

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of decision: 13 .01.2016

CRA-S. No. 500-SB of 2010

Sukhdeep Singh	...	Appellant.
Versus.		
Central Bureau of Investigation	...	Respondent.

CRA-S. No. 432-SB of 2010

Iqbal Singh	...	Appellant.
Versus.		
Central Bureau of Investigation	...	Respondent.

CORAM:- HON’BLE MR. JUSTICE M. JEYAPPAUL

1) Whether the judgment should be reported in the Digest ?. Yes
...

Present: Dr. Surya Parkash, Advocate,
for the appellant in Crl. Appeal No.S- 500-SB of 2010

Mr. APS Deol, Sr. Advocate, with
Mr. Vishal Rattan Lamba, Advocate,
for the appellant in Crl. Appeal No. S-432-SB of 2010.

Mr. Sumeet Goel, Advocate for the respondent-CBI.
...

M. JEYAPPAUL, J:

1. Accused-appellants Sukhdeep Singh and Iqbal Singh were

convicted and sentenced by the trial Court as follows:-

Sr. No.	Section	Sentence
1.	120-B of Indian Penal Code read with Section 7 and 13(1)(d) of Prevention of Corruption Act, 1988.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.3000/- each, in default of payment of fine, they will further undergo rigorous imprisonment for a period of three months each.
2.	7 of Prevention of Corruption Act,1988	Rigorous imprisonment for a period of one year and to pay a fine of Rs.2000/- each, in default of payment of fine, they will further undergo rigorous imprisonment for a period of two months each.
3.	13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988.	Rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- each, in default of payment of fine, they will further undergo rigorous imprisonment for a period of four months each.

Accused Sukhdeep Singh has preferred Criminal Appeal No. 500-SB of 2010 while accused Iqbal Singh has preferred Criminal Appeal No. 432-SB of 2010 aggrieved by the judgment of conviction and sentence recorded by the trial Court.

2. Some of the records were missing. As per order passed by this Court, only certain records were reconstructed. It was reported by the Registry that Exhibits D-5, D-6, D-8, D-10, D-13 and D-15/4 could not be traced in spite of the best efforts taken by the Registry. Reconstruction of those documents was also not possible as copies of the same were not available with any of the counsel on record. Learned counsel appearing for the accused Sukhdeep Singh and Iqbal Singh submitted during the course of hearing that

they would not rely upon those missing documents during the course of arguments. Thereafter, arguments on either side were heard by this Court.

3. PW-4 Rajiv Puri was the complainant in this case. His wife Kavita Puri started a firm in the name of M/s Mudra Associates in Sector 34-A, Chandigarh. He was the Managing Director of the said firm. The firm acted as a passport submission agency. PW-4 has deposed that on 15.5.2007, one police constable came to his office and asked him to meet Sukhdeep Singh, Sub Inspector in Sector 34 Police Station. Accordingly, he proceeded to the said police station at 6.45 PM on the said day and met accused Sukhdeep Singh, Sub Inspector. Sukhdeep Singh told him that verification of his firm M/s Mudra Associates had come to him from the Passport Office, Chandigarh. Therefore, he demanded Rs.15,000/- as bribe for preparing a favourable report. He was also warned that if the said amount was not given, accused Sukhdeep Singh would register a case against him. As PW-4 expressed that the demand was very high, accused Sukhdeep Singh introduced him to accused Iqbal Singh and directed PW-4 to discuss the matter with him. PW-4 made a request to reduce the bribe amount. Accused Iqbal Singh assured PW-4 that he would contact him over phone.

