

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

CRA-S-2270-SB of 2014

Date of decision: December 19, 2017

Balwant Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Raj Kumar Gupta, Advocate for the appellant.

Mr. Dhruv Dayal, Sr. DAG Punjab.

A.B. CHAUDHARI, J

Being aggrieved by the judgment and order dated 25.04.2014 passed by the Special Judge, Moga, in case SC No.69 dated 27.07.2009 by which the present appellant-Balwant Singh son of Mewa Singh, resident of Village Shahpur, District Ludhaina, was convicted for offence under Sections 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and was sentenced to undergo Rigorous Imprisonment for a period of 1 year and to pay fine in the sum of ₹5,000/- and in default to further undergo Rigorous Imprisonment for 3 months, the present appeal was filed by him.

In support of the appeal, learned counsel for the appellant-Balwant Singh vehemently contended that the impugned judgment and order of conviction of the appellant is perverse and not based on any evidence. He submitted, inviting my attention to the evidence recorded by the learned trial Court, that the appellant was Junior Engineer and

did not have any power to sanction or approve the electricity connections particularly in respect of split shifting (family partition). His job was only to follow the orders of his superior upon their approval/sanction for grant of electricity connections under the Scheme made for split shifting (family partition). Apart from the fact that he had no power factually, the prosecution has not brought any evidence on record that he had given any unlawful connection under the said scheme on his own. He submitted that there is evidence on record to show that approvals were granted by the higher authorities and he was only to execute the orders of the higher authorities, which he did but has been held to be guilty on the ground that he had given unlawful electricity connections under the Scheme without making verification, when his job was to follow the orders of the higher authorities to implement the orders of giving electricity connections. He, therefore, submitted that there is miscarriage of justice to the appellant for no fault of his and has lost his service in the Department. He, therefore, prayed for allowing the appeal.

Per contra, learned State counsel vehemently opposed the appeal and argued that there is categorical finding recorded by the trial Court based on evidence of the official witnesses to the effect that it was appellant-Balwant Singh who in fact had given electricity connections contrary to the Scheme made for split shifting (family partition) brought by the Government of Punjab. According to learned State counsel, it was the bounded duty of the appellant first to find out whether the forgeries had taken place in respect of documents and

thereafter, verify on the spot about the split shifting etc. He having failed in that is deemed to have acted unlawful as held by the learned trial Court and therefore, the appeal deserves to be dismissed.

I have carefully gone through the entire judgment and reasons recorded by the learned trial Court. I have also seen the evidence that was recorded by the prosecution before the trial Court. Upon perusal of the entire documentary evidence as well as the impugned judgment, this Court is shocked to see that the trial Court has convicted the appellant for no reasons whatsoever and only on the figment of imagination. The trial Court has totally ignored the aspect of the initial burden of proof on the prosecution to prove the guilt of the accused. Not only that the trial Court has ignored the evidence of the prosecution witnesses, in which it is clearly stated that it was SDO-Kulwant Singh, the higher officers, *Patwaries* who had verified the documents and thereafter, passed the orders which were required to be followed. Since the connections were approved by competent officers, the appellant was required to carry out the orders. It is surprising that the trial Court did not even refer to the evidence of the witnesses in that behalf.

Be that as it may, the trial Court has recorded the following reasons in Para-22 of the impugned judgment in relation to appellant-Balwant Singh:-

“22. It is proved on record that accused Balwant Singh JE has released connections to Sukhdev Singh, Jasvir Singh and Gurdev Singh accused. It is contended on his

behalf that he has done so in order to comply orders of his superiors. I have considered this aspect of the matter and found myself unable to hold in consensus with learned counsel for defence. It was accused Balwant Singh JE, who had actually visited the spot and he was required to verify the facts at the spot. He is proved to be a public servant and has released connections aforesaid in discharge of his official duties. Once, he is found to have acted unlawfully, it has to be taken that he has done so for some extraneous reasons and as such, he is held guilty for offence under Section 13 (1) (d) of Prevention of Corruption Act, 1988.”

These are the only reasons recorded by the trial Court for convicting the appellant. It is interesting to note that in respect of other accused persons, the trial Court has categorically recorded findings that the prosecution failed to prove that the accused persons (other accused persons) had forged and fabricated the copies of *jamabandis*. I reproduce the findings to that effect as under:-

“..... Had these accused given correct information to Punjab State Electricity Board Authorities, they were not supposed to release these connections due to the reason that case of accused was not falling in the scheme. They have made Engineer Kulwant Singh to do that official act, which he was not lawfully supposed to do and dishonest concealment of fact regarding non partition of the joint holding falls within explanation appended to section 415 of Indian Penal Code and it is a deception within the meaning of section ibid. Therefore, I am of the considered view that by giving wrong information they have committed offence defined in Section 415 of Indian Penal

Code, which is punishable under Section 417 of Indian Penal Code. Contentions raised by learned counsel for defence that there is no evidence on record to prove that accused have forged and fabricated copies of jamabandis are accepted.....”

