

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

CRM-A-1786-MA-2016

Date of Decision:11.12.2017

State of Haryana

.....PETITIONER

V/S

Balraj Singh

.....RESPONDENT

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

Present: Ms.Tanushree Gupta, DAG, Haryana.

Mr.A.S.Tewatia, Advocate for the respondent.

CRM-31223 of 2016

Heard.

For the reasons stated in the application, delay of 60 days in filing the appeal is condoned.

CRM-A-1786-MA-2016

Heard learned counsel for the parties.

The appeal is taken for hearing on admission.

At this stage, Mr.A.S,Tewatia, Advocate, appears for the respondent-accused and filed Memo of Appearance in Court today, which is taken on record.

State has come up in the present appeal against the judgment and order dated 29.04.2016 passed by the trial Court in Sessions Case No.02 of 2015 by which trial Court recorded the order of acquittal was charged under Section 7 and 13 of the Prevention of Corruption Act, 1988.

Learned counsel for the State vehemently argued that the shadow witness had supported the factum regarding payment of the bribe money to the

respondent-accused and, therefore, the same should have been taken into consideration in the light of the presumption arising out the Prevention of Corruption Act. He further argued that though the complainant had turned hostile that does not mean that the prosecution had failed to prove its case as held by the trial Court.

Per contra, the learned counsel for the respondent opposed the appeal and that the parameters in the matter of appeal are well settled and therefore, there is no need to interfere in the impugned judgment and order.

I have carefully perused the impugned judgment and order and the reasons recorded by the trial judge. Upon hearing learned counsel for the rival parties, I find that the complainant admittedly turned hostile. As a result, initial demand was not proved by the prosecution. Thereafter, insofar as the raid is concerned, as stated earlier, the complainant did not at all support the prosecution case but the shadow witness also did not say a word about any demand at the time of conduct of raid. He simply stated that money was handed over to the accused. The said aspect discussed in the matter in para Nos. 15 and 16 of the impugned judgment and I quote the same here under:-

15.As discussed above, the complainant has not supported the prosecution versions. No doubt that the complaint Ex.PX bears the signatures of the complainant and contains the allegations qua demand of bribe by the accused, but the complainant having denied the contents, it was incumbent upon the prosecution to have proved the same to be in his hand particularly when he had categorically stated that his signatures were obtained on blank papers. The fact remains that the prosecution has not led any evidence and apart from the bald statement of the investigating officer, there is no material on record to prove that the complaint

was written by the complainant himself. In so far as the oral testimony is concerned, it has already been discussed above that the complainant denied any demand of illegal gratification by the accused. The prosecution could have proved the factum of demand dehors the statement of the complainant through the shadow witness but even the shadow witness does not utter even a single word in this behalf. He simply says that when the complainant handed over the currency notes to the accused. He gave the pre-decided signal to the police party. This means that he did not hear the accused demanding bribe. He simply saw the complainant handing over the currency notes to the accused. Although, he did not say as to at what distance he was from the complainant and the accused when the alleged transaction took place, according to the investigating officer, he was at a distance of about 6-7 yards from the accused. Since the transaction took place outside the Police Station on the road, it is doubtful if from a distance of about 6-7 yards, he could hear as to what transpired between the complainant and the accused. This is the precise reason why he kept mum about the aspect of demand. Be that as it may, the fact remains that there is no occasion for the court to reach the conclusion that the accused demanded bribe from the complainant and since the demand of illegal gratification is sine-qua none to constitute the offence under Section 7 read with Section 13(1) (d) of the Act, even if the recovery of treated currency notes from the accused is taken to be proved, no offence is proved to have been committed.

16. Having held so, let us proceed further to probe as to whether the evidence led by the prosecution about the raid which resulted in recovery of tainted money from the accused inspires confidence. Suffice it to say in this behalf that the evidence is nebulous. According to PW15, he along with the complainant reached Police Station, Chhacchruali. He does not say as to what transpired thereafter, as to whether they actually entered the

Police Station or whether the accused himself came out. He simply says that when the complainant handed over the currency notes to the accused, he gave the pre-decided signal to the police party. The complainant has not supported the prosecution version. Even PW Darshan Kumar says that after reaching near the Police Station, the complainant and shadow witness were sent with the requisite directions and after about 10-15 minutes, they gave signal on which the accused was apprehended. There is nothing as to what transpired during this 10-15 minutes and as to whether the complainant and accused entered the Police Station or not. According to the investigating officer, the complainant and shadow witness were sent to Police Station, Chhachhrauli and the raiding party alongwith Duty Magistrate took position outside by hiding themselves and after few minutes, the signal was received from the shadow witness on which the accused was apprehended outside the Police Station near Park. He is also silent as to how the accused came out of the Police Station. It is the case of the prosecution that the closed-circuit television is installed in the Police Station and that to avoid being caught on the camera, the accused came out of the Police Station. Needless to say that if there was no such camera, there was no reason as to why the accused would have come out of the Police Station to receive bribe in open.

It is true that there is presumption under Section 20 of the Prevention of Corruption Act. However, the presumption can be rebutted by the satisfactory circumstances by the accused in the present case. The initial burden of proof itself has not been discharged by the prosecution namely the demand on both the occasions. The complainant turned hostile in the first place and in the second place, the shadow witness did not say anything about demand at the time of conduct of raid. Therefore, the presumption would not arise and

the prosecution failed to discharge its initial burden of proof.

In that view of the matter, I am inclined to agree with the reasons recorded in paras 15 and 16 of the impugned judgment. Therefore, I find no merit in the present appeal.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

11.12.2017
Anjal