

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Crl. Appeal No. 1413 SB of 2003
Date of decision: 15.01.2015

Pritam Chand *Appellant*
Versus
State of Punjab *Respondent*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**
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Present: Mr. Rahul Sharma, Advocate
 for the appellant
 Mr. Sandeep Kumar Bansal, AAG, Punjab

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1. Whether Reporters of local papers may be allowed to see the judgment?
 2. To be referred to the Reporter or not?
 3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal lays challenge to the judgment of conviction and order of sentence dated 22.07.2003 passed by the Special Judge, Faridkot (hereinafter referred to as ‘the trial Court’) whereby the appellant has been convicted and sentenced for commission of offence punishable under Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988 (in short, ‘the Act’), extracted here-in-below:-

Convicted for offence punishable under Section	Sentenced awarded
Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988	To under rigorous imprisonment for six months and to pay a fine of Rs.300/-. In default of payment of fine, to undergo further rigorous imprisonment for two months under Section 7 of the Act. To further undergo rigorous imprisonment for one year and to pay a fine of Rs.300.00 and in default of payment of fine, to undergo further R.I. for two months under Section 13(2) of the Act. Both the sentences shall run concurrently.

The facts relevant for disposal of the present appeal are that Jang Singh, complainant had taken a loan of Rs.25,000.00 from the Punjab Village Khadi Board, Faridkot (hereinafter to be referred as 'the Board') in the year 1991 and was supposed to repay the amount in installments of Rs.3,500/- per month. He got prepared a demand draft of Rs.3500.00 on 30.03.1993 from Bhartiya State Bank, Muktsar in favour of the Board. On 6th April 1993, Jang Singh came to the office of the Board and met Pritam Chand, accused working as Inspector in the said Board. The complainant handed over the draft to the accused and asked him for receipt and the accused demanded a sum of Rs.200.00 as illegal gratification for issuing receipt. The complainant showed his inability to pay the amount and thereafter a deal was struck for Rs.100.00. The complainant told the accused that he will borrow money and come back with money later.

The complainant went to the office of Vigilance Bureau, Faridkot, met Inspector Gurmit Singh and told him about the demand raised by the accused. The statement of the complainant was recorded and on the basis thereof, formal FIR Ex.PK/2 was registered by SI Shamsheer Singh, Police Station Kotwali, Faridkot. The draft of Rs.3,500.00 along with Rs.100.00 was received by Inspector Gurmit Singh from the complainant. After ensuring that no other article was left with the complainant, after recording number of the currency note and applying phenolphthalein powder handed over the same to the complainant through memo Ex.PL. Inspector Gurmit Singh instructed the complainant to hand over the bribe money on demand made by the accused and obtain a receipt of the demand draft. He also demonstrated the effect of phenolphthalein powder in

solution of sodium carbonate and memo Ex. PM was prepared, attested by the witnesses. Gurtej Singh, Steno from the office of Executive Engineer, Drainage, Faridkot was associated in the raiding party, introduced to the other witnesses and the entire scheme of trap was explained to all the members. They went to the office of the accused. Jang Singh followed by Constable Rajinder Singh (shadow witness) was sent to the accused and remaining party waited outside. On receipt of signal from Constable Rajinder Singh in compliance with instructions given to him, the raiding party headed by Inspector Gurmit Singh came to office of the accused. He introduced himself to the accused and told him the purpose of his visit. He procured a glass of water and prepared solution of sodium carbonate and asked PW Gurtej Singh to dip hands therein but colour of solution did not change. Thereafter the accused was asked to do so and when he dipped his hands in the same solution, the colour changed to light pink. He poured the solution in the nip duly sealed with seal bearing impression 'GS' over which signatory slip of Gurtej Singh was affixed and he prepared a sample slip. The case property was taken into police possession vide recovery memo Ex. PN, attested by the witnesses. After assuring to the witnesses that Inspector Gurmit Singh did not carry anything on his person, he conducted personal search of the accused and from the front left side pocket of the bushirt, a sum of Rs.529.00 and identity card of the accused were recovered. He handed over the money to PW Gurtej Singh and from the earlier memo, he read over the number of the currency note of Rs.100.00 bearing No. 4 BA 391793 and the same tallied and were taken into possession vide recovery memo Ex.PO. Inspector Gurmit Singh took off the bushirt of the accused,

reversed the above said pocket and after preparing solution of sodium carbonate in water dipped the same and colour of the solution changed to light pink. He poured the solution into another nip and sealed it with seal bearing impression 'GS' over which signatory slip of PW Gurtej Singh was affixed. The bushirt of the accused was converted into a sealed parcel and taken into possession vide recovery memo Ex. PP. From the table of the accused, draft dated 30.03.1993 and a chit was recovered which were taken into possession vide recovery memo Ex. PR. From search of Jang Singh, a receipt was recovered which was taken into possession through memo Ex.PO. Site plan of the place of occurrence was prepared and statements of the witnesses were recorded. On return to the police station, case property was deposited with MHC Amarjit Singh. On completion of investigation and receipt of sanction for prosecution of the accused, Ex. PH, challan was presented in the Court.

Copies of the documents relied upon by the prosecution were supplied to the accused in compliance with the provisions of Section 207 of the Code of Criminal Procedure (in short, 'CR.P.C.'). The accused was charged for commission of offence punishable under Section 7 read with Section 13(2) of the Act, to which he pleaded not guilty and claimed trial.

To prove the charge, the prosecution examined as many as 12 witnesses namely, Achhri Garg, Assistant Manager, State Bank of India, Kotkapura Road, Muktsar (PW1), Babu Ram, Superintendent (PW2), Inspector Gian Chand (PW3), Satish Kumar, Senior Assistant, Punjab Khadi Board (PW4), HC Amarjit Singh (PW5), Constable Balwinder Singh (PW6), Complainant Jang Singh (PW7), Gurtej Singh, an official witness

associated in the raid (PW8), Roshan Lal (PW9), Bharpur Singh (PW10), Constable Rajinder Singh (PW11) and Inspector Gurmit Singh, the Investigating Officer (PW12).

On evidence of the prosecution being closed, statement of the accused under Section 313 Cr.P.C was recorded through which he denied all the incriminating circumstances appearing in evidence against him and pleaded his innocence and false implication. However, he did not examine any witness in defence.

The learned trial Court, on appreciation of evidence adduced by the prosecution and rival submissions made by counsel for the parties, came to hold that the prosecution has successfully proved culpability of the accused for the charged offence and accordingly, he was convicted and sentenced, noticed here-in-before.

Feeling dissatisfied with the verdict of learned trial Court, the appeal was preferred in the year 2003 which has now matured for hearing.

Counsel for the appellant has submitted that case of the prosecution is not free from discrepancies, contradictions and embellishments which were not appreciated by the trial Court in right perspective. To assail the judgment passed by the trial Court, he has made submissions on few counts.

Counsel has submitted that the accused was not working on the seat dealing with sanction of loan and receipt of payment of loan. On the fateful day, the accused was instructed by one of his superiors to accept draft of Rs.3,500.00 from the complainant and he complied with those directions and had no occasion to ask for illegal gratification. He has been

falsely indicted in the crime by the complainant with a view to exploit him for some ulterior reasons. The complainant is a stock witness of the police and, therefore, his testimony is not worthy of credence and reliance. For this purpose, he has highlighted that the complainant has admitted during cross examination that he acted as a shadow witness in one of the cases registered by the police under the Prevention of Corruption Act, 1988 and appeared as a witness in the Court in that case.