4. On 17.5.2007, accused Iqbal Singh contacted PW-4 over phone and assured him that he would apprise him about the development in the matter in a day or two. On 18.5.2007, at about 9.15 AM, PW-4 received a call from accused Iqbal Singh. He directed PW-4 to pay a bribe of Rs.12,000/- for accused Sukhdeep Singh. PW-4 contacted Iqbal Singh who asked PW-4 to come at 5 PM with Rs.12,000/-. PW-4 was not interested in giving the bribe;

therefore, he gave a complaint Exhibit PW-1/1 to the Superintendent of Police, CBI, Chandigarh at about 2 PM. At about 3.45 PM, PW-3 Inspector Balbir Singh took him to the room of DSP Karnail Singh. PW-1 Sandeep Arora, Inspector, Central Excise, was associated as a shadow witness and PW-2 Yogesh Arora was associated as recovery witness. The complaint was read over to all persons present at the office of DSP Karnail Singh. On being asked, PW-4 produced Rs.12,000/-. The numbers of the currency notes were noted down in the pre-trap memo. The sodium carbonate solution was prepared and the effect thereof was demonstrated.

5. PW-4 travelled with the shadow witness in his car. At about 5.15 PM, PW-1 and PW-4 reached the police station Sector 34, Chandigarh. As per information passed on by accused Iqbal Singh, PW-1 and PW-4 entered into the office chamber of accused Sukhdeep Singh who was not there. But Iqbal Singh who was present in the chamber of Sukhdeep Singh asked PW-4 as to whether he had brought the money. PW-4 informed him that he had brought Rs.12,000/- for making payment to accused Iqbal Singh. Accused Iqbal Singh informed PW-4 that he had got instructions from Sukhdeep Singh to accept money from PW-4. Thereafter, PW-1, PW-4 and accused Iqbal Singh came out of the police station. Accused Iqbal Singh did not accept the money as he appeared to be tense. Iqbal Singh boarded the car of PW-4. PW-1 Sandeep Arora occupied the back seat. Iqbal Singh directed DW-8 Home Guard Bhupinder Singh to drive the same Zen car and follow him. Iqbal Singh directed PW-4 to proceed towards Sector 48, Chandigarh. After crossing the round-about of furniture market at Sector 34, Chandigarh, Iqbal Singh asked

PW-4 to stop the car and hand over the bribe money. Accordingly, PW-4 stopped the car and handed over Rs.12,000/- to Iqbal Singh who accepted the same and put it in the left side pocket of his pants. Thereafter, he alighted from the car of PW-4 and boarded the Zen car which was being driven by Home Guard Bhupinder Singh. Meanwhile, PW-1 Sandeep Arora gave signal to the police party. The maruti zen car stopped in front of Booth No. 114-115, Sector 48, Chandigarh. Both Iqbal Singh and Bhupinder Singh alighted from the Zen car and proceeded to Booth No. 114. The CBI team along with PW-2 Yogesh Arora descended on the spot. PW-3 Inspector Balbir Singh challenged accused Iqbal Singh that he had accepted bribe. Iqbal Singh was apprehended and the bribe money from his left pant pocket was recovered. The hands and left pant pocket of Iqbal Singh were subjected to sodium carbonate test. The solution turned pink in colour. Yogesh Arora matched the numbers of the currency notes recovered from the pocket of Iqbal Singh with the numbers so mentioned in the pre-trap memo. and found them tallying with each other. CBI team then searched the office chamber of Sukhdeep Singh and recovered the file Exhibit PW-1/4 along with other documents.

6. PW-7 ASI Sarabjit Kaur has deposed that the complaint Exhibit PW-2/2 was never dealt by her. She came to know that the said complaint was marked to her only when it was shown to her by the CBI. PW-15 P.L.Chauhan, Inspector, Police Station Sector 34, Chandigarh, deposed that complaint Exhibit PW-2/2 was received by him through DSP (South) and was marked to ASI Sarabjit Kaur on 4.5.2007. PW-10 MHC Balbir Singh, hailing from Police Station Sector 34 Chandigarh stated that the file relating to M/s

Mudra Associates was found on the complaint file of Sarabjit Kaur. He also spotted CBI officials taking one passport file along with them. It was he who marked the above complaint file to ASI Sarabjit Kaur on 4.5.2007 and the said complaint was lying in the complaint file of ASI Sarabjit Kaur. PW-12 Constable Suresh Kumar has supported the version of PW-10. He also deposed that yet another case in FIR No. 474 dated 1.12.2006 was entrusted to SI Sukhdeep Singh in connection with the above case. A passport was seized by the accused Iqbal Singh.

