

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Appeal-S No. 611-SB of 2002(O&M)

Date of Decision: July 29 , 2015.

Narinder Kumar Malhotra

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Amit Jhanji, Advocate
for the appellant.

Ms. Shivali, AAG, 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?

LISA GILL, J.

Appellant Narinder Kumar Malhotra has preferred the present appeal impugning the judgment and order dated 08.04.2002 passed by learned Special Judge, Patiala whereby he was convicted for the offences punishable under Sections 13(2) and 7 of the Prevention of Corruption Act, 1988 (for short, the 'Act') and sentenced to undergo rigorous imprisonment for two years, besides, pay a fine of ₹3,000/- and in default thereof, to undergo rigorous imprisonment for three months for offence under Section 7 of the Act and to undergo rigorous imprisonment for three years, besides, pay a fine of ₹4,000/- and in default thereof, to undergo rigorous imprisonment for four months for

offence under Section 13 (2) of the Act. Both the sentences were, however, ordered to run concurrently.

Prosecution was set in motion on the statement, Ex.PO of complainant Krishan Lal PW7. He revealed that he submitted an application on 22.07.1997 Ex.PW6/A to the District Food and Supplies Controller (DFSC), Patiala for allotment of a licence for running a Fair Price Shop. This application was supported by a resolution, Mark 'A', of village Panchayat of Jeon Kalan. DFSC Patiala vide endorsement dated 30.07.1997, Ex.PW6/B directed the District Food and Supplies Officer (DFSO) Patran to submit a report in respect to the complainant's request. Report dated 24.10.1997, Ex.PW6/C was submitted after due enquiry. File was handed over to complainant who himself took the file to the Additional Food and Supplies Controller, Patiala but no action was taken on his request. Complainant met appellant-accused, Narinder Kumar Malhotra on 03.11.1997 and revealed the problem being faced by him in this matter.

Accused who was Inspector Grade-II in the Department of Food and Supplies Punjab, Patran told the complainant that he enjoyed a good rapport with the Additional Food and Supplies Controller, Patiala and offered to get the needful done in lieu of illegal gratification of ₹5,000/-. Despite request accused did not reduce the amount demanded. Accused asked the complainant to bring the money at about 11/12 O'clock on 04.11.1997 in the office of DFSC Patiala itself.

However, complainant did not wish to get the work done by giving the bribe. He talked about the matter with Chhajju Ram Mittal PW11 who

advised him not to give bribe. Thereafter, the complainant alongwith PW11 Chhajju Ram Mittal approached PW10 DSP Chaman Lal, Vigilance Bureau Patiala on 04.11.1997. Complainant suffered statement Ex.PD. He handed over ₹5,000/- in the form of ten currency notes in denomination of ₹500/- each, Ex.MO/1 to MO/10 to PW10 DSP Chaman Lal. The said currency notes Ex.MO/1 to MO/10 were dusted with Phenolphthalein powder. Their numbers were recorded. The currency notes were handed over to complainant to be given to the accused on demand. It was ensured that the complainant was not in possession of any other currency. A solution was prepared by dissolving sodium carbonate in water which turned light pink when a piece of paper with phenolphthalein powder was dipped into it. Solution was drained away after explaining the same to the witnesses by demonstration. Memo Ex.PF regarding solution was prepared.

PW11 Chhajju Ram Mittal was nominated as a shadow witness and was directed to accompany the complainant to the office of DFSC Patiala to carefully hear the conversation and observe the proceedings. He was also instructed to give a signal to the raiding party by putting his right hand on his head after Narinder Kumar Malhotra received ₹5,000/- as bribe on demand. On the basis of the statement, Ex.PD suffered by the complainant, formal FIR Ex.PO/2 was recorded by Inspector Lal Chand.

PW8 Anil Kumar Garg, Sub Divisional Officer, PWD(B&R), Patiala was associated with the raiding party after he was deputed for this purpose. He was introduced to the complainant as well as the shadow witness. Thereafter, the Investigating Officer alongwith Inspector Balkar Singh, HC Ashok Kumar,

HC Ranjit Singh, Constables Swaran Singh and Jaswinder Singh, Gunmen Raj Kumar and Jaswinder Singh, the complainant, shadow witness and the independent witness Anil Kumar Garg proceeded for the raid.

At the office of the DFSC Patiala, complainant Krishan Lal PW7 and shadow witness PW11 Chhajju Ram Mittal were directed to proceed inside the office as planned while other members of the raiding party were outside awaiting the signal. Narinder Kumar Malhotra accused was standing near the canteen and on seeing the complainant he asked whether the file and the money had been brought by him. Complainant affirmed the same on which the accused took the file from the complainant. He got endorsement No.7634/4.11.97 from the Superintendent and returned the file to the complainant. He demanded the bribe money on which it was handed over to him by the complainant. Accused told the complainant that he would get the needful done by meeting the DFSC, Patiala.

On this, PW11 Chhajju Ram Mittal signalled the raiding party as planned by coming out of the office. PW10 DSP Chaman Lal proceeded inside the office with the raiding party. Accused was found talking with the complainant near the Canteen. Identity was disclosed by the Investigating Officer to the accused. He was caught hold of with the help of two police officials. A solution of water and sodium carbonate was prepared. Hands of the accused Narinder Kumar Malhotra when washed resulted in the solution turning light pink. Solution was put in a vial, Ex.MO/11 sealed with seal impression "CL" which was taken in possession vide Ex.PG. Ten currency notes of ₹500/- denomination Ex.MO/1 to MO/10 were recovered from the right pocket of

trousers worn by the accused. On comparison by Anil Kumar Garg PW8, numbers on the notes tallied with the numbers recorded in Ex.PE. The currency notes were taken in possession vide Ex.PH. On personal search, ₹59/-, one identity card of the accused and a wrist watch were taken in possession vide Ex.P1. Another solution with sodium carbonate was prepared and the right hand side pocket of the accused trousers was taken inside-out and washed in the said solution which turned light pink. Solution was taken in possession vide Ex.PJ after being put in a vial, Ex.MO/12. Trousers of the accused which had been got removed before testing with the sodium carbonate was taken in possession vide Ex.MO/13. Sample seal was prepared and after use was handed over to PW8 Anil Kumar Garg.

File of allotment of the Fair Price Shop licence, Ex.MO/14 was taken in possession vide Ex.PK. Rough site plan, Ex.PL of the place of occurrence was prepared. Case property was deposited with the Moharrir, MHC Gurbhej Singh. Ex.MO/12 was sent for chemical examination. Report, Ex.PM from the Chemical Examiner was received. Sanction for prosecution of the accused is Ex.PB.

On completion of investigation, report under Section 173 Cr.P.C. was prepared. Charge was framed on 13.01.1999 against the accused, who claimed trial.

Prosecution examined as many as eleven witnesses to prove its case.

Accused while denying the incriminating evidence put to him, pleaded innocence and false implication in this case in his statement under

Section 313 Cr.P.C. He took a specific stand that complainant is a Press Reporter. Complainant's wife Anita Rani had filed a complaint against the complainant and other members of his family under Sections 406/498A/506/509/420/148/149 IPC on 11.04.2001. Complainant and his brother Lajpat Rai have a joint ration card and he used to live with his brother at Shutrana. Lajpat Rai was running a Fair Price Shop at Shutrana for a number of years. On a complaint filed by the village Panchayat Shutrana against the complainant and his brother Lajpat Rai, appellant-accused and Naval Kumar Bassi conducted an inquiry on 30.04.1997. He submitted a report against him on the basis of which supply of food grains was stopped on the shop of his brother from 30.07.1997. Subsequently, licence of the shop was cancelled on 24.12.1997. Appeal against the cancellation was also rejected 22.10.1998. Accused further stated that he had nothing to do with the case of complainant for grant of the licence of the shop and the complainant only wanted to seek vengeance on account of the cancellation of the brother's licence of the Fair Price Shop. Present case is stated to be false and fabricated in connivance with the officials of the Vigilance Bureau. Any such occurrence as alleged is denied. Complainant had also been summoned on a complaint filed by Mann Singh Sarpanch to the effect that the resolution of Gram Panchayat and certificates appended alongwith the application were forged.

Learned trial court on appreciation of the evidence on record concluded that the prosecution has proved its case beyond reasonable doubt against the appellant thereby, convicting him of the offences punishable under Sections 13(2) and 7 of the Act and sentenced him as detailed above.

