

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

Crl. Rev. No.4972 of 2015

Date of Decision: 22.12.2015

Ajit Singh

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. M.P.S. Chandel, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge the judgment of conviction and order of sentence dated 12.03.2015 passed by the Judicial Magistrate Ist Class, Gurgaon, whereby, the accused-petitioner was held guilty for commission of offence punishable under Section 193 IPC and was sentenced to undergo rigorous imprisonment for a period of one year with fine of ₹ 3,000/- with default clause, which has further been upheld by the Additional Sessions Judge, Gurgaon vide his judgment dated 05.12.2015.

Briefly, the facts of the case are that a case under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short 'the Act') was registered by the police against accused-Jagpal Singh, Sub Divisional Clerk (hereinafter referred to as the 'SDC') in Haryana State Agricultural

Marketing Board. The petitioner was one of the prosecution witnesses and was the complainant as well. His statement was recorded under Section 164 Cr.P.C on 13.07.2007 by Judicial Magistrate Ist Class, Gurgaon, wherein, he has supported the case of the prosecution, stating therein that said SDC demanded bribe to clear his bills of work done as contractor but when his statement was recorded by the Special Judge, Gurgaon on 17.09.2008, he did not support the case of the prosecution and was turned hostile. The complaint under Section 193 IPC was filed in the Court of Chief Judicial Magistrate, Gurgaon by the Reader of the Court of Sh. S.K. Gupta, the then Special Judge, Gurgaon. The charge was framed under Section 193 IPC on 23.12.2014 and the petitioner faced trial for the said offence. He was convicted and sentenced by the trial Court vide judgment dated 12.03.2015.

Aggrieved by the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Gurgaon, which was also dismissed on 05.12.2015 and the judgment of trial Court was upheld.

The petitioner, after losing his battle before the two Courts below, has filed the present revision petition to challenge the judgment of conviction and order of sentence passed by the trial Court and the order passed in the appeal.

Learned counsel for the petitioner submits that the Courts below have failed to appreciate that the petitioner did not suppress anything from the Court and while recording his statement as PW-12, he told actual as well as factual facts and has supported the prosecution version. He has further stated in his statement that an employee of the department demanded an amount of ₹ 6,700/- for clearance of his bills. He made a verbal complaint to the vigilance department. The amount was also

recovered from the table of accused Jagpal Singh by the Vigilance Team. The allegation against the petitioner is that he did not support the prosecution case and turned hostile merely on the basis that he did not name accused Jagpal. Learned counsel also submits that the case was initiated and registered against accused Jagpal Singh on the basis of complaint made by the petitioner and as such, has helped the police. The accused was caught red handed while accepting the bribe money and the money was recovered from the drawer of the table. Learned counsel for the petitioner also submits that both the Courts below have failed to appreciate that the petitioner, while making his statement, has stated that he did not make any written complaint to the Vigilance Department but only the oral complaint was made. Only after making his oral complaint, the raid was conducted. Even in the statement recorded on 03.07.2007, the petitioner has never stated that Jagpal Singh demanded bribe from him. Simply, it was mentioned that he asked some expenses for checking of the bills. Moreover, accused Jagpal Singh was not competent to pass the bill and his duty was only to check the bills. The bills were to be passed by the Junior Engineer and Jagpal Singh was working as a Clerk. At the end, learned counsel for the petitioner submits that there was no evidence with regard to the fact that he deposed falsely before the Court. Moreover, there was no reason to become hostile. The proper procedure for initiating proceedings under Section 340 Cr.P.C was not followed and his reply was not taken into consideration.

Heard the arguments of learned counsel for the petitioner and have also perused the judgments passed by both the Courts below.

As per allegations against the petitioner, he gave false evidence in the Court of Special Judge, Gurgaon, in case, titled as State vs Jagpal, FIR No.33 dated 12.07.2007 under Sections 7 and 13(1)(d) of the

Prevention of Corruption Act, 1988 registered at Police Station State Vigilance Bureau, Gurgaon. A complaint was made by the petitioner against accused Jagpal, SDC with regard to demand of ₹ 6,700/- as bribe to clear his bills. On the basis of said complaint, the FIR was registered. A supplementary statement of the petitioner was recorded, wherein, the factum of demand of bribe by accused Jagpal was re-iterated. His statement was recorded under Section 164 Cr.P.C by Judicial Magistrate 1st Class, Gurgaon, wherein, it was stated that accused Jagpal demanded money from him. On the basis of complaint/statement, a raiding party was formed by the vigilance team. Accused Jagpal was caught red handed and an amount of ₹ 6,700/- was recovered from the drawer of his table. Again statement of the petitioner was recorded, wherein, it was stated that he made a statement without any threat, inducement or promise, to which he replied in affirmative. The relevant para of statement of the petitioner, recorded on 17.09.2008, is reproduced as under :-

“ I used to meet 3-4 employees of the department. I know Jagpal accused present in the Court. I was told that he was posted as SDC in said office. I used to meet him also. Out of the bill of ₹ 65,000/-, bill of ₹ 37,000/- was passed but the bill for the remaining amount was not passed. An employee of the department, whose name I do not know, demanded from me ₹ 6500/- or ₹ 6700/- to pass the bill of the remaining amount. I went to Vigilance department and made a complaint against him by presenting an application Ex. PN. Again said I did not move any application at that time. I made verbal complaint to the Vigilance department. Vigilance team accompanied me to the office of Marketing Board. On reaching there, I shook hand with Jagpal and other employees sitting there. I put ₹ 6500/- or ₹ 6700/- on the table of Jagpal accused. The accused Jagpal asked me as to what I was putting on his table. Without saying anything I came out. Thereafter,

vigilance team entered the office and nabbed Jagpal accused. The Vigilance team lifted the currency notes from the table where those were placed by me. Jagpal accused present in the court had neither demanded nor accepted any money from me.”

In his cross-examination, he admitted his complaint and signatures thereupon to the police. He has also admitted his statement recorded before the Judicial Magistrate Ist Class, Gurgaon. It was also admitted that the statement recorded before the Judicial Magistrate Ist Class was not under any pressure of the Investigating Officer. The evidence produced by prosecution prove the charge against accused-petitioner and there is no reason to disbelieve the version of prosecution. It cannot be said that the Judicial Magistrate Ist Class, Gurgaon was not satisfied with the statement made by accused-petitioner. The trial Court has passed a well reasoned judgment with detailed reasons. The prosecution has also examined Ram Narayan Tyagi, the then Reader to Special Judge, Gurgaon as PW-1 and he has proved the various documents including the complaint of the accused. On the basis of statement, it is apparent that the accused-petitioner was turned hostile during trial and he did not support the prosecution version. He was allowed to be cross-examined, wherein, he has admitted his signatures on the complaint and his statement given before the Judicial Magistrate Ist Class. In the complaint as well as in the statement recorded under Section 164 Cr.P.C., the accused was named specifically but subsequently, he was turned hostile by stating that an employee of the department demanded bribe. He did not specify the name in the statement recorded before the trial Court. By considering all the evidence available on the file, the petitioner was convicted for the said offence and was sentenced accordingly. Thereafter, the said judgment has been upheld by the lower

Appellate Court, wherein all arguments raised by the accused-petitioner were considered.

Accordingly, by considering the submissions made by learned counsel for the petitioner, I find no merit and the revision petition, being devoid of any merit, is hereby dismissed.

22.12.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE