

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1467-SB-2007 (O&M)
Date of decision: March 08, 2017.

Rakesh Verma

... **Appellant**

v.

CBI

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
with Shri Partham Sethi, Advocate for the appellant.

Shri Sumeet Goel, Advocate, Retainer counsel for CBI.

A.B. Chaudhari, J. (Oral):

Being aggrieved of the judgment and order dated 23.7.2007 in C.C. No.29 of 19.4.2003/6.6.2007 passed by Special Judge, CBI Court, Chandigarh by which the appellant Rakesh Verma was convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 with imprisonment for one year and fine of Rs.500/- and under Section 3(1)(d) read with Section 13(2) of the said Act with the sentence of one year and fine of Rs.500/-, the present appeal was filed by him in this Court.

FACTS:

Briefly stated, the case of the prosecution is that on 2.3.2003 Majid a resident of site No.1078 in Vikas Nagar, Mauli Jagran, Chandigarh filed a complaint with CBI that he was given a notice for having raised some unauthorized construction over third floor of the site. The appellant Rakesh Verma came to him 8-10 days before filing of the complaint and

demanded Rs.3,000/- as bribe. The complainant was having Rs.1,000/- with him and he had paid the said amount to the accused who asked him to bring the remaining amount of Rs.2,000/- on Monday i.e. 3rd March, 2003. The CBI registered the case upon receiving information and decided to lay trap and accordingly two independent witnesses Vir Sain Solanki and Bimal Kapoor from FCI were joined. Thereafter, the raid was conducted and the amount in the denomination of Rs.2,000/- was seized after the same was accepted by the appellant. The post-trap proceedings were recorded as usual. Thereafter, the investigation was completed and challan was filed in the competent court. The appellant was put on trial and in order to prove its case, the prosecution examined PW1 M.P. Singh, PW2 Chitra Bahadur, PW3 K.S. Rana, PW4 Thakur Hari Singh, PW5 Vimal Kapoor Panch witness, PW6 Vir Sain Solanki, another Panch witness, PW7 Mohinder Singh, PW8 Ashok Vashishth, PW9 trap laying officer Parkash. The star witness of the prosecution, namely, Majid Ali, from whom the money was demanded, was not examined as he had died. The prosecution, therefore relied heavily on the panch witnesses to prove the demand as well as acceptance. The other witnesses are the employees from the Municipal Corporation. The trial court appreciated the evidence and thereafter convicted the appellant, as above. Hence, this appeal.

ARGUMENTS

In support of the appeal, Dr. Sidhu, learned senior counsel for the appellant, vehemently submitted that the prosecution failed to examine and could not have examined the complainant Majid Ali because he had

died. The prosecution evidence completely lacks the evidence regarding demand and the panch witnesses examined by the prosecution also did not prove the demand. According to learned senior counsel, perusal of the reasons recorded by the trial judge would show that the learned trial judge has drawn as many inferences as possible and convicted the appellant on the anvil of preponderance of probabilities which is contrary to the concept of criminal jurisprudence. According to Dr. Sidhu, a long drawn judgment has been written but then it will be seen that the judgment contains inferences rather than discussion of any positive evidence against the appellant regarding demand as well as acceptance. Learned Counsel for the appellant then contended that PW3 K.S. Rana, the then UDC in CBI office Chandigarh, was examined to prove the FIR that was recorded and signed by the Superintendent of Police, Shri R.S. Bhatti, who was never examined. Therefore, the aspect of demand allegedly made by the appellant has not been proved by the person who received the complaint and by merely proving the signatures by PW3 K.S. Rana, it cannot be said that there was any legal evidence on record as to the demand. Even referring to the panch witnesses, he submitted that they have not been able to prove the demand as well as acceptance with any positive or affirmative evidence. None of the witnesses on whom reliance has been placed by the trial court have even spoken about the demand allegedly disclosed by Majid. Learned Counsel for the appellant therefore contended that in the absence of any satisfactory or cogent evidence regarding demand or acceptance and particularly evidence as to the demand, conviction could not have been recorded. He

therefore, prayed for allowing the appeal by setting aside the impugned judgment and order.

Per contra, Mr. Sumeet Goel learned counsel for the CBI vehemently opposed the appeal and supported the judgment of conviction and sentence. Learned counsel for the CBI argued that though it is true that complainant Majid had died and was not examined before the trial court, there was enough material on record and was rightly relied by the trial court to infer that the appellant had made a demand of Rs.3,000/- out of which he had received Rs.1,000/- and for remaining Rs.2,000/- he was caught red handed by the raiding party. Learned counsel for the CBI relied on the reasons given by the trial court for recording the conviction and finally prayed for dismissal of the appeal.