Learned counsel for the appellant vehemently argues that the false implication of the appellant is apparent on the face of it. Appellant has, in fact, been victimized for having conducted an inquiry which resulted in cancellation of the Fair Price Shop of the complainant's brother. It is vehemently contended that the necessary ingredients to constitute an offence punishable under Section 7 of the Act are conspicuous by their absence. Prosecution has failed to prove the demand of illegal consideration or its acceptance thereafter by the accused. There is no independent witness to prove the demand or the acceptance of illegal gratification. Mere recovery of the tainted money by itself is not sufficient for convicting the accused. It is urged that no reliance can be placed on the testimony of shadow witness as he is admittedly a close friend of the complainant. No reliance can be placed on the official witnesses who are obviously interested in the success of their case. It is further submitted that the accused did not have any role to play for the grant of licence for running a Fair Price Shop by the complainant. Therefore, there is no question of any payment of illegal gratification to the accused by the complainant. Learned counsel argues that the accused has led positive evidence to show his false implication. The order of cancellation, Ex.D2 of the licence of Fair Price Shop of the complainant's brother has been proved on record in which the report submitted by the appellant finds mentioned. Credibility of the complainant is stated to be suspect on various counts. Accused produced DW5 Baj Singh to show that complainant was not a tenant of Baj Singh as alleged by him. There are discrepancies in the evidence of the witnesses which also casts a doubt on the alleged recovery of the tainted money. It is urged that there is no uniformity in

the manner of recovery stated to be effected from the accused. All the witnesses have given discrepant and varying accounts. It is, thus, prayed that conviction of the accused in this case is not justified and is liable to be set aside.

Learned counsel for the State while denying the abovesaid arguments submits that there is sufficient and overwhelming evidence on record to show the complicity of appellant-accused in the present case. It is admittedly a trap case in which the tainted money was recovered from the possession of the appellant-accused. Demand and acceptance of illegal gratification has been duly proved on record. It is, thus, prayed that the conviction and sentence imposed upon the appellant be upheld.

I have heard learned counsel for the parties and gone through the record with their able assistance.

Krishan Lal PW7 has steadfastly testified without any variation or material discrepancy. He has specifically deposed that the accused demanded illegal gratification to the tune of ₹5,000/- for getting his work done i.e., pushing through his file for the grant of licence for running a Fair Price Shop from the DFSC Patiala. Admittedly, the appellant was posted as Inspector Grade II in the office of Assistant Food Supplies Officer, Patran. He had assured the complainant that he enjoyed a good rapport with the DFSC Patiala. Complainant's friend Chhajju Ram Mittal PW11 when apprised of the matter, accompanied him to DSP Chaman Lal PW10. Chhajju Ram Mittal was designated as the shadow witness. Ten currency notes of ₹500/- denomination were presented and dusted with Phenolphthalein powder. Requisite procedure was followed. Demonstration was given to the complainant and the shadow

witness and they were duly instructed. PW8 Anil Kumar Garg, Sub Divisional Officer, PWD(B&R), Patiala was duly associated with the raiding party. PW8 Anil Kumar Garg has also supported the prosecution version.

Both the complainant as well as shadow witness Chhajju Ram Mittal have affirmed that the appellant-accused who was standing near the canteen inquired whether the complainant had brought the money and the file. He took the file inside and got an endorsement No.7634/4.11.97 from the Superintendent. He took the bribe money from the complainant and put it in the right hand side pocket of his trousers he was wearing. Therefore, the argument that demand and acceptance of the illegal gratification is not proved is not sustainable in the face of specific evidence on record.

Accused was duly apprehended at the spot alongwith the tainted money and hands of the accused on being washed, tested positive to the Phenolphthalein powder. It is also proved on record that on right pocket of his trousers being washed, the solution of sodium carbonate had turned light pink. It is a matter of record that the said solution taken in possession was duly submitted with the MHC Gurbhej Singh on the same day. It was sent for chemical examination. Evidence on record shows that there is no tampering with the sample. As per FSL report Ex.PM, presence of phenolphthalein powder was detected.

Contention on behalf of the appellant that there are material discrepancies in respect of the recovery of tainted money, is equally untenable. Learned counsel has made reference to the statements of PW7 Krishan Lal, PW11 Chhajju Ram Mittal and PW8 Anil Kumar Garg as well as Investigating

Officer PW10 DSP Chaman Lal to submit that there is no uniformity in the manner in which the tainted amount was recovered from the person of the complainant. Perusal of the statements of PW7 Krishan Lal and PW8 Anil Kumar Garg shows that both of them have stated that the accused took the bribe money and put it in the right-hand side pocket of his trousers. PW10 Chaman Lal has stated that the tainted money was recovered from the right-hand side pocket of the appellant's trousers. Testimony of PW8 Anil Kumar Garg is also in consonance with the prosecution version. There is no discrepancy whatsoever leave alone a material discrepancy in this respect. Demand and acceptance of illegal gratification as well as the recovery of the tainted money from the possession of the accused is duly proved.

