

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

Crl. Appeal No.S-2172-SB of 2003

Date of Decision: 18.02.2015

Harvinder Singh through LRs

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. Sunil Chadha, Sr. Advocate
with Mr. Kirpal Singh, Advocate
for the appellant.

Mr. Premjit Singh Ghumman, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 07.11.2003 passed by the Special Judge, Ludhiana, whereby, the accused-appellant-Harvinder Singh, who was working as a *Patwari*, was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 500/- under Section 7 of the Prevention of Corruption Act (here-in-after referred to as 'the Act, 1988') and two years with fine of ₹ 1,000/- under Section 13 (2) of the Act, 1988 and in default of payment of fine, he was further directed to undergo rigorous imprisonment for a period of one month under each sentence.

Accused-appellant was convicted on the basis of complaint made by complainant-Jarnail Singh, wherein, he has alleged that the accused has demanded bribe for execution of mutation. Acting on the said complaint, raid was conducted and the alleged amount was recovered from the drawer of his table. He faced trial for offence punishable under Section 7 read with Section 13(2) of the Act, 1988 arising out of FIR No.23 dated 10.05.1999 with Police Station Vigilance Bureau, Patiala.

It is also relevant that during pendency of the appeal, the accused-appellant Harvinder Singh has died and thereafter, an application was moved by the applicants, who are stated to be the legal representatives of the deceased-appellant, for continuation of the appeal. The said application was allowed vide Order dated 26.07.2013.

The judgment of conviction and order of sentence passed by the Special Judge, Ludhiana has been challenged on the ground that the recovery was not effected from the person of the appellant, rather the alleged amount was recovered from the drawer of his table. The mutation with regard to family partition was already entered and a copy, thereof, was also handed over to the complainant much earlier from the date of alleged incident i.e 10.05.1999. There was no occasion for the appellant to demand bribe as work was already done. Learned counsel also submits that there are serious contradictions and discrepancies in the statements of prosecution witnesses and even the sanction to prosecute the appellant was granted in a most mechanical manner i.e. on the same day itself. It is also the argument of learned counsel for the appellant that a specific reason was mentioned in the statement recorded under Section 313 Cr.P.C., which clearly establish the motive to falsely implicate the accused-appellant but the same has not been considered and the appellant has been convicted without proper appreciation of evidence.

Learned counsel for the appellant has relied upon the judgments of Hon'ble the Apex Court in cases ***M.K. Harshan vs State of Kerala 1997(2) RCR (Criminal) 16***, ***K.C. Sareen vs C.B.I., Chandigarh 2001(3) RCR (Criminal) 718*** as well as judgments of this Court in cases ***Kalu Ram vs State of Punjab 1997(1) RCR (Criminal) 259***, ***Kuldip Rai vs State of Punjab 2002(2) RCR (Criminal) 781*** and ***Dalip Singh vs State of Punjab 1988(1) RCR (Criminal) 123***, in support of his contentions.

Learned counsel for the respondent-State submits that the judgment of the trial Court is well reasoned and is based on proper appreciation of evidence. He further submits that not only the demand was there but acceptance of bribe money has also been proved on the basis of statement of the complainant duly corroborated by the statement of shadow witness as well as other witnesses. The stand taken by the appellant in his statement recorded under Section 313 Cr.P.C was not based on any fact and no defence witness was examined by him. Learned counsel also submits that the execution of mutation was under consideration and it cannot be said that the work was already completed. It has also been proved on record that money was accepted by the accused-appellant and it was kept in his pocket and thereafter, the same was kept in drawer of the table. Even the hands of the accused turned pinkish in colour when they were got washed in the solution prepared by mixing *sodium carbonate* in water after acceptance of currency notes.

Heard the arguments of learned counsel for the parties and have also gone through the statements of prosecution witnesses and other relevant record on the file.

As per case of the prosecution, complainant-Jarnail Singh recorded his statement on 10.05.1999, wherein, it was stated that after the

death of his father in the year, 1973, he and his two brothers orally partitioned the joint land measuring 62 kanals 13 marlas in Village Sahnewal Khurd and prepared a memorandum of partition. Complainant along with Baldev Singh went to appellant-Harvinder Singh-Patwari, Sahnewal Khurd and requested him to enter the mutation of the partition of their land on the basis of memorandum of partition and to get the same sanctioned. Accused-appellant demanded ₹ 6,000/- for that but ultimately, it was settled for ₹ 4,000/-. Complainant told the accused that he was not having the alleged amount at that time so, he was asked by the accused to come on 10.05.1999. Complainant never wanted to pay illegal gratification and he reported the matter to the Vigilance Bureau and produced the currency notes of ₹ 4,000/-. The raid was conducted on the basis of said complaint and accused-appellant was apprehended in presence of shadow witness. The matter was investigated and challan was presented against accused and thereafter, charge was framed for offence punishable under Section 7 read with Section 13(2) of the Act to which he pleaded not guilty and claimed trial.

The prosecution, in support of its case, examined as many as eight witnesses. Thereafter, the statement of the accused under Section 313 Cr.P.C was recorded and he claimed false implication and denied the allegations. He has stated his false implication in the case as the complainant and his brother-Bhajan Singh were engaged in business of lifting milk from his house and selling the same in the market. A sum of ₹ 4,000/- was due from them towards his father and there was litigation between them in this regard. As the money was demanded from the complainant and his brother-Bhajan Singh, they were annoyed and due to that, the accused-appellant was falsely implicated.

