

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

CRA-S-1859-SBA of 2004

Date of decision: August 18, 2017

State of Punjab

.....Appellant

Versus

Gurtej Singh

.....Respondent

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

Present: Mr. Ramandeep Sandhu, Sr. DAG Punjab.

Mr. T.S. Sangha, Senior Advocate with
Mr. J.S. Lalli, Advocate for the respondent.

A.B. CHAUDHARI, J (Oral)

State of Punjab has taken exception to judgment and order dated 05.03.2004 passed by Special Judge, Bathinda, by which the learned trial Judge recorded the order of acquittal in Prevention of Corruption Act File No.15 of 24.10.2000, decided on 05.03.2004, for the offence under Section 7 read with Section 13(2) of Prevention of Corruption Act, 1988 (for short 'PC Act').

Heard learned counsel for the rival parties at length and perused the entire evidence documentary as well as oral.

Learned counsel for the appellant-State of Punjab objected the finding of acquittal recorded by the learned trial Judge and submitted that the learned trial Judge committed an error by misreading the evidence on record documentary as well as oral and therefore, the finding is perverse. According to him, the respondent-accused was clearly guilty of the offences for which he was charged and he had

accepted illegal gratification of ₹800/- from Jaspal Singh for enhancing the turn of water in his favour. The accused was caught red handed while accepting bribe and there was evidence on record to convict him. The trial Court, however, committed an error in acquitting the respondent-accused.

Per contra, learned Senior counsel for the respondent-accused supported the impugned judgment and order of acquittal. He contended that oral as well as documentary evidence does not support the prosecution case at all. On the contrary, according to him, the evidence stated by the prosecution is self-contradictory and the prosecution had failed to prove its case that too beyond reasonable doubts. Inviting my attention to the oral as well as documentary evidence, learned counsel for the respondent-accused submitted that earlier on 5-7 occasions, the complainant-Jaspal Singh had approached the respondent-accused for extending turn of the water and in the cross-examination, the complainant himself admitted that never in the past, the respondent-accused on any of the occasion, raised a demand of illegal gratification. It was, therefore, highly improbable that such demand was made by the respondent-accused, particularly, because complainant-Jaspal Singh knew that such an extension of turn of water could be made by the higher authorities and not by the respondent-accused. In fact, that was his experience for the last 5-7 occasions as his representation on those 5-7 occasions that was provided, was rejected by the competent authority for extension of turn of water. He, then contended that on all probabilities, therefore, the trial Court found that the case was not worth

holding that the prosecution has proved its case beyond reasonable doubts and therefore, rightly acquitted the respondent-accused. He, therefore, prayed for dismissal of the appeal.

I have gone through the entire evidence documentary as well as oral that were shown by the learned counsel for the rival parties during the course of hearing on few dates. I have compared the findings recorded by the learned trial Court with the evidence on record and I am satisfied that there is no perversity on the part of the trial Court in recording the order of acquittal. Instead of repeating the reasons, I would quote the reasons from the judgment of the trial Court as under:-

“But the application, Ex.P12 itself transpires that he same was not marked by the Ziledar namely Balwinder Singh, to the accused. It was also not in possession of the accused Gurtej Singh, either on 10.04.2000, i.e. the day the first demand was allegedly raised by the accused or on the next day i.e. 11.04.2000 when the raid was conducted. No doubt, DSP Vinod kumar PW7, has shown the recovery of the aforesaid application, Ex.P12 alongwith copy of Jamabandi Ex.P13 from the custody of the present accused at the time of raid but the same stands falsified from the oral as well as documentary evidence. There is no endorsement made by the Ziledar, for sending the same to the Halqa Patwari i.e. the accused for making any report etc. Moreover, there is the testimony of Gurmit Singh, ARC PW3 who was in possession of the aforesaid application Ex.P12, and it has been categorically deposed by him that Ex.P12 was marked by the Deputy Collector, to Ziledar, but the Ziledar did not attend the office for 2/3 days and he kept the application with him.

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In the case in hand, it has come on record in the statement of PW4 Vijay Kumar and PW10 Yog Raj, that the recovery of tainted currency notes was effected prior to the hand wash of the accused. If that is the position, the hand was is bound to be positive as the accused already handed over the tainted currency notes to the DSP on his asking. But it is well settled that the recovery of tainted currency notes de horse the demand would not be sufficient to convict the accused. xxxx.

20. Reverting back to the facts of the case in hand, this Court has already concluded that there was no occasion for raising the demand. Rather, the application, Ex.P12, has been falsely shown to be recovered from the custody of the accused. Since there is no cogent evidence with regard to the demand and the testimony of Jaspal Singh PW1 in this regard is not reliable, the accused cannot be held guilty and convicted on the ground or mere recovery of tainted currency notes from his possession. Here it would be pertinent to mention that even there is no cogent evidence with regard to the first demand and the evidence adduced in this regard is absolutely contradictory. Jaspal Singh PW1, while subjected to cross examination has stated that he moved application for the ten times in the Canal Department after the decrease of time of his turn of water and had been approaching time and again to Gurtej Singh Patwari in this connection but he did not raise any demand of any amount as illegal gratification on any such occasion. Even otherwise, the case of the prosecution as set out in the report under Section 173 Cr. P.C. is that the initial demand was also raised by the accused in the presence of Jaswant Singh PW2 from Jaspal Singh complainant PW1. But Jaspal Singh PW1, while subjected to cross examination has stated that Gurtej Singh accused, met him at village Jandian, on 10.04.2000, when he was going to his office by chance and

on that day he raised the demand. Meaning thereby that the demand was not raised by the accused in the presence of Jaswant Singh. It has further been stated by PW1 Jaspal Singh, that prior to that, he did not disclose about the raising of demand to Jaswant Singh. Similarly, Jaswant Singh, in the opening lines of his cross examination, has also stated that he did not meet Gurtej Singh Patwari, along with the complainant prior to 11.04.2000. Meaning there by that the demand was not raised in his presence on 10.04.2000. So, when the demand itself is not established, the recovery of tainted currency notes is of no evidentiary value and no presumption can be drawn against the accused to fasten with him with any liability and authorities relied upon by the learned defence counsel in this regard referred to above are fully applicable.”

Looking to the above reasons in the judgment of the trial Court, I find even the second view is not possible on the evidence. In the light of the decision of the Hon’ble Supreme Court in the case of **Darshan Singh versus State of Punjab**, 2010 Vol.2 Supreme Court Cases 333, in Para 24 thereof, I make the following order:

ORDER

CRA-S-1859-SB of 2004 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

August 18, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No