

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

CRA-S-1876-SB-2009 &
CRA-S-1897-SB-2009
Date of decision: July 18, 2017.

Jai Parkash Singh and
Kaka Singh

... **Appellants**

v.

Central Bureau of Investigation

... **Respondent**

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

Present: Shri Manuj Nagrath, Advocate for the appellant
in CRA-S-1876-SB-2009.

Shri H.S. Sangha, Advocate for the appellant
in CRA-S-1897-SB-2009.

Shri Sumeet Goel, Advocate Retainer Counsel for CBI.

A.B. Chaudhari, J.

Being aggrieved by the judgment and order dated 23.7.2009 in the Corruption Case No.4/11.01.2008 passed by the Special Judge, CBI Court, Chandigarh by which the two appellants, Jai Parkash Singh and Kaka Singh in two different appeals, were convicted for the offences under Section 120-B IPC and Sections 7, 13(1(d) and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo RI for one year and fine of Rs.25,000/- each, these two appeals were filed by them in this Court.

FACTS:

Briefly stated, the prosecution case was that on 10.10.2007, complainant Paramjit Singh made a complaint Ex.PW-1/1 to SP, CBI,

Chandigarh. He stated in the complaint that he was married in the year 2003 with Manjit Kaur daughter of Amarjit Singh but immediately after marriage, his wife started making complaints with the Women Cell, Chandigarh and every time she used to return as a result of mutual compromise. On 13.9.2007, she had again filed a complaint with the Cell as a result of which he was directed to appear on 27.9.2007. The matter could not be settled. Thereafter, SI Jai Parkash Singh (accused No.1) and constable Kaka Singh (accused No.2) (hereinafter referred to as accused No.1 and accused No.2 for brevity) called the complainant to the Cell. On 10.10.2007, accused No.1 asked the complainant to pay him Rs.10,000/- else a case will be registered against him for demand of dowry. Kaka Singh accused No.2 was introduced to him and was asked that he should pay the bribe money till evening to accused No.2. Kaka Singh accused No.2 asked Paramjit Singh to come under a tree near the parking lot outside Women Cell after arranging the money where he would receive the money and pass on the same to accused no.1. The complainant did not want to pay the bribe and therefore filed a complaint on the basis whereof FIR was registered.

A trap team was constituted under PW4 Inspector S.L. Sharma who was the trap paying officer. Independent witnesses were called from FCI. The complainant produced 19 currency notes, i.e., one currency note of the denomination of Rs.1,000/- and 18 currency note in the denomination of Rs.500/-, thus making a total of Rs.10,000/-. Thereafter, usual procedure was followed and the trap party went to the spot indicated earlier by Kaka Singh in Sector 17 Chandigarh where Women Cell is located. Maruti car No.HP-03-A-2461 in which the complainant was travelling, was parked in

front of the office. The complainant and the shadow witness went under the tree. The trap party took the convenient positions. The complainant made a phone call to Accused-2 Kaka Singh telling him that he was waiting for him under the tree. After about two minutes, Kaka Singh reached near the tree and then Kaka Singh told him to accompany him in the office cabin No.6 of accused No.1 Jai Parkash Singh and took the money of Rs.10,000/- from the complainant. He thus accepted the money with his right hand, counted the same with both hands and put the same in his left upper shirt pocket and thereafter the trap party entered and caught him. The requisite procedure was followed and finally investigation was completed and the challan was filed in the court. The trial court recorded evidence of the prosecution witnesses from PW1 to PW13 and thereafter convicted the appellants as stated above.

Arguments in support of both the above appeals were heard.

Learned Counsel for the appellants made the following submissions:-

- (i) the trial court committed an error in convicting the appellants when it itself found that the prosecution case was suspicious. But then, the trial court gave the benefit of doubt to the prosecution;
- (ii) the prosecution did not prove the sanction according to law, therefore, order of acquittal ought to have been recorded;
- (iii) the evidence of PW1 Paramjit Singh is interesting, particularly suspicious and unworthy of any credit and the entire evidence, if carefully examined, is required to be rejected being false;

- (iv) the prosecution kept a secret about the presence of Tipa Singh;
- (v) if the entire prosecution story from the beginning till the end is analyzed, it did not examine Tipa Singh during investigation or during trial in the court; the obvious reason was that the story introduced by PW1 Paramjit Singh or the prosecution about Tipa Singh was introduced for the first time before the court and therefore the prosecution failed to disclose the genesis of its case truthfully and honestly before the trial court.

The learned Counsel for the appellants then submitted that the prosecution case was liable to be rejected for many reasons, in that the demand was said to have been made by accused No.1 at 10.30 AM on 10.10.2007 whereas the call records show that at 11.02 AM, the complainant Paramjit Singh was at Raipur Rani which is at a 40 kilometers distance from Chandigarh which has been proved by DW6 Nigam from BSNL, so also the prosecution case was falsified. Similarly, the prosecution did not prove first demand and second demand from accused No.1 nor did it prove any demand from Kaka Singh for the first time. Admittedly, accused No.1 was not present when the raid was conducted and therefore it was difficult to believe that accused No.1 had accepted any amount and it is the prosecution which is to prove the acceptance of money by the accused which is absent in the present case.

The raiding party had arrested one Constable believing him to be accused No.1 but it has been proved from Ex.DW1/1, Ex.Dw1/2 and

Ex.DW1/3 that accused No.1 was never arrested but some other person was arrested and accordingly investigation was conducted and raids were conducted. At any rate, since the prosecution miserably failed to prove its case beyond reasonable doubt, the appellants ought to have been acquitted.

Per contra, Mr. Sumeet Goel, learned retainer Counsel for CBI, vehemently opposed the appeals and relied on the findings recorded by the trial court. He submitted that there is ample evidence on record to prove the guilt of both the appellants and there is no reason why the evidence of PW1, other police officials and shadow witness should not be accepted. The trial court has rightly accepted the evidence of the prosecution witnesses as there is nothing on record to disbelieve their testimony. According to him, non examination of Tipa Singh would not give any benefit to the defence for which the trial court has recorded the reasons also. According to Mr. Goel, it is well settled that fault on the part of the Investigating Officer in not examining Tipa Singh cannot be allowed to be read as a circumstance in favour of the accused persons. Finally, he prayed for dismissal of both the appeals.

CONSIDERATION

I have heard learned Counsel for the rival parties. I frame the following points for determination:-

- (i) Whether the prosecution has proved the sanction for prosecution according to law? Yes
- (ii) Whether the prosecution proved its case against both the appellants Jai Parkash Singh accused No.1 and Kaka Singh accused No.2 on the basis of the evidence tendered by the

prosecution? No

For the reasons to be recorded hereunder, both the appeals are allowed. I record my reasons for arriving at the above conclusions, as under.

I have seen the evidence of PW1/1A Shri S.S. Srivastava, SSP, Chandigarh who granted sanction for prosecution of both the appellants Ex.PW-1-A/1. Perusal of the evidence of this witness nowhere shows any challenge much less serious challenge to the sanction accorded by him for prosecuting both the appellants. He has duly proved the sanction order and his evidence shows that he applied his mind before according sanction. I therefore answer point No.(i) in the affirmative.

The genesis of the prosecution story is shrouded in mystery. It is the duty of the prosecution to place all material facts and evidence before the court rather than make a fault in making complete investigation or withhold one or other piece of evidence from the court so that no doubt should stir in the mind of the court. That is the standard of proof required in all criminal cases. In the present case, the CBI has failed to disclose the genesis of the prosecution case. I have seen carefully the evidence of Paramjit Singh who is the star witness of the prosecution. It would be appropriate to come directly to the date, namely, 10.10.2007 because when he had met accused No.1 on 3.10.2007, admittedly no demand was raised for any bribe nor any conversation about it took place on that day. In his evidence, he stated that on 10.10.2007 when he went in the morning, he was called by accused No.1 Jai Parkash Singh in Women and Child Support Unit when Kaka Singh was present there. Accused No.1 demanded a bribe of

Rs.10,000/- from him by evening and asked him to pay the same to Kaka Singh accused No.2. Thereafter accused No.1 asked him to come with the money under a tree outside the Women Cell. At about 1 – 1.30 PM, since he did not want to pay bribe money, he wrote a complaint Ex.PW-1/1 in the open ground in front of Women Cell, Sector 17, Chandigarh and took the maruti car of a friend (Tipa Singh) of his Jija, Pankaj Saini, and then lodged the complaint to SP, CBI, Chandigarh at about 3 PM. Inspector S.L. Sharma was asked to look into the complaint, who registered an FIR. Thereafter, he was introduced with the shadow witnesses. At about 5.40 PM, the proceedings were completed. He travelled in the car of his Jaija's friend Tipa Singh who was driving the car. As per arrangement, he met Kaka Singh at the appointed place where Kaka Singh demanded the amount and accordingly he told that he had brought Rs.10,000/- and the same was accepted by Kaka Singh and after counting the same, he kept the same in the left shirt pocket and stated that accused No.1 would do his work. Thereafter, Kaka Singh made him to talk to accused No.1 Jai Parkash Singh at the mobile phone and thereafter the trap party arrested accused No.2 Kaka Singh.

It is significant to note that the entire incident of demand and acceptance is stated to have taken place between 10 AM to 3.30/4 PM on the same day, namely, 10.10.2007. Perusal of the entire examination of Paramjit Singh nowhere shows that he himself had the entire amount of Rs.10,000/- with him but shows that he was having only Rs.3500/- - 4000/- with him when he left his place Nahan (HP) in the morning. It is also pertinent to note that the entire contemporaneous proceedings right

from lodgment of complaint till the completion of trap nowhere shows that PW1 Paramjit Singh had brought Rs.10,000/- when he left his town Nahan in the morning. However, in the cross examination, the cat came out of the bag and PW1 stated that he had only Rs.3500/- to 4,000/- with him and he was supposed to buy certain items for Mony Studio, Nahan. He was given Rs.3,000/- by Mony Studio and he himself was having Rs.500/-. He then claimed that since the demand was for Rs.10,000/-, he went to PGI where he took Rs.6000/- from Tipa Singh, a friend of his Jija Pankaj Saini. Thus exact amount comes to Rs.10,000/- with him and no amount should remain with him having paid Rs.10,000/-. But then, he stated that he had Rs.20-25 left with him. The story about Tipa Singh giving Rs.6000/- thus has been disclosed by him for the first time in the cross examination and it was never the genesis of the prosecution case. The further cross examination of this witness shows that he could not get a bus from his town to come to Chandigarh directly and therefore he boarded a bus for Naraingarh and when he was waiting at Naraingarh for a bus, Tipa Singh met him there who gave him a lift and dropped him in Sector 17, Chandigarh and he went saying that he was to get some body checked up and in case he got free in time, he could contact him so that they go back to Nahan. He stated that he did not have any mobile phone number of Tipa Singh. It is strange to note that the Investigating Officer did not at all investigate the aspect about Tipa Singh nor recorded the statement of Tipa Singh and nor cited him as a prosecution witness. It also appears that PW1 did not have the amount of Rs.10,000/- when he started from Nahan but he claims that the amount of Rs.6000/- was given by Tipa Singh. It is in this context, it was materially

necessary for the prosecution to have Tipa Singh examined before the court for corroboration of the story of PW1. The reason is that PW1 had at a point of time stated that he had exact Rs.10,000/- but then stated that he had Rs.20-25 left with him after paying Rs.10,000/-. When he himself had taken only Rs.500/- and not 520 or 525, it is the evidence of PW1 if looked carefully, requires some corroboration. The story of Tipa Singh coming to PGI and non disclosure of the name of any patient either with him in his car from Nahan or at Chandigarh is also strange. If Tipa Singh wanted to have checked up some body in the PGI medically, then, there is nothing in the evidence of PW1 as to whether any patient was brought from Naraingarh or whether the patient had accompanied Tipa Singh at any point of time or whether the patient was to be collected from Chandigarh. It was for the prosecution to remove all these suspicious circumstances as the prosecution itself is expected to furnish answers to these questions. Instead of again discussing the evidence of PW1 in the cross examination, it would be appropriate for me to quote following portion from his cross examination:-

“When I had visited women cell sec. 17 on 3.10.2007 I had been asked by JP Singh to come again on 10.10.2007. Accordingly on 10.10.2007 I reached there at 10.30 am. I came all by myself. Demand for the first time was raised on 10.10.2007. Before that on one occasion I was given beatings by Sarabjit Kaur, Police Officer. Otherwise no other type of harassment was caused by women cell before the demand was made on 10.10.2007. I do not have any relations in Chandigarh.

On 10.10.2007 I had Rs.3500/4000/- with me as on my way back I was supposed to buy certain articles for Mony studio, Nahan. Since the demand was of Rs.10000/-, I went to PGI where I took Rs.6000/- from Tipa Singh friend of my jija Pankaj Saini. I was given Rs.3500/- by Mony Studio and I was having Rs. 500/- with me. Apart from Rs. 10,000/- which were given by me to CBI team during pre trap proceedings, I had Rs. 20-25/- left with me. I did not borrow any other amount from anybody else. In the morning when I had come to Chandigarh, I could not get direct bus. Therefore I boarded bus for Naraingarh when I was waiting for bus to Chd. At Naraingarh, Tipa Singh had met me there. He had given me lift and dropped me in Sector 17 Chandigarh, While dropping me he told me that he was going to PGI for getting somebody checked up and in case I got free in time I could contact him so as to accompany him back to Nahan. Tipa Singh is a resident of Mohalla Gobindgarh, Nahan, I cannot recollect his house number. After taking money from Tipa Singh I asked him to drop me at CBI office. I had written the complaint before going to PGI to take money from Tipa Singh. Tipa Singh had told me that he would be available in the new wing of PGI where OPD cards are prepared. Tipa Singh was having mobile but I did not have his number. From PGI we left for CBI office at about 2.00/2.15 pm, Tipa Singh after dropping me told me that he would wait for me outside for 15-20 minutes

