

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 8.12.2017

CRA-S-1395-SB-2015 (O/M)

Darshan Singh and others

..... Appellants

Versus

State of Punjab and another

..... Respondents

CRA-S-1408-SB-2015 (O/M)

ASI Puran Singh

..... Appellant

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Bipan Ghai, Senior Advocate, with,
Mr. Paras Talwar, Advocate, for appellant
in CRA-S-1408-SB-2015.

Mr. K.B. Raheja, Advocate, for appellants in
CRA-S-1395-SB-2015.

Ms. Monika Jalota, DAG Punjab.

Mr. S.P.S. Sidhu, Advocate,
for complainant in both cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
 2. To be referred to the Reporter or not. Yes
 3. Whether the judgment should be reported in the digest ? Yes
- . - .-

KULDIP SINGH J. (ORAL)

Custody certificates filed in both cases in Court today and same are taken on record.

The application i.e. CRM-28039-2017 in CRA-S-1408-SB-2015 has been filed for staying the conviction of applicant-appellant ASI Puran Singh. In place of deciding the said application, main appeals are taken on board today for hearing.

By this single order, I will dispose of abovenoted criminal appeals i.e. CRA-S-1395-SB-2015 and CRA-S-1408-SB-2015, as both are

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arising out of the same judgment. For brevity, facts have been taken from CRA-S-1408-SB-2015.

Surjit Singh, complainant-respondent No. 2 had filed a criminal complaint under Sections 166, 166-A, 218, 219, 223, 500, 504, 506, 148, 149 IPC and Section 13 of Prevention of Corruption Act, 1988, against ASI Puran Singh, who was then posted at Police Station Jalalabad and 11 other private persons before the learned Judicial Magistrate 1st Class, Jalalabad, on 17.8.2013. In the said criminal complaint, it was alleged that present complainant Surjit Singh had lodged FIR No. 62, dated 18.5.2013 under Section 364 IPC, registered at Police Station Sadar, Jalalabad, against accused Darshan Singh etc. for causing injuries to Mukhtiar Singh cousin of complainant. Later on, Mukhtiar Singh succumbed to injuries on 22.5.2013 and offence under Section 302 IPC was added. It is alleged against ASI Puran Singh that he tortured complainant and his entire family. ASI Puran Singh had arrested only five persons in the said FIR No. 62, dated 18.5.2013 and used to intimate the accused before conducting the raid. He has been misusing his official position. He has been using derogatory language against complainant, despite the fact that ASI Puran Singh had already received Rs. 100000/- from complainant in presence of Paramjit Singh (PW3) for arresting the remaining accused. He was also pressurizing the complainant for compromise and threatening him to involve him in a false rape case. The complainant has further alleged that said accused No. 2 to 12 have paid Rs. 500000/- to Rs. 600000/- as a bribe to ASI Puran Singh and on account of that, they are roaming freely. ASI Puran Singh in connivance with other accused got registered a false case against complainant and his entire family, for which they are being threatened.

It comes out that after recording the preliminary evidence, the learned Judicial Magistrate 1st Class, Jalalabad, vide order dated 11.2.2014, ordered the summoning of the accused ASI Puran Singh under Sections 218, 219, 221, 166 IPC and under Section 13 of the Prevention of Corruption Act, 1988. The remaining accused were summoned under Sections 504, 506, 148 IPC. Vide order dated 11.4.2014, the learned Judicial Magistrate 1st Class, Jalalabad, committed the case to the Court of learned Additional Sessions Judge, Fazilka, for trial.

The learned Additional Sessions Judge, on receipt of case by commitment, without recording pre-charge evidence, proceeded to frame charges under Section 13 of Prevention of Corruption Act, 1988, against PW1 ASI Puran Singh and under Sections 218, 219, 221 and 166 IPC against all the accused as if it is case instituted on police report (challan case), vide order dated 10.6.2014.

To prove its case, complainant examined himself as PW1, Constable Rakesh Singh, No. 790 as PW2 and Paramjit Singh, eye witness as PW3 and closed the evidence. When examined under Section 313 Cr.P.C., accused pleaded false implication. Accused did not lead any evidence in defence.