CONSIDERATION

There is no dispute about the legal position that the prosecution must prove demand as well as acceptance. Merely by proving acceptance of the amount, conviction cannot be recorded. Viewed from the point of legal position, I find that admittedly the complainant Majid had died and therefore evidence regarding demand which could come from Majid Ali, could not be placed before the trial court by the prosecution. In such a situation, it was the herculean task to prove the demand. That apart, the complaint about the demand made by the accused, lodged by Majid Ali was received and recorded by the S.P. Shri R.S. Bhatti who was never examined for which there is no explanation. By merely proving his signature on the FIR through UDC PW-3 K.S. Rana, it cannot be said that demand was

proved. Admittedly, UDC-PW3 K.S. Rana was not personally present to hear the demand allegedly stated by Majid Ali complainant, but it was Shri R.S. Bhatti.

In my opinion, therefore the alleged demand made to Mazid Ali cannot be said to have been proved by DW-3 K.S. Rana since he does not ever claim that Majid Ali had told Shri R.S. Bhatti about the demand made by the appellant in his presence.

Now, looking to the evidence of PW5 Vimal Kapoor and PW6 Vir Sain Solanki, it is seen that they are the witnesses who were called from the FCI office for laying trap. To repeat, both these witnesses were not witness as to the demand that was allegedly made by the appellant from Majid Ali. These witnesses have come on the scene after the registration of the FIR and the raiding party being prepared to conduct the raid on the appellant. The evidence of these two witnesses, therefore, is of no avail so far as the aspect of demand is concerned.

Apart from the above, there is still a serious lacuna in the case that has been found by the trial court but has not been accepted by it. I quote the same in the words of the trial court itself from the judgment which reads thus:-

“39. PW-6 is working as Assistant Grade-II in the office of Food Corporation of India having 35 years of experience. He is not an illiterate person. He is deemed to be aware of the importance of documentation. A presumption can be drawn that a person like him would not sign any document without going

through the contents unless there are compelling circumstances. He appears to be a prudent person. According to him, he was explained in the pre-trap proceedings that he was to act as a shadow witness so as to overhear the conversation between the complainant and the accused and to give signal to the trap party after passing over of the bribe money. He was aware of the fact that the complainant had been directed to handover the amount to the accused on demand. Still he says that when the complainant approached the accused on his seat and put his hand in the pocket, he immediately came out and gave the pre appointed signal. This is not what had been instructed to him. He was supposed to give the signal only after passing over of the bribe money. He has no explanation to offer as to why did he not wait for the passing over of the bribe money and then give signal. It is not his case that he had forgotten the instruction. He nowhere states that he had misunderstood the instruction. Thus, by itself, proves that he is not telling the truth on this aspect. It is interesting to note that when the witness was cross-examined by learned Public Prosecutor and was confronted with the statement recorded under section 161 of the Code of Criminal Procedure, he again tried to play hide and seek by avoiding categorical answers. The following are the examples:-

I. I may have got recorded in my statement that Mazid

wished 'Namaste' to the accused and the accused enquired where he remained all those days and also asked for my introduction on seeing me standing nereby.

- II. It is correct that the accused demanded amount from the complainant and the complainant handed over the same to him.
- III. It is correct that the accused asked the complainant to move his chair close to him to get the money.
- IV. I do not remember whether accused took the money and counted the same and kept the same in his left side pant pocket.
- V. It is correct that I had stated to the CBI that the accused accepted the bribe money with his right hand and asked whether he had brought full amount of Rs.2,000/- while counting the same and Mazid replied in positive and thereafter he kept the money in his right hand and then put the same in his left hand pant pocket.
- VI. It is correct that the accused dropped the bribe money on the floor when the CBI team alongwith PW Bimal Kapoor entered the hall.
- VII. I had stated to the CBI that when they entered the room alongwith Bimal Kapoor and gave their introduction to the accused he dropped the bribe money on the floor and tried to run away but I had stated this as told by Mazid.

VIII. I do not remember whether Bimal Kapoor had tallied the numbers of the currency notes with the numbers mentioned in the pre-trap memo. I do not remember if I had stated to the CBI that Bimal Kapoor tallied the numbers.

IX. I do not remember whether I had got recorded in my statement Mark PE that the complainant had told him that on seeing the CBI team the accused had dropped the bribe money on the floor and tried to run away.”