7. In his statement under Section 313 Cr.P.C. accused Sukhdeep Singh has submitted that he was investigating the case FIR No. 474 of 2006 under Section 24 of the Immigration Act registered against Rattan Bhushan and another. Rattan Bhushan who was a close friend of the complainant, handed over his passport to the complainant to arrange his departure at the earliest. As the presence of Rattan Bhushan was required for the purpose of investigation, his passport which was lying with Rajiv Puri was taken away. Rattan Bhushan got panicky and pressurized the complainant Rajiv Puri to get back his passport from the police by all means so that he might flee from the country to escape from the criminal prosecution in case FIR No. 474 of 2006. Another complaint was received in the police station against Rajiv Puri/Mudra Associates from the Regional Passport Office, Chandigarh. In connivance with Dinesh Kumar, Inspector CBI, the present case was foisted upon Sukhdeep Singh. During the search of his official room, the passport of Rattan Bhushan was removed by the complainant in connivance with the CBI which was later on handed over to Rattan Bhushan who had immediately fled to

foreign country. The motive of the complainant was also to stop the investigation against M/s Mudra Associates by involving accused Sukhdeep Singh in this false case. The complainant has criminal antecedents. A case was registered against him in the year 2004 which is still pending investigation. As he has links with CBI, the challan was not at all presented in that case.

8. Accused Iqbal Singh has also come out with a similar statement. In his statement under Section 313 Cr.P.C. Accused Iqbal Singh has also submitted that it was he who took possession of the passport of Rattan Bhushan from the office of the complainant.

9. On the side of the defence, as many as 16 witnesses were examined.

10. DW-4 DSP Roshan Lal deposed that CCTV had been established in Police Station Sector 34, Chandigarh but no CCTV footage was recovered by the CBI in connection with this case. DW-5 Inspector Sudershan Kumar, SHO Police Station Sector 34, Chandigarh, stated that the original complaint Exhibit PW-2/2 was taken away by the CBI.

11. DW-6 HC Ranbir Singh deposed that FIR No. 474 dated 1.12.2006 registered under Section 24 of the Immigration Act against one Rattan Bhushan was investigated by accused Sukhdeep Singh.

12. DW-8 Home Guard Bhupinder Singh stated that he drove the Zen car owned by accused Sukhdeep Singh as per instructions given by accused Sukhdeep Singh.

13. DW-13 Dinesh Kumar, Inspector CBI, admitted that he had been

contacting complainant Rajiv Puri right from 7.5.2007 to 18.5.2007 on several occasions.

14. DW-14 IMS Negi, Inspector CBI, Chandigarh, stated that RC 23/A/2004 registered against Savita Rani wife of complainant Rajiv Puri, proprietor of M/s Mudra Associates was still pending investigation. He also stated that the said case was not investigated by DW-13 Dinesh Kumar.

15. Learned counsel appearing for the appellants in both the appeals submitted that complaint, Exhibit PW-2/2 was not at all marked to accused Sukhdeep Singh. It was actually marked to PW-7 ASI Sarabjit Kaur as early as on 4.5.2007 itself. Therefore, there was no occasion for accused Sukhdeep Singh to call the complainant in connection with the above complaint and make a demand of bribe through accused Iqbal Singh. He also referred to a decision of this Court in **Mehar Chand v. State of Haryana, 2004(4) RCR (Criminal) 655.**

16. On the other hand, learned counsel appearing for the CBI vehemently submitted that complaint Exhibit PW-2/2 was in fact recovered from the office room of accused Sukhdeep Singh. Though it was not marked to him, he had dealt with the said complaint and made a demand of bribe and received the same through co-accused Iqbal Singh.

17. PW-15 P.L.Chauhan, SHO Police Station Sector 34, Chandigarh, has statd that the subject complaint Exhibit PW-2/2 was received by him through DSP (South). He marked the same to ASI Sarbajit Kaur for necessary action. He specifically referred to 5-E complaint register and submitted that the above complaint against M/s Mudra Associates was duly entered therein

and was marked to ASI Sarabjit Kaur.