It is argued that as per testimony of Jang Singh (PW7) and Gurtej Singh (PW8), after the raiding party went to the office of the accused, firstly the hands of the accused were washed in the solution of sodium carbonate and thereafter personal search of the accused was conducted leading to recovery of currency notes of Rs.529.00. Constable Rajinder Singh (PW11) has deposed differently and according to him, the currency notes were recovered from the accused first and thereafter his hand wash was taken which creates a serious doubt in the prosecution story. Another contradiction pointed out by counsel is that Constable Rajinder Singh has deposed about recovery of purse from pocket of the accused in which the alleged currency of Rs.529.00 was found but no other witness has deposed about recovery of purse from the accused. The other witnesses of the prosecution have stated about recovery of identity card from the accused.

Much stress has been laid by counsel on the statement of Bharpur Singh (PW10), an officer posted in the office of the Board at the relevant time. It is argued with vehemence that as per testimony of Bharpur Singh, the accused issued receipt Ex.P3, in token of handing over of draft of

Rs.3500.00 by the complainant at 10.00 am, therefore, the entire story of the prosecution that the accused demanded Rs.200.00 for issuance of receipt or the complainant having approached the officials of the Vigilance Bureau, Faridkot is demolished and liable to be rejected.

It is further submitted that the accused was at the fag end of his career at the time of alleged occurrence and he is more than 80 years of age as on date. He has not been paid pensionary benefits due to conviction in the present case. A serious prejudice would be caused to the accused in case his conviction is affirmed.

Counsel for the State, on other hand, has supported the judgment passed by the trial Court with the submissions that witnesses of the prosecution have strongly supported the charge and there is no discrepancy worth consideration by this Court. It is further argued that minor contradictions in the case of the prosecution cannot enure to benefit of the accused to escape from his criminal liability.

I have heard counsel for the parties and perused the records.

The evidence on record makes it apparent that the accused was directed to accept the draft brought by Jang Singh, complainant in regard to payment of one of the installments of the loan admittedly obtained by him from the Board as the official who was handling the said work was not available on 06.04.1993. The plea of the complainant is that the accused demanded illegal gratification of Rs.200.00 for issuance of receipt, acknowledging receipt of draft of Rs.3,500.00 and after discussion, he agreed to accept Rs.100.00 for doing the needful. The complainant has strongly supported cause of the prosecution and nothing material and

tangible has been elicited during his cross examination to disbelieve his version. Counsel for the appellant has sought to assail complainant's veracity by submitting that he is a police informer and is a stock witness. No such fact has come on record either during cross examination of the complainant or other witnesses particularly the investigating officer. The mere fact that the complainant was a shadow witness in one of the corruption cases registered against Harmit Singh, Patwari and appeared in the witness box as such is not sufficient to assassinate his character or doubt his credibility. Even otherwise, it is not clear from his cross examination whether he became a shadow witness in the said case subsequent to the registration of the case in question. A relevant extract from testimony of Jang Singh, is quoted thus:-

“It is correct that I have appeared earlier as a witness in a corruption case against Harmit Singh Patwari as a shadow witness in the Court of Shri S.M.Singh Mahal, Ist Additional Sessions Judge, Muktsar. I have never made deposition as a witness of the prosecution in any other case.”

The mere fact that the complainant was a shadow witness in a corruption case against Harmit Singh Patwari is not all sufficient to brand him a police informer much less a stock witness to attack his character and credibility.

Counsel for the appellant has pointed out contradiction in the sequence of events narrated by the witnesses. Jang Singh (PW7), Gurtej Singh, an official witness associated in the raid (PW8), Inspector Gurmit Singh(PW12) are quite firm and consistent in their deposition that firstly, the hand wash of the accused was conducted and result of phenolphthalein

was found to be positive and thereafter Rs.529.00 including the tainted currency was recovered from the accused. One of the witnesses, namely Constable Rajinder Singh changed the sequence and stated that recovery of currency notes was effected first and thereafter the hand wash was conducted. Constable Rajinder Singh also deposed about an additional fact of the currency being lying in the purse which was recovered from pocket of the accused. Firstly, there is no such principle in law that culpability of the accused is to be proved by way of mathematical demonstration. Constable Rajinder Singh appeared in the witness box after ten years of the alleged recovery as he was examined on 23.05.2003 in regard to an occurrence dated 06.04.1993. The Court cannot overlook the fact that human memory fades away with passage of time when otherwise some discrepancies are bound to occur in the statement of a truthful witness. This apart, possibility cannot be ruled out that the said official was approached by the accused and for that reason, he tried to create some discrepancies to the benefit of the accused. In face of consistent version given by other three witnesses, the discrepancy pointed out by counsel for the appellant can neither be taken seriously nor can form the basis to discard or disbelieve other evidence.

As per version of the complainant, the accused refused to issue the receipt acknowledging receipt of draft unless he was paid Rs.100 as illegal gratification. Bharpur Singh (PW10) identified signatures of the accused on receipt Ex.P3 which is stated to be recovered from Jang Singh after raid was conducted on receipt of signal from Constable Rajinder Singh after the accused had accepted the tainted currency. A relevant extract from testimony of Bharpur Singh (PW10) reads as follows:-

“It is correct that the entire loan case of the complainant has been dealt with by Charan Dass and the accused has never dealt with it. That on 06.04.1993, I was present in my office. It is correct that on the said day, Charan Dass was not available on his seat and Jang Singh, complainant had come to me along with draft at 10.00 am and it was on my asking accused Pritam Chand had happened to issue receipt Ex.P3 on my direction.”

The first question which arises for consideration is 'whether from the above extract, can it be construed that the receipt was issued by the accused at 10'o clock, ruling out possibility of the accused demanding gratification.' It appears from the statement that Jang Singh, complainant approached Bharpur Singh, an officer working there along with draft at 10.00 am and he asked Pritam Singh to issue receipt. This apart, the statement of Bharpur Singh that the accused issued receipt on his asking gets falsified as the accused has pleaded in unequivocal terms that he never issued any such receipt. It is relevant to refer to an extract from the statement of the accused under Section 313 Cr.P.C, quoted thus:-

“I am innocent. I have been falsely implicated in this case. I did not make any demand or accept any amount from the complainant nor any amount was recovered from me. The proceedings of handwash and pocket wash are faked one. That the entire loan was dealt by Charan Dass posted on that seat and I had no concern with the loan file of the complainant. I did not issue any receipt. The false circumstances and evidence have been collected against me and I am falsely implicated in this case.”

As the appellant has denied issuance of any receipt by him, it is not open for him to argue that as he had issued the receipt at 10'o clock, there was no occasion for the complainant to have any grievance to express or approach the Vigilance authorities. On the contrary, the complainant has

deposed in categoric terms that the accused issued the receipt when he approached him for the second time along with draft and Rs.100.00 towards illegal gratification. The witnesses of recovery are quite firm in their deposition that receipt Ex. P3 was recovered from Jang Singh after recovery of tainted currency from accused Pritam Chand. In this view of the matter, the appellant cannot derive any advantage to his contention from the facts elicited during cross examination of Bharpur Singh.

No other point has been raised.

This brings the Court to the question of sentence awarded by the trial Court. Counsel for the appellant has made a mercy plea in view of age of the convict and financial loss suffered by him due to his conviction. The age of the appellant or financial implications due to his conviction, in no circumstances can militate against his criminality. The trial Court has shown sufficient consideration and leniency to the accused in sentencing for the proven offence. I do not find any reason to interfere in the sentence awarded by the trial Court.

For the reasons aforesaid, finding no merit, the appeal fails and is accordingly dismissed. The judgment of conviction and order of sentence are affirmed. The appellant, if on bail, be taken into custody to suffer the remaining sentence.

(Rekha Mittal)
Judge

15.01.2015
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