

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Appeal No. S-2367-SB of 2007

Date of Decision: 18.01.2016

Dalip Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Hitesh Kumar Sammi, Advocate
for the appellant.

Mr. Deepak Garg, Deputy Advocate
General, Punjab, for the respondent.

Shekher Dhawan, J.

Present appeal against judgment of conviction recorded by learned Special Judge, Fatehgarh Sahib on 13.11.2007 whereby the appellant was held guilty and convicted for commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and sentenced him, vide order of even date, as under:-

Under Sections	Sentence
7 of the Prevention of Corruption Act, 1988	To undergo rigorous imprisonment for two

Under Sections	Sentence
	years and to pay fine of ₹ 1000/-. In default of payment of fine to further undergo rigorous imprisonment for six months.
13(2) of the Prevention of Corruption Act, 1988	To undergo rigorous imprisonment for two years and to pay fine of ₹ 1000/-. In default of payment of fine to further undergo rigorous imprisonment for six months.

2. Facts relevant for the purpose of decision of the present appeal that the process of law was set into motion by Jasbir Singh, complainant, resident of Mandi Gobindgarh, who was a Taxi Driver by profession. As per complainant, on 13.8.2003, during the night time, Dalip Singh, while posted as Sub Inspector (present appellant), had gone to the house of Jasbir Singh, complainant. At that time, Jasbir Singh was not present in his house. Jaswinder Kaur, wife of Jasbir Singh, was present in the house. Dalip Singh (present appellant) asked Jaswinder Kaur that there was a complaint against Jasbir Singh to the effect that he was in the habit of indulging in trade of opium/poppy husk and the same was to be investigated and for that purpose, Jasbir Singh be sent to the Police Station at Mandi Gobindgarh on 15.8.2003 in the evening. In case Jasbir Singh failed to visit the Police Station, Mandi Gobindgarh, then criminal case under the Narcotic Drugs & Psychotropic Substances Act would be registered against him. On 13.8.2003, the complainant came to his house and his wife Jaswinder

Kaur narrated the entire incident to him.

On 15.8.2003, complainant Jasbir Singh along with his friend Sukhvir Singh had visited Police Station, Mandi Gobindgarh and appellant Dalip Singh met them in the police station. At that time, Dalip Singh told the complainant that there was a complaint against him to the effect that he was in the habit of selling poppy husk and opium. The complainant denied the said allegations. At that time, appellant demanded a sum of ₹ 10,000/- as illegal gratification for not taking any action on the complaint against him. Complainant shown his helplessness being a poor person and the matter was settled for ₹ 5,000/-. Though the complainant was not willing to pay the illegal gratification. However, complainant assured appellant Dalip Singh to bring payment on 16.8.2003 afternoon. Thereafter, Jasbir Singh along with his friend Sukhvir Singh contacted Vigilance Bureau, Patiala where his statement was recorded by Deputy Superintendent of Police Banarsi Dass and the same was signed by Jasbir Singh in token of its correctness. The complaint was sent to the Police Station on the basis of which FIR was recorded.

Thereafter, Baldev Singh Sidhu, Principal, Government Multipurpose Senior Secondary School, Patiala and Kulbhushan Singh, Lecturer, Government Multipurpose Senior Secondary School, Patiala were joined as witnesses. Raiding party was constituted. Jasbir Singh handed over ten currency notes of the denomination of ₹ 500/- each to Deputy Superintendent of Police Banarsi Dass. Numbers of the currency notes were noted in the memo. Phenolphthalein Power

(hereinafter referred to as "P.Powder") applied to currency notes and the same were handed over to complainant Jasbir Singh with a direction to hand over those currency notes to the appellant/accused on demand. Shadow witness was directed to accompany Jasbir Singh and to follow the signal. Accordingly, Jasbir Singh had gone to the appellant and on demand, paid illegal gratification amount to him. The complainant passed on signal to the shadow witness and the raiding party, headed by Deputy Superintendent of Police Banarsi Dass, apprehended the appellant/accused. The hands of accused were got washed. Tainted currency notes were recovered from the accused and the same were tallied with the numbers mentioned in the memo. The recovered currency notes as well as other material were taken into police custody vide recovery memo after sealing with seal bearing impression "BD". The remaining proceedings of investigation were completed and the accused was arrested. Case property was deposited with Moharrir Head Constable of the police station. After completion of investigation, challan was presented in the Court. During trial, the trial Judge framed charges against the appellant/accused for commission of offence under Sections 7 & 13(2) of the Act to which he pleaded not guilty and claimed trial.

During trial, prosecution examined Jasbir Singh complainant as PW.1. Baldev Singh, shadow witness was examined as PW.2, Sukhvir Singh as PW.3, Kuljit Singh as PW.4, Head Constable Gurbhej Singh as PW.5, Head Constable Jeet Singh as PW.6 and Banarsi Dass as PW.7. Appellant/accused was examined under Section 313 Cr.P.C. wherein the

entire prosecution evidence was put to him to which he pleaded not guilty and pleaded false implication being innocent. However, Moharrir Head Constable Jagdish Singh was examined as DW.1, Deputy Superintendent of Police Amarjit Singh as DW.2 and Gurdeep Singh as DW.3.

The trial Judge, after appreciating the entire prosecution evidence and defence version, held the present appellant guilty for commission of offence punishable under Sections 7 & 13(2) of the Act and sentenced him as mentioned in earlier part of the judgment and as such the present appeal is against the said judgment of conviction and order of sentence.