18. It is also relevant to refer to the evidence of PW-10 Balbir Singh, Head Constable, who has stated that as per instructions given by PW-15, it was he who mentioned the name of PW-7 ASI Sarabjit Kaur and marked the complaint to her as early as on 4.5.2007. He was very categoric that the file was lying in the complaint file of ASI Sarabjit Kaur and the same was handed over by him to the CBI officials during search as per their command.

19. PW-12 has also deposed that he searched for the complaint Exhibit PW-2/2 and found the same in the complaint file of ASI Sarabjit Kaur. The said complaint along with other documents was submitted to the CBI during the course of search made by them.

20. Against the above evidence of PW-10 and PW-12, PW-7 ASI Sarabjit Kaur has deposed that she came to know that the complaint Exhibit PW-2/2 was marked to her as early as on 4.5.2007 only when the complaint was shown to her by the CBI on 18.5.2007. Quite unfortunately, the trial Court has placed reliance upon the statement of PW-7 and ignored the evidence of PW-10 and PW-12. There is every possibility for PW-7 to wash off her hands as regards the complaint Exhibit PW-2/2 marked to her as early as on 4.5.2007, fearing implication in this case by the CBI people. In my considered view, the evidence of PW-10 and PW-12 is found to be quite cogent and convincing. There was no reason for PW-7 not to touch the complaint Exhibit PW-2/2 for about 14 long days from the date it was marked to her. As per the evidence of PW-10 and PW-12, the complaint Exhibit PW-2/2 was traced from the complaint file of PW-7. In the above facts and

circumstances, I have no hesitation to hold that the complaint Exhibit PW-2/2 which was already marked to PW-7, was not at all dealt by the accused Sukhdeep Singh.

21. It is the admitted case of the CBI that accused Sukhdeep Singh was already dealing with FIR No. 474 dated 1.12.2006 registered under Section 24 of the Immigration Act against Rattan Bhushan and another as spoken to by DW-6 HC Ranbir Singh, If at all, accused Sukhdeep Singh was avaricious, he would have demanded the bribe in connection with the case in FIR No. 474 dated 1.12.2006 which was under his active investigation and need not have made an attempt to fleece the complainant in connection with the complaint which was not at all marked to him. In this connection, reference be made to the observation made by this Court in **Mehar Chand's** case(supra). It has been observed therein that it should be shown by the prosecution that the official had been in a position to perform certain official acts of which aggrieved party would have received some benefits.

22. In view of the above, I am of the considered view that the very foundation laid by the prosecution that the accused Sukhdeep Singh through accused Iqbal Singh demanded bribe in connection with the complaint which was not marked to him, is found to be shaky.

23. Learned counsel appearing for the appellants submitted that there is a clear motive for implication. The complainant who had a prior animus and had some connection with the CBI, had implicated the accused in this case.

24. Learned counsel appearing for the CBI submitted that the CBI has established independently that accused Sukhdeep Singh through accused Iqbal

Singh demanded bribe and received the same. Therefore, no motive could be attributed to the complainant whose earlier case was of course dealt by accused Sukhdeep Singh.

25. PW-12 Constable Suresh Kumar has categorically admitted that FIR No. 474 dated 1.12.2006 of Police Station Sector 34, Chandigarh, was registered against Rattan Bhushan and another under Section 24 of the Immigration Act and the said case was marked to accused Sukhdeep Singh for investigation. He also submitted that complainant Rajiv Puri approached him for release of passport of Rattan Bhushan which was seized by accused Iqbal Singh from the office of the complainant Rajiv Puri and was lying with accused Sukhdeep Singh. He had informed the complainant that it was not possible for him to talk to accused Sukhdeep Singh in that regard. Complainant Rajiv Puri had visited the police station about three times in that regard.

