

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

CRA-S-2538-SB of 2011 (O&M)
Date of decision: October 12, 2017

Ram Ji

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. K.S. Khehar, Advocate for the appellant.

Mr. Ramandeep Sandhu, Sr. DAG Punjab.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 28.09.2011 passed by the Special Judge, Ludhiana, in Corruption case No.15 of 2001 by which the appellant was held guilty for offences under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and was sentenced to undergo Rigorous Imprisonment for a period of 3 years and pay fine in the sum of ₹5,000/- etc. and in default to further undergo Rigorous Imprisonment for six months, the present appeal was filed by him.

FACTS

The prosecution case in brief was that Bharpur Singh son of Tota Singh reported to the police that his sister Balwinder Kaur was married to Rajinder Singh. That on the complaint of one Ravinder Kaur, a rape case was reported on 27.12.2000 against his brother-in-law, sister-Balwinder Kaur and mother Bachan Kaur. Appellant-Sub

Inspector Ram Ji, In-charge police post Jodhan was the investigating officer. On 28.12.2000, appellant-Ram Ji told him that he will have to pay ₹70,000/- as bribe money for helping him and that the bribe amount was ultimately settled to ₹50,000/-. The complainant promised to pay the same on 29.12.2000, however, he told the said fact to Balwinder Singh that he did not want to pay bribe money. Accordingly, he and Balwinder Singh went to the office of Vigilance and reported to Sarup Singh-Deputy Superintendent of Police who recorded the statement. Thereafter, the amount of ₹50,000/- was arranged in the denomination of ₹500/- each and usual demonstration was undertaken. Thereafter, shadow witness and official witness were arranged and the raid was prepared. The complainant and shadow witness were sent to police post Jodhan, whereas the police party stood outside the police post. Upon receiving the signal, raiding party entered the police post when appellant-Ram Ji was present there. The Deputy Superintendent of Police then searched his person, but no money was found on the person, but putting the solution of Sodium Carbonate, his fingers were washed which colour changed into Pink. The currency notes were, however, recovered from the pillow lying on the cot in the wireless room of the police post. Thereafter, usual procedure was followed and the investigation was made, which was completed and the challan was filed against the appellant. The appellant caught in the charge under Section 13(1)(D) punishable under Section 13(2) read with Section 7 of the PC Act. The

prosecution examined PW1-Complainant Bharpur Singh, PW2-Balwinder Singh and other official witnesses. The trial court framed only one point of determination and needless to say that he did not frame any point regarding validity or otherwise regarding sanction to prosecute. The prosecution closed the evidence and thereafter, the trial Court recorded the conviction against the appellant as stated above. Hence, this appeal.

ARGUMENTS

In support of the appeal, learned counsel for the appellant vehemently argued that complainant-PW1-Bharpur Singh was not declared hostile by the prosecution and thus, the prosecution wanted to rely on his defence. The trial Court, however, did not at all give any importance to his cross-examination. Though, the trial Court has stated in the judgment that PW1 did not support the prosecution in the cross-examination, the trial Court did not consider his cross-examination and the fact that he was not declared hostile. According to him, PW1-complainant himself having not supported the prosecution case and having given different accounts altogether, the benefit of doubt at least could have been given to the accused-appellant. Learned counsel for the appellant argued that the trial Court relied on the evidence of PW2-Balwinder Singh, but then Balwinder Singh admittedly, was never the eye witness to the first demand, which prosecution required to prove by positive evidence and it would prove only by PW1 who did not support the prosecution. Hence, the first demand was not proved. In so far as the evidence of PW2-Balwinder Singh is concerned, the same is

liable to be rejected as Rajinder Pal Singh who was arrayed as accused in the rape case in respect of which bribe was allegedly demanded because he admitted in his cross-examination that he had been working with Rajinder Pal Singh for the last 4-5 years. Rajinder Pal Singh in respect of whom bribe amount was demanded was only examined by the prosecution. There was reason to doubt about the credibility of this witness since he was in dealing with the accused Rajinder Pal Singh. The learned counsel for the appellant contended that admittedly, the money was never recovered from the person of the appellant and it was dangerous to rely on the alleged evidence regarding the powder on the fingers of the appellant allegedly turning Pink. PW1 had stated that in fact, appellant was asked to touch the powder notes when, under the pillow, the amount was found. He, therefore, submitted that it was highly doubtful whether there was any acceptance of the amount by the appellant. He then submitted that the location of the wireless room is such that the prosecution story cannot be accepted. He also argued that the sanction order was never proved by the authority granting sanction as admittedly, the specified authority granting sanctioning did not appear before the trial court and the job was left to subordinate Clerk who merely stated that the sanctioning authority had dictated the order that does not at all prove the application of mind. The point regarding sanction was specifically raised before the trial Court which has been rejected for reasons. He therefore, prayed for acquittal of the appellant.

Per contra, learned State counsel supported the impugned

judgment and order and the reasons contained therein. He submitted that even if the complainant has not supported the prosecution case in the cross-examination by the accused, the evidence of PW2 was good enough to record conviction. He argued that other evidence of the official witnesses clearly corroborated the evidence of PW2 and therefore, there was no reason to interfere with the impugned judgment and order. On the issue of sanction, he submitted that witness proved the signature as well as the fact that sanction order was granted by the sanctioning authority itself. He, therefore, prayed for dismissal of the appeal.

CONSIDERATION

With the assistance of the learned counsel for the rival parties, I have carefully gone through the evidence of the witness. I have also seen the reasons recorded by the learned trial Judge for recording the order of conviction.

It is the fact that the trial Court itself had recorded in its judgment that the star witness of the prosecution, i.e. PW1 did not support the prosecution case in the cross-examination by the appellant-accused. It was also the fact that he did not support the prosecution in the cross-examination. The prosecutor wanted to cross examine him in order to bring out the truth and accordingly, he cross-examined the complainant PW1 at length. After cross-examining his own witness, he did not declare him hostile and merely remained satisfied. Therefore, the prosecution wanted to rely on the entire testimony of the said witness PW1. In that event, in my opinion, the trial Court could not

have ignored the cross-examination of PW1 made by the appellant-accused. The cross-examination of PW1-Bharpur Singh reads thus:-

“Out of Rs.50,000/- some amount was taken from my commission Agent some were arranged from my house. Commission Agent was Dashmesh bans Trader, Jagraon. A sum of Rs.30,000/- were borrowed from him. I do not remember date on which I had borrowed that amount. No document was written in favour of the commission agent. Rs.15,000/- was taken from my house. Rs.5,000/- were borrowed from my friend whose name I do not know. No amount was given to me by the Vigilance Department out of sum of Rs.50,000/-. It is incorrect to suggest that the entire amount of Rs.50,000/- was paid to me by Vigilance Department. The currency notes were of the denomination of Rs.500/-. I do not know from which date Balwinder Singh was working with my brother-in-law Rajinderpal Singh. My brother-in-law is running restaurant two years prior to the occurrence. My village Hans Kalan is at a distance of 20 miles from Jodhan. I do not remember the exact date when I came to know about the arrest of Rajinder Pal Singh. I had gone to Jodhan for the first time on 29.12.2000 and not before that. On 29.12.2000 I had gone to Jodhan at about 4.00 p.m. A person was present in the police post to whom I met. At that time accused Ranjit was not present in the police post. I had a talk with that person. I remained in the police post for 30-40 minutes and during that period Ramji was not present in the police post. I came to Vigilance Office on 30.12.2000 at 8.00 a.m. Balwinder Singh had directly come to the Vigilance Office. On that day we remained in the Vigilance Office for one hour. We started for raid from the Vigilance Office at 10.00 a.m. I and Balwinder Singh had gone to Police Post

Jodhan in a bus. Other police party had come in 2-3 vehicles. We reached Jodhan at about 11.00 a.m. In the post, I along with Balwinder Singh had gone. At that time Ramji was in his residential home located in the same post. We had no talk with Ramji either by me or Balwinder Singh. We had met to the same person to whom I had met earlier a day before. On the date of raid I and Balwinder Singh had no talk with accused Ramji. That person took us to a room and asked us to keep the amount on the bed sheet under the pillow. When money was placed under the pillow I alone had gone to the said room whereas Balwinder Singh remained standing outside. In the meantime raiding party had come in the Police post. I told the raiding party where I had placed the currency notes. The raiding party had gone inside the room and saw the currency notes lying there. Then Ramji was called for from his quarter. Then I alongwith DSP and Ramji had gone to that room. DSP man handled with Ramji and asked him to collect the currency notes. Under the fear Ramji picked up the currency notes given to DSP. Then Ramji was brought out of that Room. Hand wash of Ramji was done. The pillow and bed sheet was taken out of the room as it is from the room. Vigilance Party remained there for 10-15 minutes. Then all members of the raiding party had come to the Vigilance Office. All the writing work was done in the Vigilance Office. I had signed the memos in the Vigilance Office. Directly the accused did not demanded or accepted money from me.....”

The perusal of the cross-examination clear shows that the appellant was asked to pick up the currency notes that were recovered from under the pillow and thereafter, the procedure of putting the

solution etc. was undertaken. There is no reason why this version should be disbelieved. The location of the wireless room has been seen by me with the assistance of learned counsel for the rival parties, from the sketch map that has been placed on record. The story of the prosecution goes inconsistent with the location of the wireless room and the story of the prosecution regarding incident taking place in the manner stated by PW2-Balwinder Singh. A doubt creeps in the light about the veracity of the evidence of PW2 particularly in the light of the fact that he seems to be the entrusted witness as he admitted that he was working with Rajinder Pal Singh about which the allegation of bribe was made. His evidence, therefore, will have to be looked into with full care. It is significant to note from his cross-examination that he stated that the money was kept by the appellant under the pillow on the bed in the wireless room, but then in the cross-examination he stated that Bharpur Singh and accused only went to the room but he did not enter the wireless room which is at the distance of about 25 feet from the place where he was standing. During the entire period of raiding party, he did not at all enter the wireless room. He also admitted that one has to go to the wireless room after passing another room in front of the wireless room. It would be appropriate for me to quote the following portion from his cross-examination in this behalf:-

“Bharpur Singh and accused went into wireless room. I did not enter the wireless room. That room is at a distance of about 25 feet where I was standing. I did not the wireless room during the entire period when the raiding party remaining in the police post. That room will be

12x12 feet or 10x12 feet. One has to go the wireless room after passing through another room in front of that. The same is the dimension of that room as that of wireless room. In that room, there was office of the M.H.C. I did not enter the room of MHC on that day. There was curtain on the entry point, but curtain was folded and was not open. I did not state in my statement that the accused after taking the bribe money from Bharpur Singh put it under the pillow. I have stated in my statement that bribe money was given by Bharpur Singh to the accused in my presence. The attention of the witness is drawn to his statement Ex.DA, where word presence is not there, but Sahmne is there. The accused and Bharpur Singh were visible to me through that entry point to the room. It is wrong to suggest that where I am stating to be standing, nothing inside the wireless room was visible. I gave the signal to the raiding party one/two minutes after Bharpur Singh and accused went into the wireless room. When I have the signal to the raiding party, accused and Bharpur Singh were in the wireless room. Immediately after seeking my signal, the D.S.P. and other officials came there. When D.S.P. came there accused and Bharpur Singh had come outside the wireless room. After apprehension of the accused, D.S.P. alone had gone to the wireless room from where he recovered the bribe money.”

The perusal of the above cross-examination shows that PW2 did not at all enter into wireless room where the bribe money was said to have been paid. From the above cross-examination, to my mind, it is very difficult to rely on his testimony to hold that the bribe money was actually accepted by him.

PW4-Joginder Singh was examined by the prosecution as a

witness in respect of whom PW11-Deputy Superintendent of Police Sarup Singh admitted that Joginder Singh was made witness by the Vigilance Bureau in other cases and in fact, by PW11 himself in three cases. He also stated that PW4-Joginder Singh-Naib Tehsildar was himself facing vigilance inquiry for amassing assets disproportionate to the non-source of income. Thus, the action of the prosecution in bringing Joginder Singh as a witness who was of such a character could not be said to be justified. Even otherwise, the evidence of Joginder Singh does not throw any better light on the prosecution case. Then there is no other evidence regarding demand and acceptance by the appellant-accused. In that view of the matter, I think a case for benefit of doubt was clearly made out by the appellant in the light of inconsistencies and infirm nature of prosecution.

In so far as the issue of sanction is concerned, the trial Court has dealt with the said aspect of the matter as the issue was raised by the defence. The trial Court stated thus, in its judgment:-

“14. Learned defence further argued that the sanction accorded for the prosecution of the accused is not valid as no mind was applied by the competent authority for grant of sanction and a letter draft of sanction order was received in the office of DIG, Ludhiana which is Ex.DB. This contention of the learned defence counsel is without any merit, because PW6 Bhola Singh has specifically deposed that he had put the file of this case before Sh. Paramjit Singh Sandhu, DIG, Ludhiana and he by applying his mind gave dictation to this witness regarding sanction of prosecution against Ram Ji accused and then

he typed the same and produced the same before DIG, who after going through the same, signed it in the presence of this witness. He has also identified signatures of Sh. Paramjit Singh Sandhu on sanction order Ex.PL. He has further deposed that sanctioning authority has signed Ex.PL after applying his mind. Thus, it is held that the sanction is valid.....”

I have perused the evidence of PW6-Bhola Singh. From the reasons given by the trial Court itself as above, it is clear that Paramjit Singh Sandhu, DIG, Ludhiana was the specified authority which never appeared before the Court for test of cross-examination by the appellant. It was PW6-Bhola Singh subordinate employee from the Department who stated that he had put the file before the specified authority and the specified authority had applied its mind by giving dictation. I do not think that such an evidence can be accepted by the Court. It was not the case of the prosecution that Paramjit Singh Sandhu was not available for recording evidence, nor any other process was followed by the prosecution and at any rate, the principle of natural justice require that the appellant was entitled to cross-examine Paramjit Singh Sandhu as to whether he applied its mind or not. A subordinate employee like PW6-Bhola Singh could not be substituted for him. The initial burden of proof was on the prosecution to prove sanction order according to law, but it failed to discharge the same in the light of the above facts. Even the file granting sanction was not proved in the trial Court. The finding therefore, regarding sanction as legal and valid must be held to be

illegal and surely causes miscarriage of justice to the appellant.

For all the above reasons, therefore, I find that the benefit of doubt ought to have been given to the appellant-accused. In the result, following order is passed:-

ORDER

- (i) CRA-S-2538-SB of 2011 is allowed;
- (ii) Impugned order dated 28.09.2011 passed by the Special Judge, Ludhiana, in Corruption case No.15 of 2001 is quashed and set aside;
- (iii) Appellant-Ram Ji is acquitted of the charge against him.

(A.B. CHAUDHARI)
JUDGE

October 12, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No