On perusal of evidence on record and after considering the

statement of prosecution witnesses, the trial Court convicted the accused-appellant and sentenced him for the offence as mentioned above.

The judgment of conviction and order of sentence passed by the Special Judge, Ludhiana has been challenged mainly on the ground that there are serious contradictions in the statements of the witnesses; no recovery was effected from the person of the accused as the alleged amount was recovered from drawer of the table; the mutation was already entered into and there was no occasion to demand money.

In a case of offence under Section 7 or 11 and 13 of the Act, in case an accused has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification other than legal remuneration or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he has accepted or obtained or agreed to accept or attempted to obtain or agreed to accept some amount as gratification and the offence is made out.

As per provisions of Section 20(1) of the Act, the prosecution is to prove the demand and its acceptance by the accused and then onus shifts upon the accused to show that the amount recovered was not towards any illegal gratification. In case, the money has been recovered from the accused, then the presumption in terms of Section 7 of the Act casts an obligation on the Court to operate it in every case though that presumption is rebuttable presumption by way of proof and not merely by explanation.

In the present case, the accused has come with the explanation that there was no occasion to demand illegal gratification as work was already completed. A plea has also been raised in the statement recorded under Section 313 Cr.P.C by the accused that the money was due towards complainant and on demand, the complainant being

annoyed, implicated him in this case. Neither any defence witness has been examined by the accused nor any document has been placed on record to show that there was any transaction between him and the complainant party.

On perusal of statement of the complainant-Jarnail Singh before the Court, it has come on record that the accused has demanded ₹ 6,000/- as bribe for entering the mutation and ultimately, it was settled for ₹ 4,000/-. The matter was brought to the notice of Deputy Superintendent of Police and the complainant even handed over eight currency notes of the denomination of ₹ 500/- each, which were treated with powder and their numbers were also noted down. The complainant was directed to give the said amount as and when demanded by the accused. A shadow witness accompanied the complainant and money was accepted by the accused in his presence. The accused was sitting in his office and he asked for the alleged amount, which was paid to him and after taking the said amount, he kept the same in the drawer of his table, which was recovered by the raiding party. The solution prepared by mixing *sodium carbonate* in water was used for washing the fingers of the accused subsequent to which the hands of the accused turned pinkish in colour, which was transferred into a nip and sealed by the Deputy Superintendent of Police with his seal bearing impression 'SS', which was taken into possession. Numbers on the notes were also tallied, as per memo already prepared as Ex.P1. It has also come in the statement that the mutation register was also taken into possession, wherein, in the remarks column, it was written "Zen Ker", meaning thereby, 'under consideration'. Copy of the same was given to the complainant and he promised to pay the amount later on. The statement of the complainant has further been corroborated by the statement of shadow witness i.e Baldev Singh (PW-5). Similarly,

PW-6 Sarup Singh, DSP (Vigilance Bureau) has also corroborated the statement of the complainant as well as of shadow witness-Baldev Singh. A stand has been taken by the accused in his statement recorded under Section 313 Cr.P.C that the complainant-Jarnail Singh and his brother Bhajan Singh were engaged in business of lifting milk from his house and thereafter, it was being sold in the market. An amount of ₹ 4,000/- was due from them towards his father but the same was not given in spite of demand. Both of them became annoyed and due to that reason, the accused-appellant has falsely been implicated in the case. Neither any witness has been examined in defence nor any document was proved on record to show that the amount was due.

On perusal of statements of prosecution witnesses, it has been proved on record that the bribe was demanded and the amount of bribe was also recovered from drawer of the table of the accused. It is not a case that the recovery was made from drawer and accused-appellant cannot be held liable for that as recovery was not effected from him. Not only the amount was recovered but it was accepted by the accused and when his fingers were put into the solution prepared by Deputy Superintendent of Police, its colour changed into pinkish.

In case **Hazari Lal vs. State (Delhi Admn.), (1980) 2 SCC 390**, it was observed that there is no requirement to prove passing of money by direct evidence and it may be proved by circumstantial evidence.

In **Madhukar Bhaskarrao Joshi vs. State of Maharashtra, (2000) 8 SCC 571**, it has been observed as under: -

“12.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 the inference to be

drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

In **Ramesh Chander vs. State of Punjab, 2005 (2) RCR (Criminal) 330**, it has been held that in case, even the shadow witness turns hostile and independent witness was not examined, then the fact of recovery of tainted money is proved and in the absence of any reason for false implication, the conviction can be upheld.

It is clear from Section 20(1) of the PC Act that once the prosecution establishes the demand and acceptance of money by the accused, then onus shifts on the accused to show that the amount recovered was not towards any illegal gratification as has been held in

T. Shankar Prasad vs State of A.P. 2004 Supreme Court Cases (Crl.)

870. In that case, it was held that when money was recovered from pocket

of accused, then the presumption was in terms of Section 7 of the PC Act, which was rebuttable and the same is to be rebutted by proof not merely by explanation.

In the present case also, the accused has not come with any explanation whatsoever to show that the recovered amount was not towards illegal gratification or was for some other purpose. The recovery in the present case has duly been proved from the person of accused and presumption under Section 20(1) of the PC Act goes against the accused-appellant.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the appellant and no interference is required with the findings recorded by the trial Court.

The appeal is, accordingly, dismissed.

18.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE