

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

CRA-S-No.2740-SB OF 2012 (O&M)
DATE OF DECISION : 17th AUGUST, 2017

Kanwaljit Singh

.... Appellant

Versus

State of Punjab

.... Respondent

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

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Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. G. S. Bawa, Advocate for the appellant.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 07.09.2012 passed in RBT Corruption Case No.4 of 05.03.2009 by which the trial Court convicted the present appellant for offence under Section 7, 13(2) of Prevention of Corruption Act, 1988 and sentenced him to undergo RI for a period of one year and to pay fine of ₹5,000/- and in default of payment of fine, to undergo further RI for three months, the present appeal was filed by the appellant-accused.

Facts

2. In brief, the prosecution case is that on 25.07.2008 the complainant Surjit Singh resident of Bhindi Aulakh along with Ajaib Singh lodged a complaint with DSP, Vigilance Bureau, Amritsar (Ex.PA) stating therein that though the land measuring 17 kanal 11 marla was

transferred in his name by Rehabilitation Department on the basis of possession, accused-Kanwaljit Singh, Sales Clerk, demanded ₹15,000/- from him towards illegal gratification and that the bargain was settled at ₹10,000/-. The complainant agreed to pay the amount of ₹10,000/- after three days. The accused-Kanwaljit Singh asked him to come to his office on 25.07.2008 with ₹10,000/- and thereafter he will get completed the process regarding the transfer of plot in his name. Since the complainant did not want to pay the bribe, he went to DSP, Vigilance Bureau Amrik Singh Powar and lodged the report. Twenty Currency notes of ₹500/- each total ₹10,000/- were produced by the complainant before the DSP Amrik Singh Powar and the routine procedure of phenolphthalein powder etc. was completed. Thereafter, the raiding party went to, Ajnala and parked their vehicles at Tehsil Complex. Then complainant-Surjit Singh and shadow witness Ajaib Singh entered of office of accused-Kanwaljit Singh while raiding party remained outside watching for the signal. The shadow witness came out and signaled the raiding party and they went inside and recovered ₹10,000/- from the file of accused lying on the table in which the bribe amount was kept by the accused which was received from complainant Surjit Singh. Again thereafter, the routine procedure was followed and thereafter the investigation was completed. Challan was filed and the appellant was put to trial. The trial Court after hearing the evidence finally came to the conclusion that the appellant had committed the offence for which he was charged. Hence this appeal.

Arguments

3. In support of the appeal learned senior counsel for the appellant contended that PW-2 Ajaib Singh; the shadow witness examined by the prosecution did not support the prosecution case. He then submitted that the only witness that has been relied upon by the trial court in support of the incident was complainant-Surjit Singh himself. He has pointed out my attention to the document which was prepared by the appellant and was sent also to the concerned office on 25.07.2008 itself and therefore, there was no occasion for the appellant to demand any bribe as alleged by the prosecution. He then contended that the prosecution did not have any other evidence except the evidence of PW-1-Surjit Singh. Another government witness PW-7 Harjot Singh, SDO, PWD (B&R) was also declared hostile.

4. With the help of learned counsel for the rival parties the entire evidence was seen by me.

5. Learned counsel for the appellant also submitted that there was no requisite sanction required by Section 19 of the PC Act and therefore, in the absence of legal and proper sanction the prosecution was liable to be rejected and the appellant ought to have been acquitted. He has also invited my attention to the evidence brought on record and contended that the trial Court ought to have believed the defence witness. He therefore prayed for acquittal of the appellant. He cited several

decisions but it is not necessary to consider and quote them as the preposition laid down therein cannot be disputed.

6. Per contra, learned counsel for the State opposed the appeal and supported the judgment and order of conviction with which no fault can be found out. The conviction of the appellant is required to be upheld according to him. He, therefore, prayed for dismissal of the appeal.