26. DW-6 HC Ranbir Singh also deposed having brought the record relating to FIR No. 474 dated 1.12.2006 registered under Section 24 of the Immigration Act, that the said case which was registered against Rattan Bhushan and another was investigated by accused SI Sukhdeep Singh. DW-13 Dinesh Kumar, Inspector CBI, Chandigarh, has categorically admitted that he had been contacting complainant Rajiv Puri on his mobile phone with effect from 7.5.2007 to 18.5.2007 on several occasions. He would also depose that he might have been present in the CBI office on 18.5.2007 at about 4.30 PM. It is his categoric admission that he was contacting complainant Rajiv Puri as the CBI made an attempt to lay a foundation for a case through PW-4. But

their efforts did not succeed. DW-14 IMS Negi, Inspector CBI, has deposed that case in RC No. 23-A/2004 registered against Savita Rani wife of Rajiv Puri, complainant in this case, was not all investigated by DW-13 Dinesh Kumar, Inspector CBI.

27. It is found that accused Sukhdeep Singh was investigating a case under Section 24 of the Immigration Act as against the complainant. Accused Sukhdeep Singh had seized the passport of Rattan Bhushan. The complainant had a grievance that a case had been registered under Section 24 of the Immigration Act which was investigated by Sukhdeep Singh and the passport of his friend Rattan Bhushan had also been seized by accused Iqbal Singh from his custody.

28. The case of the complainant is that a sum of Rs.15,000/- was demanded by accused Sukhdeep Singh for the first time on 15.5.2007. I am at loss to understand as to why DW-13 Dinesh Kumar, Inspector CBI, had been in touch with the complainant right from 7.5.2007 itself, long prior to the alleged demand made by accused Sukhdeep Singh. The above conduct of the CBI officials and the nervousness shown by the complainant whose friend's passport was seized in connection with the case under Section 24 of the Immigration Act, speaks of prior animus for false implication.

29. Learned counsel for the appellants vehemently submitted that the evidence of PW-4 who had criminal antecedents cannot be safely relied upon. Learned counsel for the CBI submitted that the CBI has established independently the demand and acceptance of bribe by the accused. Therefore, the criminal antecedents cannot outweigh the telling evidence available on

record.

30. It is an admitted case that the CBI had booked a case against the complainant for forgery. Accused Sukhdeep Singh had already dealt with a case under Section 24 of the Immigration Act and the passport of Rattan Bhushan was already seized from the office of M/s Mudra Associates by accused Sukhdeep Singh through accused Iqbal Singh. That apart, the subject complaint Exhibit PW-2/2, was also pending investigation at the hands of PW-7.

31. In the face of the above criminal antecedents of the complainant, I am of the considered view that there is every possibility for the complainant to fabricate a case as though the accused demanded bribe and accepted it. Further, it is highly unsafe to rely upon the testimony of PW-4 who had lodged a complaint against the accused who were already dealing with yet another case against him.

32. Further, it is a settled position of law that the complainant shall be treated as an accomplice and therefore, his evidence shall be corroborated in material particulars before placing reliance thereupon. (see **Panalal Damodar Rathi v. State of Maharashtra, (1979) 4 Supreme Court Cases 526**).

33. Let me now analyze the testimony of PW-1 Sandeep Arora who was associated as a shadow witness. The DVD, Exhibit PW-1/D1 was produced by the defence to confront this witness. It is found that he had come out with a story during his chat that a false implication had been made against the accused in this case. PW-1 had admitted his participation in the chatting which was captured in Exhibit PW-1/D1. In my considered view, such an

unsteady witness cannot be safely relied upon to record conviction.

34. DW-4 DSP Roshan Lal has categorically stated that Close Circuit Televisions (CCTVs) have been installed in all the police stations located in of Union Territory, Chandigarh since 23.4.2007. On an earlier occasion, in connection with some other case relating to police station Manimajra, the CBI had taken the CCTV footage installed therein. But unfortunately, CBI had not taken any footage of CCTV installed in police station Sector 34 Chandigarh, in connection with the present case. The presence of PW-1 and PW-4 at the office room of accused Sukhdeep Singh could have been established by producing CCTV footage. The CCTV footage looms large when the prior animus for the complainant to implicate the accused in this case has been well established.

35. The entire evidence of PW-4 who was the complainant in this case, was thoroughly scanned by me. No where had he stated that accused Iqbal Singh made an attempt to verify the identity of PW-1 Sandeep Arora, shadow witness, who accompanied him to meet accused Sukhdeep Singh/Iqbal Singh. It is quite unbelievable that accused Iqbal Singh had not enquired about the identity of PW-1 Sandeep Arora who accompanied PW-4 at the time when the trap was laid. It is in the evidence of PW-4 that Sandeep Arora took back seat when he drove the vehicle taking Iqbal Singh by his side. It is his further testimony that accused Iqbal Singh became nervous at the police station and therefore, he did not receive the bribe money at the police station. Under such circumstances, Iqbal Singh would have definitely made an attempt to verify the profile of Sandeep Arora before accepting the bribe. A person who had

become nervous would not have ventured to receive bribe in the presence of a stranger.

36. It was submitted by the learned counsel for the CBI that it was established that accused Iqbal Singh made a call to PW-4 and that such a call had been made by him only in connection with the bribe accepted by him in this case. To this, learned counsel for the appellants submitted that accused Iqbal Singh kept in touch with PW-4 in connection with the seizure of passport of Rattan Bhushan from the office of PW-4.

37. There is no denial of the fact that accused Iqbal Singh and PW-4 had conversed over phone but the fact remains that accused Iqbal Singh had seized the passport of Rattan Bhushan from the office of PW-4. PW-4 had exhibited anxiety in recovering the passport which was seized by accused Iqbal Singh at the instance of accused Sukhdev Singh. Therefore, the version of accused Iqbal Singh that PW-4 was in touch with him in connection with the seizure of passport of Rattan Bhushan cannot be rejected. In view of the above, I am of the view that the chatting through mobile between accused Iqbal Singh and the complainant has been properly explained by accused Iqbal Singh.

38. It is an admitted case that the passport of Ratan Bhushan which was seized by accused Iqbal Singh is missing from the case file relating to the case booked under Section 24 of the Immigration Act. PW-10 has stated that the CBI officials directed him to bring all the registers to the room of accused Sukhdeep Singh. After he furnished all the registers to the CBI officials, he was asked to go outside the room and the room was bolted from inside for 1½ hours. He also noticed that CBI officials carried some documents including

one passport when they left the office room of accused Sukhdeep Singh.

PW-12 has also corroborated the above evidence of PW-10.

39. Now, it is an admitted position that Rattan Bhushan had gone to foreign country after he retrieved his passport. The above testimony available on record would go to support the version of the defence that the complainant was very particular about securing the passport of Rattan Bhushan which was seized by accused Iqbal Singh at the instance of accused Sukhdeep Singh. Further, all the three criminal cases concerning the complainant were still pending investigation as per the evidence discussed above. Therefore, the submission made by learned counsel for the appellants that the complainant who had criminal antecedents was tempted to oblige for the reward assured to him, cannot be rejected outright.

40. To top it all, it is found from Exhibits DW-10/1 and DW-10/2 that accused Sukhdeep Singh had addressed the Director General, CBI, Lodhi Road, New Delhi, and also reminded him to subject him to lie detection test, brain mapping test and narco analysis test to find out the truth as regards the demand and acceptance of bribe alleged against him. Had accused Sukhdeep Singh demanded bribe and accepted the same through accused Iqbal Singh, he would not have the guts to throw a challenge to the top brass of the Police Department to subject him to the above test.

41. It is well settled position of law that mere recovery of bribe amount would not establish the charges under the Prevention of Corruption Act. The demand of bribe and acceptance of the same by the accused will have to be established by the prosecution.

42. On a thorough analysis of the entire evidence on record, I am of the view that the prosecution miserably failed to establish that accused Sukhdeep Singh demanded a bribe of Rs.12,000/- and accepted the same through accused Iqbal Singh. Therefore, both of them are acquitted of the charges under Section 120-B IPC and Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The security bonds and bail bonds executed by them shall stand discharged. Consequently, the judgment of conviction and sentence passed by the trial Court qua these two accused-appellants is set aside and both the appeals, namely, Criminal Appeals No. 432-SB and 500-SB of 2010 stand allowed.

January 13, 2016
JS

(M. JEYAPPAUL)
JUDGE