

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2543-SB-2011
Decided on: 11.09.2017

Ashok Kumar

.... Appellant

Versus

State of Haryana

..... Respondent

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

Present: Mr. Sanjiv Sheoran, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

A.B. CHAUDHARI, J (ORAL)

Learned State Counsel filed the custody certificate of the appellant in Court today, which is taken on record.

Heard learned counsel for the rival parties.

This appeal was filed by the appellant against the judgment and order dated 24.09.2011/27.09.2011 passed by Special Judge, Rohtak by which the appellant was convicted by the trial Court for the offence under Section 7 & 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.1000/- for the commission of offence punishable under Section 7 of the Prevention of Corruption Act.

The prosecution case is that the appellant and some other police officials used to stop the trucks and demand Rs.20 from the truck drivers.

It is not the case of the prosecution that any FIR was registered with the concerned Anti Corruption Bureau or police station and that thereafter, the raiding party was prepared and then the currency was duly

powdered and that then the raiding party had proceeded further and then thereafter the raid was conducted and thereafter the appellant was caught raid handed while accepting the money much less than Rs.20/-. In other words, for recording conviction under Prevention of Corruption Act, not a single ingredient has been recorded by the trial Court in the reasoning part of the judgment.

However, it appears from the prosecution case that police demanded extortion regularly from the drivers of the truck drivers. For that purpose, the case for extortion ought to have been filed before the Magistrate Court rather the prosecution took it a pride in filing the case before the Special Court under Prevention of Corruption Act.

Thus, very genesis of the prosecution case is totally shaky and cannot stand the test of judicial scrutiny. At any rate, the trial Court itself has recorded in his judgment that the star witness of the prosecution PW-1 Madan Lal did not identify the appellant before the Court nor did he support the prosecution case at all. This finding has been recorded by the trial Court in paragraph 15 of the judgment and I quote relevant portion from paragraph 15 which reads as under:-

“Complainant Madan Lal examined in the case as PW1 has fully supported the prosecution case to the extent of his complaint Ex.PA which formed the basis of FIR Ex. PA/1. In clear and unequivocal words, he stated that one year ago, when he along with Sant Lal and Hawa Singh was on his way to Jhajjar on Tata-407 bearing No.HR-39-2190 loaded with wheat fodder, at about 11/11.30 P.M., they reached near village Kalanaur. A police vehicle was standing parked and he was asked to stop the vehicle which he did. A police official came,

demand entry fee and thereupon, he told him to talk with vehicle owner. Hawa Singh then handed over Rs.20/- to the police official. Meanwhile, a car reached, two persons alighted from the car and took away the police official with them. He moved application Ex.PA in the police station. He however, declined to disclose the name of the police official and to identify the accused present in the Court. Supporting and corroborating his testimony, is the deposition of PW2 Hawa Singh who stated that one year ago, he, Madan Lal driver and Sant Lal were going to Jhajjar with Tata-407 bearing no.HR-39-2190 loaded with wheat fodder. At about 11/11.30 P.M. They reached village Kalanaur. When a police official stopped the vehicle and demanded entry fee, upon which he gave Rs.20/- to the police official. A car reached, the person in the car talked to police official and took him away and also took them to the police station, after which the police official fled from the spot. He too could not disclose the name of the police official who demanded or took Rs.20/- nor he could identify the accused present in the Court. Thus, both PW Madan Lal and PW Hawa Singh have specifically deposed regarding the demand of Rs.20/-, the payment thereof and acceptance of the amount of Rs.20/- by the police official who was standing with the police vehicle near village Kalanaur.”

However, the learned trial Court in para 16 has expressed the anxiety about the witnesses being managed by the accused. The relevant portion of paragraph 16 is quoted as under:-

“Accused winning over witnesses is a common feature in corruption cases and it is quite apparent from the

circumstances on record that PW Madan Lal and PW Hawa Singh have tried to wriggle out of their statements under Section 161 Cr.P.C. being won over by the accused.”

The learned Judge may be right in saying so but the fact remains that on that score, the appellant cannot be convicted.

In other words, the prosecution could not prove even a single fact much less any demand or acceptance as required to be proved according to law for obtaining conviction under Prevention of Corruption Act.

Thus, the investigation as well as the learned Judge went tangent and the trial Court recorded totally wrong conviction. In that view of the matter, the appeal must succeed. Hence the following order:-

ORDER

(i) CRA-S-2543-SB-2011 is allowed.

(ii) The impugned judgment and order dated 27.09.2011 convicting the appellant for a period of six months and to pay fine of Rs.1000/- for the commission of offence punishable under Section 7 of the Prevention of Corruption Act, is set aside and appellant is acquitted from the charge against him.

(A.B. CHAUDHARI)
JUDGE

11.09.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No