

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

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Crl. Appeal – S – 564 – SB of 2006 (O&M)
Date of decision: 09.10.2017

State of Punjab

...Appellant

Vs.

Om Parkash

...Respondent

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

Present: Mr. Dhruv Dayal, Sr. DAG, Punjab.

None for the respondent.

A.B.CHAUDHARI, J. (Oral).

This appeal was preferred by the State of Punjab against the judgment dated 19.09.2005, passed by Judge, Special Court, Patiala, by which the trial Court had recorded order of acquittal.

Learned State counsel vehemently argued that evidence on record about demand and acceptance of bribe amount was duly proved by official witnesses. It is submitted that the presumption under Section 20 of Prevention of Corruption Act will have be raised against the accused in the wake of the recovery of tainted money from accused. He, therefore, submitted that trial Court went wrong by acquitting the respondent-accused.

None appears for the respondent.

I have gone through the impugned judgment and order. Dealing with the submission made by learned State counsel I find undoubtedly due to recovery of tainted money duly proved by the official witnesses would raise presumption under Section 20 of the Prevention of Corruption Act. However, as held by the Apex Court in the case of *Suraj Mal Vs. State (Delhi*

Administration) AIR 1979 SC 1408 and subsequent judgments following the said judgment, I find that the mere recovery itself is not enough to make order of conviction. In the present case what is to see is that the demand was not proved on both the occasions, namely, the initial demand and the second demand though the recovery of money was made at the time of acceptance of money by the accused. The law contemplates the proof of demand at the first instant and thereafter a demand when actual raid is conducted before acceptance. In the present case to the misfortune of the prosecution, the complainant and the witnesses both turned hostile on the question of demand. Thus, the prosecution did not prove the demand. All that is observed by the trial Court from paragraph 21 to 24. I quote para 21 to 24, which reads thus:-

“Demand and Acceptance and Illegal Gratification:-

21.The most material witnesses to prove the demand and acceptance of illegal gratification in this case are PW.1 Ajaib Singh and PW.4 Jaswant Singh. Both have not supported the case of the prosecution.

22. PW.1 Ajaib Singh has stated that on 20.10.2000 he was not allowed to enter in the laboratory being a private person. On 23.10.2000 he met Jaswant Singh and stated that he has not been allowed to enter the laboratory. Jaswant Singh took him to the vigilance office, where his signature were obtained on some plain papers. Thereafter, he was told that the report of viscera of his brother Jagga Singh will be received automatically and he is not to go anywhere. He has stated that he did not pay anything to anyone for getting this report. He was cross-examined by ld. Prosecutor after getting him declared hostile and was confronted with the statement Ex.

PW.14/A which he did not support. Regarding tainted currency notes of Rs.5000/- it has been stated by this witness that same was given to him by an official. No demonstration of the reaction of phenolphthalein powder, water and sodium carbonate was conducted in his presence. He also denied this fact that the recovery of tainted currency notes was effect from the Godrej almirah of the accused. He was also subjected to the cross-examination by the accused. Wherein he was stated that the vigilance official asked him to place currency notes of the demonstration of Rs.5000/- each worth Rs.500/- at the house of the accused. It was accompanied him to the house of the accused. It was darkness at that time when he had gone to the house of the accused. He gave bell at the house of the accused and shook hands with the person. Who was sitting there, but could not identify that person due to darkness. He was not aware if money was placed on the table or bed but no signal was flashed by him.

23. Jaswant Singh, the shadow witness, while appearing as PW4 has stated that he had accompanied Ajaib Singh to Vigilance Office, where he remained sitting outside and nothing happened in his presence. He has also shattered the entire case of the prosecution regarding conducting of demonstration of reaction of P. Powder with solution of water and sodium carbonate, treating of currency notes with phenolphthalein powder preparing the documents at the time of conducting of raid.

24. From the above, statement of the complainant and the shadow

witness, it is clear that the prosecution has not been able to produced any direct evidence regarding the demand and acceptance of the tainted currency notes. Both these witnesses were the material witnesses of the prosecution and now the prosecution is left with no evidence to prove that the accused ever demanded any illegal gratification or received the same. The statement of the complainant also prove his shaking hand with the person present in the house of the accused. That person may be and in all probability was accused Om Parkash and this explain the turning of solution of water and sodium carbonate as pink. It is quite evident that on shaking hand, the complainant left the traces of the powder on the hand of accused, who may have also put hand in his kurta pocket. In this manner prosecution is left with no evidence to prove that the accused demanded or received any illegal gratification.”

In the light of above discussion by the trial Court about demand as contemplated by law and in the light of the judgment in the case of **Suraj Mal**, I do not think that the view taken by the trial Court in ordering acquittal of the accused can be interfered with. The view taken is plausible and possible. In the result, I make a following order:-

ORDER

Crl. Appeal – S – 564 – SB of 2006 is dismissed.

October 09, 2017
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(A.B.CHAUDHARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No