Upon perusal of the above paragraph, it is clear that the signal was given by the witness PW6 to the raiding party even before the passing over of the money to the appellant. I think that was crucial and the trial court made an error in relying upon the evidence of these witnesses to hold that the acceptance was proved.

Upon perusal of the entire judgment recorded by the trial court, what I find is that the trial court has made several adverse comments regarding the appellant in the official files of corporation and then has drawn inferences that the only intention of the appellant-accused was to extract money from the complainant Majid Ali. In my opinion, drawing of inferences regarding entries in the files as they were placed before the court, cannot be said to be justified. At any rate, all the files on which there was discussion by the trial court did not disclose any demand or acceptance which is *sine qua non* for proving the offence under the Prevention of Corruption Act, 1988. As stated earlier by me, there is long discussion

about these files by the trial court, but then it would be enough to quote following portion from para 32 as also paragraphs 33 and 34 of the judgment which shows the approach of the trial court in drawing inferences from the files, which reads thus:-

“32 ... There is no reason to disbelieve PW-8 when he says that on 27.2.2003 the accused neither put up the file nor produced the complainant before him. Therefore, it is evident that the accused was up to a mischief. He wanted to extract bribe and with this guilty mind he tampered with the file. If the complainant did not visit the office on 27.2.2003, why his signatures in the noting portion? If the accused made no overtures, demanding the bribe, on what rational hypothesis can one explain the visit of the complainant to the office of the CBI on 2.3.2003, his producing currency notes worth Rs.2,000/-, the responsible CBI officers making all arrangements for the trap and the raiding party going to the office of the accused on 3.3.2003? The visit of the complainant soon followed by the raiding party at the seat of the accused on 3.3.2003 is admitted in the statement of DW-I. These facts together form an unbroken chain of events, which leads to only one hypothesis that there was demand of bribe by the accused as he had not only the occasion but also the motive, notwithstanding the fact that he himself was not in a position to pass any orders favourable to the complainant. It remains a fact that, he was in a

position to mould and to move the file in the manner he wished. It is for this reason that he did not produce the complainant before the Additional Commissioner on the date fixed i.e. 27.2.2003 even after marking his presence. The only inference to be drawn is that since he had already demanded bribe to be paid to him on 3.3.2003 he was waiting to accomplish the mission and then to put up the file with a note suitable to achieve his mission. Point No.(1) is thus answered in favour of the prosecution.

33. Once it is proved that there was a prior demand and that in pursuance of that demand the complainant had gone to the office of the accused on 3.3.2003, it has to be ascertained as to whether there was acceptance of bribe by the accused. As discussed above, the complainant died before he could depose. Hence, we are left with the statements of PW-5 Bimal Kapoor, PW-6 Vir Sain Solanki and the Trap Laying Officer PW-9 Shri Parkash. So far as the pre-trap proceedings are concerned, there is unanimity between all of them. However, PW-6 differs on trap/post trap proceedings. If he is to be believed, although he entered the office alongwith the complainant yet, he did not see the complainant passing over the bribe money to the accused. According to him, the moment the complainant put his hand in the pocket, he immediately came out and gave the signal. He has also projected that when the CBI team entered, the notes

were already lying on the floor.

34. If the statement of the complainant is taken on its face value there will perhaps be no need to discuss the evidence of the remaining witnesses. This is, however, not what the law requires. The function of the Courts is to separate the grain from the chaff and accept what appears to be truth and reject the rest. For that, the entire evidence has to be considered. The circumstances brought on record have to be given due weightage. The manner in which the complainant has presented a version hostile to the prosecution renders it necessary for the Court to pierce the facadial smoke-screen to unravel the truth. For that purpose veil has to be lifted so that what appears but, is not the real, can be avoided and what is real but, is lying at the base, can be accepted.”

I think, such a approach cannot be justified in deciding a criminal trial in relation to proof of charges.

Be that as it may, the inferences drawn by the trial court as to the demand and acceptance are not based on any legal evidence. It is not possible to affirm the conviction recorded by the trial court in the above scenario.

The upshot of the above discussion is that the present appeal must be allowed. In the result, I make the following order:-

ORDER

(i) Criminal Appeal No.1467-SB of 2007 is allowed;

- (ii) Judgment and order of conviction and sentence dated 23.7.2007 convicting the appellant for offence for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 with imprisonment for one year and fine of Rs.500/- and under Section 3(1)(d) read with Section 13(2) of the said Act with the sentence of one year and fine of Rs.500/-, is set aside;
- (iii) The appellant is acquitted of the charges levelled against him;
- (iv) Fine, if paid, be refunded to the appellant.

March 08, 2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No