Learned counsel for the appellant submitted that as per complainant version, appellant had visited the house of complainant on 13.8.2003 and had asked Jaswinder Kaur wife of Jasbir Singh that there was complaint against Jasbir Singh to the effect that he was indulging in the trade of drugs and opium, whereas prosecution could not lay their hands on any such document that there was any such complaint with the police. On that account, there was no motive for the appellant to demand bribe and there was no question of any recovery of tainted money in pursuance of the alleged raid conducted by the Vigilance Department. Learned counsel for the appellant also submitted that most important witness in this case was Jaswinder Kaur wife of Jasbir Singh before whom the demand of illegal gratification was raised by the present appellant on 13.8.2003. However, said Jaswinder Kaur has not been examined during trial of the case and as such prosecution case is

not believable. Learned counsel for the appellant also submitted that no complaint was made against the appellant to the higher police authorities for false implication of Jasbir Singh. Learned counsel for the appellant also took the plea that complaint, if any, was required to have been made to Mandi Gobindgarh Vigilance office where Dalip Singh was posted as Sub Inspector at the relevant time. But in the present case, complaint was intentionally made to Deputy Superintendent of Police at Patiala.

While arguing further, learned counsel for the appellant also took the plea that as per prosecution case, recovery of ₹ 5,000/- as tainted money was effected from the possession of the accused at a dhaba but the owner of the dhaba or even any of its worker was not joined as a witness which also falsifies the prosecution case. However, the said dhaba owner was examined in defence evidence as DW.3 who has deposed in the Court that no such incident had taken place and no recovery was effected from the possession of the appellant/accused.

Learned counsel for the appellant, while arguing further, took the plea that as per DDR No. 41 dated 14.8.2003, appellant Dalip Singh was not present in the police station but as per prosecution case, he was present at Police Station Mandi Gobindgarh at that time. That also falsifies the prosecution case.

To conclude, learned counsel for the appellant submitted that the appellant has also suffered much agony of law by facing protracted litigation for more than 20 years by now and he be set free now by accepting the present appeal.

While arguing on these points, learned State counsel has submitted that the prosecution case has been duly proved on the file. All the prosecution witnesses have duly supported the prosecution case. Infact, there was demand of illegal gratification. Thereafter, recovery of tainted money has been effected from the possession of the appellant/accused in the presence of the raiding party. There was no motive for the prosecution witnesses to depose falsely against the present appellant/accused. More so, the defence version is not believable at all. In the present case, the prosecution version is duly supported by testimony of two independent witnesses and respectables of the area and they have supported the prosecution case and there is no reason to disbelieve the entire prosecution version and the present appeal deserves dismissal.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the prosecution has been able to prove the guilt of appellant/accused beyond shadow of reasonable doubt. This Court say so for the reason, firstly the prosecution has been able to prove as per statements of PW.1 Jasbir Singh, PW.2 Baldev Singh and PW.7 Banarsi Dass that present appellant Dalip Singh was working as a public servant and was posted as Sub Inspector at Police Station Mandi Gobindgarh on the date of alleged occurrence. This fact is not disputed even from the side of accused. As regard the demand of illegal gratification, complainant Jasbir Singh had made statement on oath before the Court. His version is duly supported by PW.3 Sukhvir Singh. Thereafter, they had reported

the matter to PW.7 Banarsi Dass who was working as Deputy Superintendent of Police, Vigilance Bureau at Patiala and had filed written complaint in this regard. The recovery of tainted money of ₹ 5,000/- stands proved as per statement of these witnesses. Appellant/accused was apprehended on the spot along with tainted money. His hands were washed and currency notes were also washed and the colour of the water changed. The recovered currency notes were taken into police custody in presence of the witnesses. More so, the prosecution case is duly supported and corroborated by testimony of Baldev Singh who was working as Principal, Government Multipurpose Senior Secondary School, Patiala and had joined the raiding party.

As regard to the plea taken by learned counsel for the appellant that dhaba owner was not joined as a witness, the same is not tenable because the raiding party was already associated with independent witnesses namely Sukhvir Singh and Baldev Singh apart from complainant Jasbir Singh. As regard to testimony of Gurdeep Singh, Dhaba Owner, as DW.3 he had not made any complaint regarding false implication against the appellant/accused at any point of time which shows that the defence version is not correct version rather that was just an afterthought. The plea taken by learned counsel for the appellant that there was no complaint in the police station against Jasbir Singh, complainant, does not show innocence on the part of the present appellant because the version of complainant is that infact he was not indulging in the trade of drugs and opium and as such there

was no complaint against him. But the present appellant Dalip Singh was just trying to extract some money from Jasbir Singh. As regard to non-examination of Jaswinder Kaur, the prosecution has been able to prove its case by examining Jasbir Singh complaint and Sukhvir Singh as shadow witness that the demand was actually made from Jasbir Singh on 16.8.2003 and thereafter recovery of tainted money was effected. Thereafter, the complaint was made to Deputy Superintendent of Police Vigilance at Patiala. It has not come on the file that Deputy Superintendent of Police Vigilance posted at Patiala was not having jurisdiction to conduct raid in this case.

More so, there is nothing on the file that there was any reason or motive for the prosecution witnesses to depose falsely against the present appellant. The trial Judge has rightly held the appellant/accused guilty and rightly convicted and sentenced him. The appeal against the judgment of conviction is without any merit and the same stands dismissed.

As regard to order of sentence, the trial Judge has taken most lenient view and ordered the appellant/accused to undergo two years rigorous imprisonment for commission of offence punishable under Section 7 of the Act and two years rigorous imprisonment for commission of offence punishable under Section 13(2) of the Act. Even both the sentences were ordered to run concurrently. Such like cases, involving corruption by public servant is having increasing tendency in the society, which requires to be curbed with strong hands. The trial Judge has already taken most lenient view on the point of sentence and

there is no scope of further leniency on the part of sentence by this Court. The present appeal is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

January 18, 2016

"DK"