

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

CRA-S-1413-SBA-2004

Date of decision: July 13, 2017.

State of Punjab

... **Appellant**

v.

Joginder Pal

... **Respondent**

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

Present: Shri Ramandeep Singh Sandhu, Sr. Dy. AG, Punjab
for the appellant-State.

Shri Vinod Ghai, Sr. Advocate with
Shri Mandeep Kaushik, Advocate for the respondent.

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

Heard learned Counsel for the rival parties.

Appeal by the State of Punjab is directed against the judgment dated 5.5.2003 by which the respondent-accused was acquitted of the charge framed against him.

In support of the appeal, learned Counsel for the appellant vehemently argued that the impugned judgment and order of acquittal recorded by the trial court is per se illegal and contrary to the evidence on record and is liable to be set aside. He further submitted that the prosecution had proved its case beyond reasonable doubt and there was reason that trial court acquit the accused-respondent. He then contended that the trial court wrongly disbelieved the testimony of Vinod Kumar PW2

who categorically deposed about the complicity of the respondent-accused. However, the trial court has unjustifiably rejected his evidence when his evidence had not been shattered in the cross examination.

Per contra, learned Counsel for the respondent-accused submitted that the trial court has found that the prosecution case was not worth of reliance. The testimony of Vinod Kumar PW2 was found to be untrustworthy. Counsel further argued that the respondent-State has also brought on record FIR against the complainant himself and with the aid of Section 146 of the Evidence Act, he submitted that the said record brought before the court has sufficiently shaken the credit of the witness Vinod Kumar PW2. He, therefore, prayed for dismissal of the appeal.

Having heard Learned Counsel for the parties, I have seen the reasons recorded by the trial court for recording acquittal of the accused-respondent. The reasons are contained in para 11 and 12, which read thus:-

“11. ... In the case in hand, defence version of the accused is that while checking electric connection, consumer was found consuming excess load. Notice was issued to the complainant party to pay penalty. Complainant came to the P.S.E.B. Office and lodged protest for checking and sending of notice. Ultimately, complainant requested for payment of penalty through installments. Notice with Rs.2000/- was handed over to the accused; whereas, allegation of the prosecution is that accused demanded and accepted illegal gratification of Rs.2000/- in the presence of shadow witness Charanjit Singh. Now the question is, whether

defence version is probable; whether prosecution story inspires confidence. Shadow witness, namely Charanjit Singh appeared as PW10 but he did not support the prosecution story. Shadow witness was declared hostile and was cross-examined by the learned Addl. P.P. for the State. But nothing came out of his cross-examination, which could help the prosecution. Shadow witness rather admitted that complainant was saying that their ladies were insulted by the accused. Accused also submitted wrong report regarding checking. In his presence accused did not demand bribe, nor bribe was paid by the complainant to the accused. Lastly, shadow witness admitted that complainant was requesting to pay penalty through installments. Investigating Officer Amrik Singh on cross-examination stated that R.A. was joined at the time of raid. R.A. namely Vinod Kumar appeared as DW5 and on oath stated that complainant came to P.S.E.B. office and enquired as to whether penalty can be waived or not. Complainant was also requesting for payment of penalty through installments. On enquiry by the complainant he replied that no officer has the power to waive penalty. But SDO has the power to deposit penalty through installments. Complainant was saying to pay installments to the accused. SDO Davinder Pal Singh appeared as PW9 and in-chief stated that notice was issued to recover penalty. He has the power to recover penalty through installments. But no officer of the P.S.E.B. has the power to waive penalty.

Immediately after the alleged occurrence, SDO, PSEB Kala Sanghian wrote letter to the XEN. Ex.D-2 is the copy of the complaint. In the complaint, SDO informed the XEN that notice was issued to the complainant to pay penalty. Complainant came to the P.S.E.B. Office and requested to pay penalty through installments. Rs.2000/- was paid to Joginder Pal JE. Later on Vigilance Officials were summoned to the office by the complainant. Joginder Pal had no power to pay penalty through installments. Joginder Pal was got implicated falsely by the complainant. Joginder Pal is innocent. Suggestion was given to Vinod Kumar that he was requesting to deposit penalty through installments. Rs.2000/- alongwith notice to deposit penalty was handed over to the accused. Defence version inspires confidence because shadow witness, official witness admitted on cross-examination that complainant was requesting to deposit payment of penalty through installments. Accused had no power to accept payment through installments. Only SDO had the power to effect recovery through installments. SDO appeared as PW9 and supported the version of the accused. R.A. was also joined by the Investigating Officer. R.A. also supported the accused by saying that complainant firstly enquired as to whether penalty can be waived. When R.A. replied that no Officer had the power to waive penalty, then complainant enquired whether penalty can be deposited through installments. Rs.2000/- as installment with

notice was handed over to the accused. Immediately after the occurrence SDO reported the matter to the higher authorities. Shadow witness was declared hostile. Shadow witness categorically stated that in his presence accused did not demand or accept bribe. So statement of Vinod Kumar alone is not sufficient for conviction of the accused, as held in 1989(1) R.C.R. 257 Joginder Kumar versus State of Punjab, wherein, it was held that police party recovering bribe money from accused – Witnesses of recovery declared hostile. Only one witness supported prosecution story. Then it is not safe to convict the accused on solitary statement, who did not speak whole truth. Statement of PW corroborated by Investigating Officer, it is no corroboration, not safe to convict the accused. In the presence of official witness and investigating officer only tainted currency notes were recovered from the possession of the accused, but the question is, whether amount was deposited as installment or amount was paid as illegal gratification on demand of the accused.”

“12. ... In the case in hand, complainant appeared on 20.2.2003. On cross-examination admitted that he did not appear as a prosecution witness in a murder case. FIR No.152 was not registered against him. But FIR No.157 was registered against him. Complainant further admitted that he had some altercation with the employees of the P.S.E.B., but statement of the complainant is not correct one. Rajneesh Kumar, Clerk

brought summoned file of State case registered against Bakhtawar Singh and in the said murder case Vinod Kumar complainant appeared as PW. Ex.D-3 is the copy of the statement of Vinod Kumar appeared on 9.9.1999. HC Ranjit Singh brought record. FIR No.152 dated 9.4.2002 was registered against Vinod Kumar. FIR No.157 dated 15.6.2001 was registered against the complainant. Present complainant had altercation with the employees of the P.S.E.B. DW6/A is the copy of the complaint by the employees against Vinod Kumar complainant. DW6/B is the copy of the letter by the XEN to the Incharge, Police Post Uggi. Ex.D-4 copy of FIR No.152 shows that complainant threatened to encroach upon the property of Gram Panchayat. Ex.D-5 copy of FIR No.157 shows that present complainant was unauthorizedly occupying the property of Kashmiri Lal resident of Village Uggi. DIG Jalandhar Range also wrote letter to District Magistrate, Jalandhar in view of the complaint of Smt. Shindo to provide police assistance to Smt. Shindo for getting her shops vacated from Vinod Kumar son of Harbans Lal. All this show that complainant is very much interested for the conviction of the accused. Complainant was inimical towards the accused because the accused at the time of checking submitted report to the higher authorities that consumer is consuming excess load than the sanctioned one. Notice was issued to the complainant to pay penalty. After the occurrence complainant had

altercation with the employees of the P.S.E.B. Murder case was registered against Bakhtawar Singh and in that case Vinod Kumar complainant appeared on 9.9.1999. In the present case Vinod Kumar appeared on 20.2.2003. Then categorically stated that he did not appear as a prosecution witness in a murder case registered against Bakhtawar Singh. Vinod Kumar on cross-examination stated that FIR No.152 was not registered against him. But this fact is not correct one in view of the statement of HC Ranjit Singh, who brought record and produced the copy of FIR No.152 Ex.D-4. In case complainant can deny that FIR No.152 was not registered against him and he did not appear as a prosecution witness in a murder case, then without corroboration of independent evidence it is not safe to convict the accused because the accused being employee of the Board was duty bound to inspect electric meter. Regarding checking entry was made in the checking register. Raj Kumar PW3 brought the checking register and proved the entry of the register dated 27.5.1999 Ex.PM. PW1 Ravinder Kumar brought the record and on oath stated that as per dispatch register notice dated 2.6.1999 was dispatched to Harbans Lal. Copy of the letter is Ex.PA. Ex.PB is the copy of dispatch register. In case on 2.6.1999 notice was issued to consumer to pay penalty, then on 10.6.1999 accused cannot demand illegal gratification from the complainant. As per evidence accused had no power to

waive penalty. Only SDO had the power to effect recovery through installments. When the letter was dispatched to the consumer on 2.6.1999 to deposit penalty for consumption of excess load and the accused had no power to waive penalty, then how on 10.6.1999 accused can demand illegal gratification. Something could be said if on 2.6.1999 letter would not have been posted to the consumer or after checking accused would not have submitted report to the higher authorities. There was possibility to demand illegal gratification if the checking report was with the accused. After checking there was possibility for the accused to send a tout to pay illegal gratification if the complainant wants to avoid payment of Rs.3698/-. As per inspection report, report was submitted to the higher authorities. As per inspection report, notice was sent to the consumer on 2.6.1999 to deposit penalty. After the issuance of notice, how the accused can waive penalty. SDO had the power to recover penalty through installments. So possibility of payment of Rs.2000/- as installment with notice to the accused cannot be ruled out. That is why shadow witness did not support the complainant. ...”

In so far as the discredit given to the witness by the trial court is concerned, the same finds mention in para 12, reproduced above.

In the light of the decision of the Supreme Court in the case of Darshan Singh v/s State of Punjab, 2010(2) SCC 333, in particular para 24, I think the second view is not possible. Even if second view is possible, in

appeal against acquittal, the same cannot be substituted. Therefore, I find no merit in the present appeal.

Dismissed.

July 13, 2017.

kadyan

[**A.B. Chaudhari**]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No