No *mala fide* has been alleged much less proved against the official witnesses who had no axe to grind against the appellant. PW8 Anil Kumar Garg who was posted as Sub Divisional Officer, PWD(B&R), Patiala is an independent witness though a suggestion was made to PW10 DSP Chaman Lal that an inquiry against Anil Kumar Garg was pending with him, the same was denied and there is no evidence on record to substantiate any such averment.

Learned counsel for the appellant relies upon the judgment of Hon'ble Supreme Court in **B.Jayaraj v. State of A.P., 2014(2) RCR(Criminal) 410** to show that mere recovery of the tainted currency notes from the possession of the appellant does not constitute an offence under Section 7 of the Act. In the case of **B.Jayaraj** (supra), the complainant had not supported the prosecution version insofar as the demand of tainted money from accused was concerned. It is in these circumstances that the Hon'ble Supreme Court has held

that mere possession and recovery of currency notes cannot be the basis of the conviction.

In the present case, the complainant as well as the shadow witness have clearly proved the demand as well as the acceptance of the bribe money by the accused.

Similarly in the case of **State of Punjab v. Madan Mohan Lal Verma, 2013(3) RCR(Criminal) 972** it has been held that mere receipt of amount in question by the accused is not sufficient to fasten guilt. In the said case, the accused had specifically explained that he shook hands with the complainant and that is the reason why sodium carbonate solution had turned pink on his hands being washed. In the present case, there is no explanation by the accused as to why and for what reason he had accepted the money and kept the same in the right pocket of his trousers or that it had been forced upon him in any manner.

Strenuous effort was made to project victimization of the appellant for having submitted the inquiry report against the complainant's brother which led to cancellation of his licence to run a Fair Price Shop. Reference has been made to Ex.D2, order of cancellation dated 24.12.1997 passed by DFSC Patiala in which reference is made to an inquiry report dated 14.07.1997 referring Lajpat Rai's relative being local press reporter who threatened and intimidated officials who conducted inquiry. This aspect is irrelevant and immaterial keeping in view the peculiar facts of this case where the appellant has not only been caught red-handed but the complainant and shadow witness have proved the demand and acceptance of illegal gratification. Independent witness has

duly supported the prosecution version. There is no reason to disbelieve testimony of official witness. Hands and the right pocket of the accused when washed tested positive for phenolphthalein. There is no plausible explanation for the same except being a conclusive pointer to the guilt of the accused.

Similarly, appellant cannot derive any benefit from the statement of DW5 Baj Singh. Complainant being a tenant or not is not relevant in view of the fact that the file Ex.MO/14 was taken in possession and an application had doubtlessly been made for grant of licence for running a Fair Price Shop by the complainant. Appellant was posted as Inspector Grade-II in the said department and complainant would necessarily have reason enough to believe that appellant could get his work down. Registration of an FIR by the complainant's wife on account of matrimonial discord has no relevance to the present case.

PW4 Mann Singh, who was Sarpanch of the village from the year 1993 to 1998 has been declared hostile. However, he can not be of much help to the appellant. His statement that no resolution was passed on 14.07.1997 by the Panchayat does not improve the case of the defence. The said resolution dated 14.07.1997 Mark 'A' was stated to have been appended alongwith the application for grant of licence for Fair Price Shop. As per the said resolution, it was disclosed that the Gram Panchayat Jeon Kalan has certified that there was no Fair Price Shop in the abadi due to which the villagers faced problem and the Gram Panchayat was in favour of the licence being granted to Krishan Lal for running a Fair Price Shop. While denying the passing of resolution, PW4 Mann Singh has admitted that the Gram Panchayat did have place/space to give to

Krishan Lal for opening the ration depot. The complaint filed by Mann Singh for having submitted a false resolution, is not material for decision of this case. This is so for the reason that application accompanied by the said documents has been proved on record. Said documents being genuine or otherwise cannot improve the appellant's case in the present factual matrix.

Keeping in view the facts and circumstances, I find that prosecution has indeed succeeded in proving its case against the appellant beyond reasonable doubt. There is no infirmity and illegality in the conviction and consequent sentence imposed upon the appellant vide judgment and order dated 08.04.2002 rendered by the learned Special Judge, Patiala.

Consequently, this appeal is dismissed.

July 29 , 2015.
'om'

(LISA GILL)
JUDGE