IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-743-SB of 2003

DATE OF DECISION: AUGUST 6, 2015

YUDHISHTER (THROUGH L.R.S) & ANOTHER ...APPELLANTS

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPAUL.

1. Whether the judgement should be reported in the digest? Yes

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PRESENT: MR. SUNIL PANWAR, ADVOCATE
AND MS. SONIA SHARMA, ADVOCATE
FOR THE APPELLANTS.

MR. TANUJ SHARMA, AAG, HARYANA.

M. JEYAPAUL, J.

1. The appellants who are the father and son have challenged the conviction and sentence recorded by the trial Court vide which appellant Yudhishter was sentenced to undergo rigorous imprisonment for 2 years and 6 months and to pay a fine of ₹2000/- and in default, to undergo a further period of 6 months rigorous imprisonment under Section 7 of Prevention of Corruption Act, 1988 and 2nd accused Kamal was sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of ₹2000/- and in default, to undergo a further period of 6 months rigorous imprisonment under Section 120-B IPC.

2. Appellant Yudhister has died. As the conviction, if maintained, would have an adverse impact on the entitlement to receive terminal benefits by the legal representatives of Yudhishter who was in service, the legal representatives have come on record to prosecute the appeal preferred

by Yudhishter.

3. It is the case of the prosecution that on 7.2.2001, accused Yudhishter who was working as Clerk in the office of Dakshin Haryana Bijli Vitran Nigam Limited (for short 'DHBVNL'), Badshahpur accepted an illegal gratification of ₹500/- for clearing the file for extension of electric load of the tubewell of Nain Singh Tyagi and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988. It is the case of the prosecution that 2nd accused Kamal conspired with his father Yudhishter and did some act in pursuance thereof and received the bribe amount entrusted by his father and thereby, he committed an offence under Section 120-B IPC.

4. PW7 Nain Singh Tyagi who was the complainant has deposed that he was in need of more horsepower to run his electric motor in the pump set. Accused Yudhishter was posted as a Clerk in the office of DHBVNL, Badshahpur. Mr.D.S.Hooda, Junior Engineer Assistant attached to the said office received the application and directed him to go to accused Yudhishter after making necessary note on the application. PW7 met accused Yudhishter who refused to accept the application. He demanded a sum of ₹500/- for pursuing the application. The accused called him several times, but he did not do the needful. On 7.2.2001, accused Yudhishter called him with an assurance that he would recommend for the increase of the load. PW7 did not want to give bribe to accused Yudhishter who did not like to clear the file without accepting a sum of ₹500/- as bribe. He proceeded to the office of Deputy Superintendent of Police, State Vigilance Bureau, Gurgaon alongwith his acquaintance PW9 Roshan Lal and moved

an application Ex.PF.

5. PW8 DSP Murari Lal Vats sent ruqa for registration of the case. PW6 V.K.Sharma, an official witness and PW10 SI Umesh Chander were associated for the purpose of raid headed by PW8. Phenolphthalein powder test was demonstrated before the witnesses. PW7 accompanied by PW9 Roshan Lal and PW10 SI Umesh Chander proceeded to the office of accused Yudhishter. PW7 handed over five tainted currency notes Ex.P1 to P5 of ₹500/- each at the denomination of ₹100/- to accused Yudhishter who passed on the same to his son accused Kamal. On receipt of a signal from PW10 SI Umesh Chander, PW8 Roshal Lal alongwith the police party entered into the office of the accused Yudhishter. The tainted currency notes were recovered from the pocket of accused Kamal. Sodium Carbonate solution was prepared. The hands of accused Yudhishter and Kamal were dipped therein upon which the water turned pink in colour. All the material objects were properly parceled and sealed.

6. Accused Yudhishter and Kamal have set up a plea in their statements under Section 313 Cr.P.C. that the police took them forcibly and registered a false case.

7. The trial Court adverting to the evidence on record, convicted and sentenced the accused as stated supra.

8. Learned counsel appearing for the appellants referring to the evidence of PW6 to PW10 would submit that a false case was booked as against the appellants. A case of electricity theft was registered as against PW7 and PW9 at the instance of accused Yudhishter. It is his further submission that the first information report was prepared leisurely after the alleged raid was conducted. Appellant Yudhishter had nothing to do with

the application submitted by PW7 after his boss had handed over the file to PW7 for payment of necessary fees to the cashier. Therefore, it is his submission that the appellants are entitled to acquittal.

9. Learned AAG, Haryana would vehemently submit that there was no motive for PW6 to PW10 to implicate accused Yudhishter in this case. The fact remains that tainted currency notes to the tune of ₹500/- was recovered from the pocket of accused Kamal. The same had been entrusted by accused Yudhishter to his son Kamal who happened to be at his office. Minor discrepancies in the evidence adduced by the prosecution does not create any doubt in the case of the prosecution, he further submitted.

10. PW8 DSP Murari Lal Vats has categorically deposed that the application Ex.PF was registered at his instance beforever he proceeded to the office of accused Yudhishter for conducting a raid. On a careful perusal of the application Ex.PF submitted by PW7 to PW8, it is found that there was no reference to accused Kamal. But surprisingly, it is seen that the name of Kamal found a place in the formal FIR registered beforever PW8 proceeded alongwith witnesses and police party for a raid. The above facts and circumstances would go to establish that FIR was registered after the raid was conducted. The introduction of accused Kamal in the formal first information report registered beforever the raid was conducted throws doubt on the very foundation laid by the prosecution.

11. Ex.PA is the copy of the application submitted by PW7 for extension of load. PW7 has categorically deposed that the Junior Engineer had handed over the file to him on 5.2.2001 itself with a direction to make payment of fees. But, it appears that PW7 instead of making payment of fees of ₹180/- for extension of load, went away with the file.

12. PW7 has categorically admitted that he remitted fees of ₹180/- only on 7.2.2001. PW8, the investigating officer who conducted raid has clarified the position that fee was remitted only after the raid was conducted.

13. The question that arises for consideration at this juncture is whether there could have arisen any necessity for accused Yudhishter to demand a sum of ₹500/- for processing the file relating to the application submitted by PW7 and whether PW7 would have felt the necessity to pay illegal gratification of ₹500/- to accused Yudhishter, even after the file was processed and handed over to him only for making payment of fees.

14. In my considered view, it is totally unbelievable that accused Yudhishter made a demand of ₹500/- from PW7 even after the file was handed over to him by the Junior Engineer on 5.2.2001 itself. If at all accused Yudhishter had thought of receiving an illegal gratification from PW7, he would have retained the file in the guise of processing the same. Therefore, in the above background, the evidence of PW7 that accused Yudhishter persistently demanded a sum of ₹500/- for processing the file does not appear to be true.

15. There was no role for accused Yudhishter in the matter of processing the file relating to the application by PW7 for extension of load as the same had already been processed and handed over by the Junior Engineer to PW7.

16. It is to be noted at this juncture that PW7 never deposed that on 7.2.2001, accused Yudhishter demanded a sum of ₹500/- for processing the file. It is a well settled position of law that mere recovery of tainted amount

from the accused would not establish the charge under the Prevention of Corruption Act.

17. PW7 and PW9 have categorically admitted that a case under Section 379 IPC for theft of electric power was booked as against them. Of course, accused Yudhishter could not establish that the case of theft was registered as against PW7 and PW9 only at his instance. But the fact remains that a suggestion put to them to that effect was denied. At any rate, accused Yudhishter had dropped a hint through the admission of PW7 and PW9 to the suggestion made to them that they had been facing a case of theft of electrical energy just a month before the raid was conducted. Therefore, in my considered view, there is every chance for PW7 having tied-up with PW9 to book a false case as against accused Yudhishter.

18. As regards the role of accused Kamal, there is no whisper made by any of the witnesses that accused Yudhishter and Kamal conspired together to receive the illegal gratification from PW7 for processing his application. There is also no evidence that accused Kamal received the amount knowing full well that it was a bribe amount. For all these reasons, I find that the prosecution miserably failed to bring home the guilt to accused Yudhishter and Kamal and, therefore, they are entitled to acquittal.

19. Resultantly, accused Yudhishter and Kamal are acquitted of the charges framed as against them. Accused-appellant Kamal is on bail. The bail bond executed by him shall stand discharged.

20. Consequently, the appeal is allowed.

August 6, 2015 **(M. JEYAPAUL)**
Gulati **JUDGE**