It is, thus, clear that the trial Court itself held that there was no forgery or fabrication by the other accused persons in respect of *jamabandis*. Having held that there was no forgery or fabrication of *jamabandis* in respect of split shifting (family partition) as per the Scheme of the Government of Punjab, one fails to understand as to how it could be said that approvals/ sanction orders for supply of electricity connections under the Scheme were wrong or illegal. In fact, that is the case of the prosecution itself that *jamabandis* were forged to take the benefit of split shifting (family partition) Scheme of the Government of Punjab and acting on those forged documents, the electricity connections were approved/sanctioned. But there is finding as stated above that the prosecution failed to prove that “other accused” persons had forged and fabricated the *jamabandis*. It thus, appears that the trial Court had adopted a most casual approach in dealing with the prosecution under Indian Penal Code and Prevention of Corruption Act.

Perusal of Para-22 of the above reasons shows that the trial Court has put the burden on the appellant-Balwant Singh that he did not visit the spot and that he was required to verify the facts on the spot as a public servant and having not done so, he had acted unlawful and therefore, he was found guilty under Section 13(1)(d) of the PC

Act.

The above approach of the trial Court in convicting the appellant-Balwant Singh is bizarre/unfair and cannot be countenanced. That is all the more so in the light of evidence which I would like to quote hereinafter brought by the prosecution. Thus, the only reason given for convicting the appellant is that he did not visit the spot and did not verify the facts. As stated earlier, the approvals/sanction orders were issued by the higher officers upon verification of *jamabandis* and other documents and accordingly, the appellant-Balwant Singh was required to carry out those orders to implement the same. Added to all this, the trial Court recorded that none of the *jamabandis* were forged or fabricated. In that wake of these findings, it is surprising as to how the trial Court has held that the appellant as a Junior Engineer should have visited the spot and should have verified the facts. Not a single prosecution witness has stated that appellant did not visit the spot and did not verify the facts. Thus, this reason given by the trial Court is not based on any evidence, but on figment of imagination. Apart from that, the appellant acted on the orders of his superiors for giving electricity connections. He cannot be said to have acted unlawfully. It is necessary to quote the following evidence of PW3-Shavinder Singh, Assistant Line man/Consumer Clerk qua the appellant-Balwant Singh only. The appellant-Balwant Singh is said to have given connections to Sukhdev Singh, Jasvir Singh and Gurdev Singh. Accordingly, I quote the evidence of PW3-Shavinder Singh as under:-

“Regarding split shifting (family partition), as per record,

*Jagvir Singh son of Massa Singh Resident of village Masita applied through Agreement No.23742 dated 28.12.2004 and submitted an affidavit dated 27.12.2004 along with jamabandi for the year 1999-2000 of khewat No.267, Khatauni No.449 which is signed by Karam Singh Patwari along with Jagvir Singh and attested by Kulwant Singh on 14.12.2004. The documents were submitted to JE Kheru Masih and Kheru Masih prepared the site plan which was also checked by Kulwant Singh SDO by putting his signature. Copy of the mutation No.5092 was also annexed with the affidavit and upon it there are signatures of Jagvir Singh and on 14.12.2004 it is signed by the Patwari and it was duly attested by Kulwant Singh. The case was sent on 29.12.2004 to Sub Division office Moga and Kulwant Singh SDO recommended for shifting the splitting of the load. The case was sanctioned by Sub Divisional Officer, on 7.1.2005 and the site plan was approved and the estimate was returned. Demand notice was issued and as per record after taking the articles from the store, connection was released, which is still running. Attested Photostat copies of the documents contained in the file of Jagvir Singh are **Ex.P5 to Ex.P21**.*

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Jasvir Singh son of Channan Singh resident of Sherpur Takhtuwala through agreement No.23716 dated 15.12.2004 applied for electric connection of 5 BHP electric motor on the basis of family partition and he also submitted affidavit dated 13.12.2004, jamabandi for the year 1998-99 khewat No.45, khatauni No.90, area 53 kanals 8 marlas, jamabandi dated 18.11.2004 prepared by Parminder Singh Patwari which is bearing the signatures of Jasvir Singh and attested by Kulwant Singh SDO. JE Darshan Lal prepared the site plan, estimate after visitng

*the spot on 17.12.2004 and it was attested by Kulwant Singh SDO and the case was sent to Sub Division Office, Moga on 17.12.2004 and it was returned to Sub Division Kot Ise Khan on 22.12.2004. Demand notice and SCO etc. were issued and after taking the articles from the store connection was released to Jasvir Singh by Darshan Lal JE. Attested photostat copies of the documents contained in relevant file are **Ex.P171 to Ex.P189**. Connection is still running.*

Gurdev Singh son of Dalip Singh resident of Barahamke through agreement No.23722 dated 20.12.2004 applied for electric connection of 5 BHP electric motor on the basis of family partition and he also submitted affidavit dated 16.12.2004, jamabandi for the year 2000-01, khewat No.74, khatauni No.131 area 26 kanals 3 marlas, prepared by Gurmukh Singh Patwari bearing the signatures of Gurdev Singh another jamabandi for the year 1990-91, khewat No.64, khatauni No.112, area 51 kanals 8 marlas prepared by Gurmukh Singh Patwari, which is bearing the thumb impression of Dalip Singh and both jamabandis attested by Kulwant Singh SDO, mutation No.2112 dated 19.12.2004. This mutation was signed by Gurmukh Singh Patwari and attested by Kulwant Singh SDO, JE Kheru Masih prepared the site plan, estimate after visiting the spot on 22.12.2004 and it was attested by Kulwant Singh SDO and the case was sent to Sub Division Office, Moga on 22.12.2004 and it was returned to Sub Division Kot Ise Khan on 10.1.2005. Demand notice and SCO etc. were issued and further taking the articles from the store connection was released to Gurdev Singh by Kheru Masih, JE. Attested photostat copies of the documents contained in relevant file are **Ex.P190 to Ex.P205**.

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Sukhdev Singh son of Dara Singh resident of Masita through agreement No.23825 dated 1.2.2005 applied for change of the consumer regarding electric connection of 5 BHP electric motor. He also submitted affidavit of Resham Singh etc., both dated 30.12.2004, along with statement of Rattan Kaur etc. dated 30.12.2004, indemnity bond of Sukhdev Singh dated 30.12.2004, jamabandi for the year 2000-01, khewat No.229/823, khatauni No.385, 386, which is in the hand of Shinda Patwari Dated 30.1.2005, copy of the mutation No.2336, khewat No.229/386 dated 14.1.2005 which is issued under the signatures of Gurmukh Singh Patwari Barahamke and these papers were marked to Balwant Singh JE by Kulwant Singh SDO. Clerk Sarabjit Singh handed over these documents to JE Balwant Singh who visited the spot and prepared estimate, site plan and thereafter, produced the same before Kulwant Singh SDO which was prepared according to CLR page No.72 and the case was sent to Sub Division office, Moga on 4.3.2005. After the approval of the case it was returned on 9.3.2005 and the consumer was directed to deposit the estimate fee and hand over the receipt to Balwant Singh JE. Previous account number was R 3 -27 in the name of Shri Jagan Nath son of Shri Ishar Dass resident of village Nasipur Jania. Bhagwant Singh SDO ordered Balwant Singh JE to disconnect the connection in the name of Shri Jagan Nath and on 30.3.2005 the needful was done and it was transferred and operated in the name of Sukhdev Singh on 31.3.2005 under the new Account No.53-657 and the connection is still continuing.....”

Perusal of the above evidence of the prosecution witnesses

shows that all the approvals/sanction orders under the Scheme were made by the higher officers with the assistance of *patwaries* and other staff. It nowhere shows that even after sanction orders, appellant was directed or supposed to verify the documents. The above witness has given his evidence which shows that the appellant-Balwant Singh did not do any unlawful act. On the contrary, he had only carried out the orders of his superiors who had approved the electricity connections under the Scheme after verifying all *jamabandis* with the help of *patwaries* concerned coupled with the finding of the trial Court that *jamabandis* were not forged and fabricated. It is thus, clear that the appellant-Balwant Singh was unnecessarily convicted. Thus, this being the position, I do not think that the impugned judgment and order of conviction of the appellant can at all be upheld and therefore, he is liable to be acquitted of the charge for which he was convicted.

It appears that the appellant was dismissed from service because of conviction in question. As observed by me above, there is no semblance of evidence against him but he has been convicted by the trial Court in most unfair manner. The concerned Power Corporation is therefore, expected to take a sympathetic view in respect of the appellant-Balwant Singh in the matter of his service and payment of some amount of backwages to him. That is of-course nothing more than the recommendation made to the Corporation in the light of injustice done to him. In the result, I make the following order:-

ORDER

- (i) CRA-S-2270-SB of 2014 is allowed;

- (ii) Impugned judgment and order dated 25.04.2014 passed by the Special Judge, Moga, in case SC No.69 dated 27.07.2009 against the appellant-Balwant Singh only, is set aside;
- (iii) Appellant-Balwant Singh is acquitted of the charge framed against him;
- (iv) The amount of fine, if any paid, shall be refunded to him.

(A.B. CHAUDHARI)
JUDGE

December 19, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No