After hearing the learned counsel for complainant, the learned counsel for accused and going through the evidence, the learned Additional Sessions Judge, Fazilka, vide judgment dated 19.3.2015, held that the allegations of payment of Rs. 500000/- to Rs. 600000/- by accused No. 2 to 12 to ASI Puran Singh are not proved. However, it also held that from the statement of complainant as well as eye witness, Paramjit Singh, it is proved that Rs. 100000/- as bribe were paid. Therefore, accused were convicted

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and sentenced as under :-

<u>Name of convict</u>	<u>Under Section</u>	<u>Rigorous imprisonment</u>	<u>Fine</u>	<u>In default</u>
ASI Puran Singh	13(2) of P.C. Act	Four years	Rs. 5000/-	SI for six months
ASI Puran Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
ASI Puran Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Darshan Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Darshan Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Tek Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Tek Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Joginder Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Joginder Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Mal Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Mal Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Iqbal Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Iqbal Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Jagdish Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Jagdish Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Desa Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Desa Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Binder Kaur	221 IPC	Four years	Rs. 3000/-	SI for two months
Binder Kaur	120-B IPC	Six months	Rs. 2000/-	SI for one month
Gurbax Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Gurbax Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Khazan Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Khazan Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month
Prem Singh	221 IPC	Four years	Rs. 3000/-	SI for two months
Prem Singh	120-B IPC	Six months	Rs. 2000/-	SI for one month

All the sentences were directed to run concurrently.

I have heard the learned senior counsel for appellant ASI Puran Singh, the learned counsel for appellants Darshan Singh etc. the learned counsel for complainant, the learned State counsel and have also carefully gone through the file.

On the examination of file, it comes out that present case is a classical example of casual approach by the learned Additional Sessions Judge, Fazilka. From its face, the allegations against ASI Puran Singh were that complainant had paid Rs. 100000/- to ASI Puran Singh as a bribe. The said bribe was for arresting accused No. 2 to 12. On the basis of these allegations, accused No. 2 to 12 have been convicted under Sections 221, 120-B IPC. This Court fails to understand even from the plain reading of the complaint as to how the said sections could be attracted qua them. The mere

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fact that they were named in the complaint, is no ground to convict them.

It comes out that the learned Additional Sessions Judge, Fazilka, did not bother to critically examine the evidence and apply judicial mind to the facts of the case. FIR No. 62 was registered on 18.5.2013 when ASI Puran Singh was the investigating officer. 17 persons were named in the FIR, out of which only 5 persons were arrested by him. Apparently, opposite party had also made out a cross case against present complainant which was also being investigated by him. According to the complainant, it was on 22.5.2013 that injured Mukhtiar Singh died and offence under Section 302 IPC was added. At that juncture, the investigation was handed over to Inspector Baljinder Singh, SHO of Police Station Sadar Jalalabad. Complainant claimed in evidence that ASI Puran Singh was not arresting remaining 12 accused. Therefore, he had paid Rs. 100000/- as a bribe to him on 22.5.2013 when Mukhtiar Singh had died. The present complaint was filed about three months later before the learned Illaqa Magistrate. No reason has been given why such a complaint was not made earlier to any authority. It is also highly improbable that when the dead body of Mukhtiar Singh was lying in the house of complainant, ASI Puran Singh, who is no more investigator of the case, will approach the complainant and demand Rs. 100000/- and complainant without bothering to make preparation for the last rites of Mukhtiar Singh, will make arrangements from all the available sources to pay the bribe within one hour as claimed by him in cross examination. He says that eye witness Paramjit Singh was present at that time. Such witness can be easily procured. It also comes out from the statement of complainant that complainant had remained admitted from 18.5.2013 to 22.5.2013 in GGS Medical College, Faridkot, alongwith

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one Joginder Singh, though, he claims that he was discharged from hospital on 21.5.2013. Though as per record, he was discharged on 22.5.2013 at 7:30 PM against medical advice (LAMA). Therefore, it will not be possible that on the said date, bribe will be given in these circumstances. When the complainant was in the hospital, he will be otherwise not in a position to offer bribe to ASI Puran Singh, who was no more investigator of the case. Moreover, when a dead body was lying at home, such type of incident is unlikely. Further, even if, it is assumed that complainant did not know that investigation has been transferred to Inspector Baljinder Singh on 22.5.2013 and he was under the bonafide belief that the investigation is still with ASI Puran Singh, then there is no reason why after transfer of the investigation, complainant did not demand back his money and if alleged bribe was not returned, why he did not make any complaint to the higher authority for nearly one year. His allegations from its face are unreliable and undependable. The statement of eye witness like Paramjit Singh can be easily procured. Complainant during cross examination, could not tell from where he immediately arranged the bribe within one hour. He claimed that he had arranged it from his relatives. Such claim cannot be accepted from its face. In the complaint, the complainant has not given the date, time and place of such bribe. However, this was explained when he was examined in the Court. The complaint itself was filed after nearly 3 months of incident. There is no reason why the time, date and place was not mentioned in the complaint.

The complainant has admitted in the cross examination that he was also accused in the cross case. It is stated in the complaint that ASI Puran Singh was conducting raids for arresting the remaining accused of

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opposite party, but complainant alleges that ASI Puran Singh was informing the accused before conducting the raids. It goes to show that ASI Puran Singh was conducting the raid till the investigation was transferred to Inspector Baljinder Singh.

The learned Additional Sessions Judge, Fazilka, has recorded the findings that the allegations regarding payment of Rs. 500000/- to Rs. 600000/- by remaining accused to ASI Puran Singh are not proved. It also comes out that PO proceedings were initiated against 7 accused in the said FIR and accused No. 2 to 12 in present complaint were alleged to have been declared proclaimed offenders. In the cross case, in which present complainant was accused, 4 of the accused on the complainant side, were found to be innocent and were not challaned by the police. It goes to show that the police was conduction a fair investigation and finding out as to how many persons, out of a large number of persons named by both parties, are actually involved in cross cases.

There was absolutely no reasonable ground for the learned Additional Sessions Judge, Fazilka, to hold that accused No. 2 to 12 in the complaint are liable under Sections 221, 120-B IPC. There is not an iota of evidence regarding their criminal conspiracy with ASI Puran Singh or avoiding the arrest. It appears that complainant was aggrieved by the cross case registered against him and after nearly one year, when he failed to achieve his object, he filed a criminal complaint before the learned Illaqa Magistrate, Jalalabad. The findings recorded by the learned Additional Sessions Judge, Fazilka, are found to be perverse, illegal and contrary to the evidence recorded before it and have to be reversed.

The learned Additional Sessions Judge, Fazilka, also failed to

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notice that for offence under provisions of Prevention of Corruption Act, 1988, sanction under Section 19 of the Prevention of Corruption Act, 1988, was required, which was never even applied for. Therefore, without sanction under Section 19 of the Prevention of Corruption Act, 1988, present complaint under the Prevention of Corruption Act, 1988, could not continue against ASI Puran Singh.

The learned Additional Sessions Judge, Fazilka, further failed to take note that proceedings conducted before the learned Judicial Magistrate 1st Class, Jalalabad, are illegal. Once offence under the Prevention of Corruption Act, 1988, is attracted in addition to other offence, it was only the Special Judge, who was competent to entertain the complaint and take cognizance of the same. The learned Judicial Magistrate 1st Class, Jalalabad, could not entertain the complaint once provision under Section 13 (1) of the Prevention of Corruption Act, 1988, are also invoked. Further, he could not record the preliminary evidence and was not competent to pass summoning order. The complaint was to be entertained by the Special Judge and it was for the Special Judge to pass the summoning order. Therefore, initially order of the learned Judicial Magistrate 1st Class, taking cognizance and passing the summoning order is also illegal. His order of commitment of complaint to the Court of Sessions is also illegal. The learned Additional Sessions Judge on receiving the file by commitment tried the complaint case as a case instituted on police report and without recording pre-charge evidence, framed the charge which is also illegal. All these aspect were ignored by the learned Additional Sessions Judge, Fazilka.

Moreover, the learned Additional Sessions Judge, Fazilka, who

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is also vested with powers of Special Judge, Fazilka, did not decide the case in her capacity as Special Judge, rather decided the case in the capacity of Additional Sessions Judge which though may be clerical error, but it shows the casual approach. The learned Additional Sessions Judge, Fazilka, entertained and decided the complaint while ignoring the legal provisions and the evidence placed on file.

This Court has been informed that out of accused convicted by the learned Additional Sessions Judge, Fazilka, appellants, namely, ASI Puran Singh, Darshan Singh and Jagdish Singh, respectively, in CRA-S-1408-SB-2015 and CRA-S-1395-2015 were Government servants and on account of their conviction, they have since been dismissed from service.

In view of what has been discussed above, the impugned judgment dated 19.3.2015, passed by the learned Additional Sessions Judge, Fazilka, is hereby set aside. All the appellants-accused stand acquitted of the charges framed against them. Appellants, namely, ASI Puran Singh, Darshan Singh and Jagdish Singh should be reinstated in service with immediate effect. Both the appeals are allowed. Bail bonds and surety bonds of appellants stand discharged.

Let copy of this judgment be also conveyed to Ms. Jatinder Walia, the then learned Additional Sessions Judge, Fazilka, wherever she is now posted, for future guidance and with a caution that in case, her such casual approach come to the notice of this Court in future, the necessary consequences will follow. Let a copy of this judgment be also sent to Registrar (Vigilance) of this Court to keep constant watch on the quality of Judgments, passed by Ms. Jatinder Walia, Additional Sessions Judge, and

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send quarterly report to the Administrative Judge concerned for next two years.

(KULDIP SINGH)
JUDGE

8.12.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes