

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.S-774-SB of 2002
Date of Decision : February 24, 2015

Jagdish Prashad

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.SMANN

Present : Mr. Ashwani Bhardwaj, Advocate.

Mr. Baldev Singh, Additional A.G. Haryana.

T.P.S. MANN, J.

The appellant was tried for committing the offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') for demanding and accepting Rs.600/- as illegal gratification from complainant Ram Bhagat. Vide judgment and order dated 29.4.2002, the Special Judge, Sirsa held him guilty for the aforementioned offences and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further imprisonment for a period of six months. Hence, the present appeal.

The facts of the prosecution case, in nutshell, are that the land belonging to the complainant, situated in village Rajpura Sanghi

was transferred in the command area, pursuant to the order of the Divisional Canal Officer, which was confirmed by the Superintending Canal Officer. As Form-A was to be verified by the Superintending Canal Officer, the complainant was required to contact the appellant, who was posted as Division Head Draftsman. The former met him a couple of times but the latter kept on putting him off. Ultimately, the appellant demanded a sum of Rs.600/- from the complainant for getting Form-A verified from the Superintending Canal Officer. On 26.5.1997, the complainant appeared before DSP Ganga Ram and apprised him of all the facts. DSP asked the complainant to bring a witness with him. Accordingly, the complainant took his friend Inder Singh with him to the residence of the DSP, where Ashok Bhadu, DETC, Sirsa and Sanjeev Kumar, Excise Inspector, were present. The DSP recorded statement Ex.PE of the complainant and sent the same to Police Station City, Sirsa for registration of the case. The complainant produced six currency notes of the denomination of Rs.100/- each before the DSP, which were taken into possession vide recovery memo. Ex.PG. The DSP put his initials 'GR' and applied phenolphthalein powder on the notes, which were, thereafter, handed over to the complainant with a direction to deliver them to the appellant on demand. Inder Singh was deputed to act as a shadow witness. At the time of raid, the police party, including Ashok Bhadu and Sanjeev Kumar stayed in the premises of Hindustan Petrol Pump, Sirsa, which was near the office of Superintending Engineer,

Irrigation Department, Sirsa. On getting a signal from Inder Singh, the raiding party went to the office of the appellant and introduced itself to the appellant. In the meantime, Wazir Chand Goyal, XEN also reached there. The DSP conducted the search of the appellant, which led to recovery of six tainted currency notes from the left pocket of his shirt. The DSP then dipped the hands of the appellant in a solution of sodium carbonate and the colour of the solution turned pink. The hand wash of the complainant was also done and the colour of the solution turned pink. The solutions were put in separate nips and taken into possession. The shirt of the appellant was got removed and taken into possession. The DSP prepared rough site plan of the place of recovery and recorded the statements of witnesses and arrested the appellant.

Upon completion of the investigation and after obtaining sanction for prosecution of the appellant, the Investigating Agency challaned the appellant. The appellant was charged for the aforementioned offences, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 13 witnesses. DSP Inder Dutt, while appearing as PW1, deposed that on 1.7.1997, he recorded the statements of the prosecution witnesses and obtained sanction for prosecution of the appellant. Subsequently, he presented the final report under Section 173

Cr.P.C. against the appellant. PW2 Giani Ram, Assistant Revenue Clerk, proved Ex.PA, which was given by the complainant for conversion of his land into command area. Scaled Site Plan Ex.PB was proved by PW3 Constable Subhash Chander. PW4 Head Constable Sita Ram and PW5 Head Constable Om Parkash tendered in evidence their affidavits Ex.PC and PD, respectively. PW6 SI Tara Chand testified about recording the formal FIR Ex.PE/1 on receipt of ruqa Ex.PE. PW7 Harmesh Lal, P.A. to General Manager, Irrigation Department, Chandigarh proved the sanction order Ex.PF. PW8 Ashok Bhadu, PW10 Ram Bhagat, complainant, PW11 Inder Singh, shadow witness and PW12 DSP Ganga Ram supported the prosecution case on all material points. While PW 9 Madan Lal proved the posting order of the appellant Ex.PM. and copy of the first page of his service-book Ex.PN. PW13 Satbir Singh, Clerk proved sanction order Ex.PT issued by the Engineer-in-Chief, Irrigation Department, Haryana. Report of Forensic Science Laboratory Ex.PS was tendered in evidence by the Public Prosecutor.

During his examination under Section 313 Cr.P.C., the appellant admitted his posting as Draftsman in the office of Superintending Canal Officer, Sirsa. He denied the correctness of the other allegations and pleaded that he was falsely implicated in this case by the complainant, whose case was being delayed by some other officials. He had received the file of command area of the complainant on 26.5.1997 and returned the same on the same

day, after due compliance to the concerned branch, before he came to be implicated in this case. In support of his plea, the appellant examined DW1 Om Parkash, who had been working as a Circle Head Draftsman in the same office in which the appellant was posted. He deposed that the file of the complainant for change of outlet was received in his office at about 10.30 a.m. and he marked the same to the appellant, who returned the same after due compliance at about 12.30 p.m. Thereafter, he sent the file to the Superintending Engineer which was received back, duly signed by the Superintending Engineer between 2/2.30 p.m. The file was, thereafter, handed over to the dispatcher for being sent to the Executive Engineer. He further deposed that on the same day at about 2.30 p.m., the appellant was taken out of his room by the police but no proceedings were done in the office.

After hearing learned Public Prosecutor for the State, learned defence counsel and perusing the records, the Special Judge came to the conclusion that the prosecution had been able to prove its case against the appellant beyond a shadow of reasonable doubt. Accordingly, he was convicted and sentenced.

After hearing Mr. Ashwani Bhardwaj, Advocate for the appellant and Mr. Baldev Singh, Additional Advocate General, Haryana, this Court finds that at the time of the occurrence, i.e. on 26.5.1997, the appellant was posted as Division Head Draftsman in

the office of the Superintending Canal Officer. Further, before prosecuting the appellant for committing the offences under Sections 7 and 13 of the Act, the prosecution had obtained the valid sanction. It is also not in dispute that the complainant had moved application Ex.PA for conversion of his area into command area which was decided on 21.8.1996 by the Divisional Canal Officer, which order was confirmed by the Superintending Canal Officer. Subsequent thereto, Form-A was to be approved by the Superintending Canal Officer and, accordingly, Form-A was sent to the Superintending Canal Officer on 26.5.1997. The said form was to be routed through the appellant, who according to the prosecution, demanded Rs.600/- from the complainant for getting the necessary approval from the Superintending Canal Officer. This was followed by the complainant appearing before PW12 DSP Ganga Ram, who constituted a raiding party so as to nab the appellant red handed. However, before the raid could be conducted some time after 4.30 p.m. on 26.5.1997, the file of the complainant came to be received by DW1 Om Parkash, Circle Head Draftsman, who marked the file to the appellant. The appellant, after making necessary compliance, returned the file to DW1 Om Parkash at about 12.30 p.m. This was followed by DW1 Om Parkash conducting necessary verification and sending the file to the Superintending Engineer. Once the file was signed by the Superintending Engineer, it was again received by DW1 Om Parkash between 2.00 p.m. and 2.30 p.m., who further handed over the file to

the dispatcher for being sent to the Executive Engineer. The various steps taken in the office of the Superintending Engineer have been clearly and succinctly stated by DW1 Om Parkash before the trial Court. In cross-examination, he did depose that at about 4.30 p.m. the raiding party had come to his office but he denied the suggestion that DSP Ganga Ram had recovered tainted currency notes from the front pocket worn by the appellant. He also denied that he was deposing falsely so as to help the appellant, who was his subordinate. It is true that the appellant worked under DW1 Om Parkash, who was the Circle Head Draftsman but DSP Ganga Ram, who had stepped into the witness box as PW12 also admitted in his cross-examination that when the raid was conducted, the complainant's file pertaining to Form-A was not with the appellant. He also stated that he did not know that the complainant's file had already been sent by the appellant to the concerned officer prior to the raid. He also deposed that during the period the investigation remained with him, he did not check up the whereabouts of the file and the fact as to when it was received in the office of the appellant. He also could not say that the file was received in the office of the appellant who was the Head Draftsman and then it was marked to the appellant for taking necessary action. He also denied the suggestion that nothing was recovered from the appellant.

PW2 Giani Ram, who stood posted as Assistant Revenue

Clerk in the office of Executive Engineer, testified about the

application submitted by the complainant for conversion of his area into command area and he had sent the same to the SDO concerned. In cross-examination, he admitted that on 26.5.1997, Form-A was sent to the office of Superintending Engineer for approval thereof. Further, it was sent during working hours. It was received after approval on that very day and during the working hours. Thus, it stands established that the file in respect of Form-A had reached the office of the appellant only on 26.5.1997 and not before that. Even on that day, the file was entertained by DW1 Om Parkash, Circle Head Draftsman at about 10.30 a.m., who marked the same to the appellant. After making necessary compliance the appellant returned the file at about 12.30 p.m. The file was, thereafter, forwarded by DW1 Om Parkash to the Superintending Engineer for signatures from where it was received between 2.00 p.m. and 2.30 p.m. and then the file was handed over to the dispatcher, on the same day and within the working hours after the file was received after approval by the Assistant Revenue Clerk, posted in the office of the Executive Engineer. In such a situation, there was no scope for the appellant to sit over the file and to release the same only after accepting the illegal gratification. All the necessary formalities otherwise had already been completed at the appellant's end. Thus, there was no occasion for him to demand illegal gratification. Complainant Ram Bhagat, while appearing before the trial Court as PW10, clearly stated in his cross-examination that

he could not say with whom the file was lying when he met the appellant. He also could not say as to when the concerned file reached the office of the Superintending Canal Officer. He, however, stated that on 26.5.1997 he met the appellant in his office for the first time around 11.30 a.m. who told him to come after lunch alongwith money. He further stated that he met the DSP at about 3/3.30 p.m. at his residence. When the file had already been dealt with by the appellant on 26.5.1997, he could not be attributed making of demand of illegal gratification from the complainant.

Even otherwise, the evidence regarding hand wash does not inspire confidence. According to the prosecution, the hands of the appellant were washed in solution of sodium carbonate and the solution turned pink. Fresh solution was again prepared in which the hands of the complainant were washed and the colour of the solution turned pink. However, PW10 Ram Bhagat could not say whether his hands as well as the hands of the appellants were washed in one solution or different solutions. Even PW8 Ashok Bhadu testified during his cross-examination that as regards the hand wash, he did not remember whether it was put in one nip or more than one nips. This witness may have been at the beck and call of the police as he admitted that he had joined the investigation in one more case under the NDPS Act. He also stated that he knew DSP Ganga Ram before 26.5.1997 and used to talk to him on telephone. He also stated that prior to the present case, an excise raid was conducted in a village in

which he had gone with DSP Ganga Ram. Therefore, no implicit reliance can be placed upon the testimonies of PW8 Ashok Bhadu, PW10 Ram Bhagat and PW11 Inder Singh.

In view of the above, this Court is of the considered view that the prosecution has not been able to prove its case beyond reasonable doubt. Therefore, the conviction and sentence of the appellant, as recorded by the trial Court, cannot be upheld.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellant is acquitted of the charges under Section 7 read with Section 13 of the Prevention of Corruption Act.

The appellant is on bail. His bail bonds and surety bonds shall stand discharged.

February 24, 2015
satish

(T.P.S. MANN)
JUDGE