in case he was needed. I went in CBI office. After my complaint was marked by SP to SL Sharma, SL Sharma took me to his room but before that I told him that I had a friend of mine waiting outside. Then I came out but by that time Tipa Singh had left. Before I had entered the CBI office Tipa Singh had told me that he would wait for me for 15-20 minutes and then would come again outside CBI office in the evening. I had asked some rickshaw puller as to where the CBI office was and then I had written the complaint while sitting in the open ground in front of women cell. I had taken paper from court complex. After looking for Tipa Singh outside CBI office I had gone back in the CBI office and thereafter I had come out only with the trap party while going to lay trap at about 5.40 pm. I found Tipa Singh waiting for me outside. I asked CBI officers that I would travel with Tipa Singh in his car. After the trap was proceedings were over I went back to Nahan with Tipa Singh. Tipa Singh had not entered women cell. I had entered women cell with Vijayant Burman. Tipa Singh remained out. After trap proceedings I travelled back to CBI office in Tipa Singh's car. From there I went to Nahan with Tipa Singh. I do not know where the patients whom Tipa Singh had brought to PGI were when we came back to Nahan. I did not ask Tipa Singh whether they had been admitted. I do not know whether they were his relatives."

It is also important to note that PW1 claimed that Tipa Singh who is the owner of the car was moving with PW1 after it was decided to conduct the raid and the raiding party had started from the office for conducting the raid and that the shadow witnesses were also in the car of Tipa Singh. It is in this entire background, in my opinion, it was absolutely essential to examine Tipa Singh to remove suspicious circumstances particularly because PW1 had only Rs.500/- of his own when he is stated to have arranged Rs.10,000/- for being paid as bribe.

The trial court has further held in para 42 of the judgment that there was negligence on the part of the trap laying officers in not examining Tipa Singh and that his mere non joining in the investigation cannot be a ground to discard the prosecution case. Similarly as to the payment of money by Tipa Singh who was never examined before the court, the trial court stated in para 43 that Tipa Singh was having cordial relations with the complainant, therefore, he decided to assist him financially. I quote para 42 and 43 from the judgment as under:-

“42. The presence of Tipa Singh, who had accompanied the complainant to the Office of CBI and thereafter to the place of trap, also cannot be considered doubtful simply on the ground that the Trap Laying Officer of the Investigating Officer has not associated him in the investigation of this case and the Trap Laying Officer has not been able to tell as to whether he was a Hindu or a Sikh gentleman, This can be stated to be the negligence and lapse on the part of Trap Laying

Officer and the Investigating Officer. The complainant has categorically deposed that Tipa Singh had given him the lift in his car from Naraingarh, District Ambala. PW-2 Vijayant Burman, the shadow witness has also corroborated the presence of Tipa Singh and had stated that he has travelled in the car with the complainant and his friend was driving the car. This friend of the complainant is none else than Tipa Singh. If the statement of Tipa Singh would have been recorded by the Investigating Officer or the Trap Laying Officer that would have landed more corroboration to the story of the prosecution, but, mere non-joining of Tipa Singh by these officers is only a lapse on the part of these officers which cannot be a ground to discard the prosecution case.

43. The fact, as to whether said Tipa Singh was the owner or driver of the car used by the complainant and what happened to the patient brought by said Tipa Singh in his car, are the facts which could have been disclosed by Tipa Singh but as he has not been associated in the investigation, these facts could not be brought on record. Tipa Singh was having cordial and close relations with the complainant. So, it is probable and plausible that he might have financially helped the complainant to arrange the bribe money.”

In my opinion, in the absence of examination of Tipa Singh before the Court on both the counts, the trial court could not have given benefit to the prosecution as he was a material witness to corroborate PW1.

Admittedly, the prosecution has brought on record through PW1 that he had only Rs.500/- with him but he had paid Rs.10,000/- and the prosecution does not have any explanation as to the amount of Rs.3500/- which also did not belong to him but belonged to Mony Studio. This Court therefore finds that there is reasonable ground to hold that the prosecution evidence suffers from highly suspicious circumstances and the benefit of doubt, as is well settled, always goes to the accused and not to the prosecution.

In the result, I find the entire prosecution story is shrouded in suspicion and thus must be rejected by giving benefit of doubt to the appellants.

The upshot of the above discussion is the following order is inevitable:-

ORDER

- (i) CRA-S Nos.1876-SB and 1897-SB of 2009 are allowed;
- (ii) judgment of conviction and the order of sentence passed by the trial court CRA-S Nos.1876-SB and 1897-SB of 2009 are set aside;
- (iii) the appellants are acquitted of the charge, under Section 120-B IPC and Sections 7, 13(1(d) and 13(2) of the Prevention of Corruption Act, 1988, that was framed against them.

July 18, 2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No