Consideration

7. Heard learned counsel for the rival parties at length and perused the entire evidence as well as the record. It is not in dispute that the shadow witness who accompanied the complainant in the office on the second occasion for making payment of bribe amount, was only one i.e. Ajaib Singh PW-2. He was declared hostile by the prosecution. It is strange that the Anti Corruption Cell made the friend of the complainant namely Ajaib Singh who had accompanied him from his village as a shadow witness. That should have been avoided. As is the practice the Anti Corruption Bureau ordinarily calls the witnesses from the government departments etc. by giving requisitions so that the Bureau is not then blamed for bringing interested witness as shadow witnesses. There is no explanation from the prosecution as to why Ajaib Singh PW-2 was made shadow witness. As is seen from the prosecution evidence itself it was only complainant PW-1 Surjit Singh and PW-2-Ajaib Singh who had entered the office room of the appellant and none else, for

payment of the bribe amount. Therefore the evidence recording demand and acceptance after their entry in the office room of the appellant, will be the relevant evidence to find out whether the appellant could be convicted or not. To repeat as stated earlier the shadow witness Ajaib Singh had turned hostile and had not supported the case of the prosecution at all. What then remains is only the evidence of complainant. I have carefully gone through the evidence of PW-1 Surjit Singh who is star witness in this case for the prosecution. It would be appropriate to quote the relevant part of his evidence for finding out whether money was demanded and accepted by the appellant. Following is the evidence of PW-1:

“Then I joined the police party headed by vigilance bureau went to Ajnala. We parked our vehicle immediately outside the office of the accused. From where I went the office of the accused a head of all followed by Ajaib Singh and vigilance bureau official, I and shadow witness met Kawaljit Singh and I sat down in the office of the accused. The shadow witness was sitting by my side then accused put the amount of Rs.10000/- in the file. Then Ajaib Singh went out side and passed a signal to the vigilance officials who also came there. In the meantime vigilance officials also reached there and apprehended the accused and got recovered the

currency notes of Rs.10000/- from the file, and were taken into possession vide memo Ex.PD duly attested by the afore said witnesses.”

8. A careful perusal of the above quoted evidence shows that PW-1 Surjit Singh deposed that he and Ajaib Singh entered the office room of the appellant and then sat in his office with shadow witness on the side of PW-1 complainant. He did not depose that at that time the appellant demanded the amount of bribe and that PW-1 Surjit Singh paid the amount of ₹10,000/- from him and that the appellant accepted the same from PW-1 Surjit Singh-complainant. This is conspicuously absent in the evidence. But then this witness jumped and stated that the accused put the amount of ₹10,000/- in the file. Therefore, unless PW-1 had deposed that the appellant had demanded the amount of ₹10,000/- and that pursuant thereto PW-1 had paid that amount to the appellant and that he accepted the same and thereafter put the amount of ₹10,000/- in the file, no inference or conclusion can be drawn that the appellant had demanded and accepted the amount of ₹10,000/-. To record conviction on the evidence in the absence of above evidence, that accused put the amount of ₹10,000/- in the file, would not be enough as the initial burden of proof rests heavily on the prosecution. The prosecution must succeed or fail on its own. The prosecution cannot ask the Court to draw inference that because the appellant has put the amount in the file and therefore he must have demanded and accepted the amount. That would

be against the basic rule of appreciation of evidence contemplated by Section 3 of the Evidence Act.

9. It is thus crystal clear from the above evidence that the evidence of PW-1 Surjit Singh clearly fall short of the proof required by law. The courts are not supposed to draw inference from the evidence, if the evidence falls short. The Court cannot fill up the gap as is sought to be contended by learned counsel for the State.

10. It is thus clear that there is no other evidence, in the absence of which, the conviction could have been recorded. At any rate, the benefit of doubt ought to have been given to the appellant.

Conclusion

11. In the result, the present appeal must succeed. Hence I make the following order:

ORDER

- (i) CRA-S-No.2740-SB OF 2012 is allowed.
- (ii) Judgment and order dated 07.09.2012 passed in RBT Corruption Case No.4 of 04.03.2009 convicting and sentencing the appellant, is set aside.
- (iii) The appellant is acquitted of the charges framed against him.

17th AUGUST 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes No