaraj's case** (supra).

[31]. Taking note of entire facts and circumstances on record, it is found that the prosecution has failed to bring the culpability of the accused to the hilt and has also failed to prove the factum of demand by the accused and payment thereof by the complainant, so as to attract culpability in terms of Sections 7 and 13(2) of the P.C. Act.

[32]. For the reasons as mentioned above, appellant deserves acquittal. Consequently, impugned judgment of conviction and order of sentence are hereby set aside. Appellant is acquitted of the charges against him.

August 21, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE