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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-563-SBA of 2006
Date of decision: December 18, 2017

State of Haryana

......Appellant

Versus

Jaibir

.....Respondent

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

Present: Ms. Tanushree Gupta, DAG Haryana.

None for the respondent.

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A.B. CHAUDHARI, J (Oral)

State of Haryana had filed the present appeal against the judgment dated 15.04.2005 passed by the Special Judge, Panipat in PC Act Case No.1 of 2003, by which the respondent-accused was acquitted of the charge framed against him for offence under Section 7 and 13 of the Prevention of Corruption Act, 1988 (for short 'PC Act').

In support of the appeal, learned State counsel submitted that the trial Court acquitted the respondent-accused firstly on the ground that the sanction was not legal and valid. The second reason for acquittal was that there was no evidence that the accused had demanded bribe amount by way of illegal gratification. According to her, the trial Court did not examine the issue of sanction in the correct perspective and it thus, failed in its duty to correctly answer the issue regarding sanction. According to her, the complainant had categorically deposed before the trial Court that the money that was taken by the accused and in the raid he was caught, was by way of illegal gratification and therefore, it was wrong on the part of the trial Court to record the order of acquittal. She, therefore, prayed for reversal of the order of the acquittal.

None appeared for the respondent, though, served.

I have gone through the impugned judgment and order and the reasons recorded therein. At the outset, I find that the trial Court did not at all frame the points for determination nor the point regarding sanction was at all framed by it. That apart, the trial Court in order to hold that the sanction was not legal and valid stated as under, in Paragraph 15 of the impugned judgement:-

> "*15. A perusal of sanction order Ex.PA shows that PW1 Rishi Ram while posted as Managing Director of the Central Co-operative Bank Ltd., Panipat accorded sanction to launch prosecution against the accused. However, it was admitted by him in his examination in chief as well as in his cross-examination that the board of Director of a co-operative Bank was appointing and removing authority. He was authorized by the Board to accord sanction Ex.PA to launch prosecution against the accused. Admittedly he is one of member of the Board of Directors and which functions in pursuance of a resolution. Admittedly, no resolution in his favor was passed by the Board of Directors for according sanction to launch prosecution against the accused. So, in such a situation, it cannot be said that there is valid sanction to launch prosecution against the accused as required under section 19 (1)(c) of the Act............*"

PW1-Rishi Ram, Managing Director had deposed before the trial Court that the Board of Directors had authorized him to grant sanction and accordingly, he had granted the sanction. Thus, the prosecution had projected a theory of delegation which is well permissible in law. That apart, it was incumbent on the trial Court to find out from the service rules of the Bank as to who was the authority to appoint and remove the respondent-accused. The trial Court should have insisted upon the prosecution to produce the service rules of the Bank. That was not done. The trial Court, as stated earlier, did not examine the issue regarding delegation of power to the Managing Director for granting sanction to prosecute. It was, therefore, incumbent on the part of the trial Court to follow the aforesaid procedure before holding that the sanction was not legal and valid. Even the Bank could have been summoned to produce before the trial Court the resolution regarding delegation of power and the service rules. Merely, because the police did not bring before the trial Court any service rules or the resolution of the Board of Directors of the Bank, the trial Court could not have shirked its duty to call upon the Bank to produce all the relevant documents. It was rather the obligation on the part of the trial Court, in the interest of justice. The finding regarding sanction thus, recorded by the trial Court is thus, clearly faulty. The second reason given by the learned trial Court that the prosecution did not produce any evidence that the money that was accepted by way of bribe by the accused was by way of illegal gratification. In other words, the trial Court wanted the prosecution to prove that the money paid to the respondent-accused was legally required to be paid. The trial Court has clearly gone wrong in asking for negative proof form the prosecution which is not permissible. The prosecution had proved by positive evidence that the respondent-accused had accepted the money and in the raid, the same was found from his person, usual procedure was followed, contemporaneous record was prepared and, therefore, under Section 20 of the PC Act, the burden was on the accused to disprove or rebut the presumption that arose. The shadow witness as well as the complainant affirmatively stated in the depositions about the demand and acceptance of money by the accused. Thus, the prosecution discharged its initial burden of prove. The finding recorded by the trial Court that there is no evidence on the file that the accused demanded the amount form the complainant as illegal gratification, is preposterous and must be set aside.

To sum up, I think that both the reasons being wrong and illegal, the original case will have to go back to the trial Court for finding out and decide the case afresh in the light of the observations made hereinbefore. In the result, I make the following order:-

ORDER

(i) CRA-S-563-SBA of 2006 is partly allowed;

(ii) Impugned judgment dated 15.04.2005 passed by the Special Judge, Panipat by which the respondent-accused was acquitted of the charge framed against him, is set aside and the proceedings of criminal case PC Act Case No.1 of 2003 are sent back to the trial Court for fresh hearing and disposal in accordance with law and if necessary, by calling for the evidence that is necessitated;

(iii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

December 18, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No