

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

CRA-S-1033-SB of 2003

Date of decision: July 31, 2017

Shingara Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Chanchal K. Singla, Advocate for the appellant.

Mr. Ramandeep Sandhu, Sr. DAG Punjab.

A.B. CHAUDHARI, J (Oral)

The appellant-Dr. Shingara Singh son of Piara Singh, feeling aggrieved by judgment and order dated 16.05.2003 passed by the learned Special Judge, Ferozepur, in Sessions Case No.22 of 07.12.1998, by which he was convicted for the offence under Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and sentenced him to undergo Rigorous Imprisonment for 2 years plus fine and in default of payment of fine, further undergo Rigorous Imprisonment for 6 months, had filed the present appeal.

In brief, the case of the prosecution was that appellant-Dr. Shingara Singh was working as medical officer in Civil Hospital, Jalalabad at the relevant time. On 28.06.1997, a quarrel had taken place between Krishan Kumar brother of Raj Kumar-Complainant (PW-6) and Ramesh Chand, in the village Megna Ke Uttar. Ramesh Chand had given *kappa* blow on the head of Krishan Kumar and ran away. Complainant-

Raj Kumar brought Krishan Kumar the injured to Civil Hospital,

Jalalabad, on scooter and met appellant-Dr. Shingara Singh. Dr. Shingara Singh replied that injury was simple and there was no need to admit the injured. However, he agreed to admit him since he was requesting to provide an amount of ₹500/- as bribe. Complainant-Raj Kumar paid him ₹200/- and the patient was admitted in the Hospital. He, thereafter, told him to pay remaining bribe amount of ₹300/- in the evening and that MLR report would be send to the police station for registration of the case. He, then approached the Vigilance Bureau, Ferozepur and DSP Sukhdev Singh recorded the statement Exhibit P12. Currency notes were produced and after following the procedure, the complainant and shadow witness had gone to hand-over the currency at Civil Hospital, Jalalabad. Appellant demanded bribe of ₹300/-, which was paid and thereafter, there was a raid. Procedure was followed and thereafter, challan was filed. The trial was held and the evidence was recorded.

In support of the appeal, learned counsel for the appellant vehemently argued that the prosecution case was completely false and baseless and appellant-Dr. Shingara Singh has been falsely involved. He submitted that injury was simple but the complainant wanted the appellant to give a certificate of grievous injury so that the accused could be pressurized and or arrested for a serious offence. As a matter of fact, the appellant had refused to give any false certificate and that is why he had treated injured after admitting him in the morning itself and then refused to give certificate of grievous injury. Learned counsel then submitted that this is borne out from the admitted position that the complainant and the accused thereafter, in the evening in the police

station, arrived into a compromise and by doing some transaction of money being paid over to the complainant by the accused, the matter was compromised. However, before that, appellant-Dr. Shingara Singh was not ready to issue certificate of grievous injury. Having got annoyed, the complainant filed false complaint. Even about the trap, it is clear that the appellant was, at the relevant time in the bathroom, and forcibly money was put in his pocket in bathroom. At any rate, according to learned counsel for the appellant, demand was not at all proved and on the contrary, the theory of demand is clearly falsified by documentary evidence, which was duly proved on record. The reasons given by the learned trial Court for convicting the appellant are perverse. The appellant had to suffer unnecessarily due to false complaint lodged by the complainant who ultimately, in the evening, arrived into compromise with the accused leaving the appellant to suffer in his career. He, then submitted that sanction for prosecution was not proved by the prosecution and is clearly illegal.

Per contra, learned State counsel supported the judgment and order impugned inviting my attention to the reasons recorded by the learned trial Judge. Learned State counsel submitted that prosecution had proved its case beyond reasonable doubt and therefore, there is no need to interfere with the impugned judgment of conviction and prayed for dismissal of the appeal.

I have heard learned counsel for the rival parties at length. I have perused the entire record oral as well as documentary. I have seen the reasons recorded by the learned trial Judge for convicting the

appellant. Upon perusal of the entire record and the evidence, I find that the case in question launched against the appellant is clearly false, baseless, and unnecessarily the appellant has been convicted. The trial Court in a casual manner recorded the conviction against the appellant ignoring the material on record and the fact that the complainant had, in the police station itself in the evening, entered into a compromise and got the FIR evaporated. The appellant has clearly suffered for no fault of his.

In so far as the merit of the criminal case is concerned, the prosecution case is that complainant-Raj Kumar had taken his brother Krishan Kumar to the Civil Hospital, where he met the appellant at about 2:00 PM and then the incident of demand of bribe etc. had taken place. The official record from the Civil Hospital was brought before the Court that is, the admission register of the patient Krishan Kumar and was duly proved before the Court as Exhibits D1, D2 and D3 by Ashok Kumar Clerk. I have perused the evidence of Ashok Kumar as well as documentary evidence. The evidence of Ashok Kumar on the material points has gone totally unchallenged. Perusal of the original documents Exhibits D1 and D2 shows that Krishan Kumar was brought at 9:05 AM in the hospital and was medically examined at 10:45 AM, on 28.06.1997 that is in the morning itself and immediately thereafter, report was sent. In other words, the theory of demand of bribe at 2:00 PM for the first time when the complainant had gone to admit his brother in the Hospital is clearly contradicted and falsified with the above documentary evidence of the Government Hospital. There is no reason to ignore the said contemporaneous record. The trial Court discussed about the said

documents and the evidence, in Para 16 of the impugned judgment and also stated that patient was admitted in the Hospital in the morning itself. In that event, the trial Court ought to have straightway recorded a finding that the evidence of complainant that he had gone to the Hospital at the first time at 2:00 PM to admit his injured brother and there was demand of bribe, was clearly false. However, rather than relying on documentary evidence produced before the learned trial Judge from the Government records of the Civil Hospital, the trial Court recorded flimsy reasons for rejecting the documentary evidence and the reasons read thus:-

“17. Learned defence counsel tried to argue that it has been stated by Raj Kumar complainant PW6 during his cross-examination that he had gone to the hospital at 2 P.M. By that time his injured brother has already been examined and admitted in the hospital and as such there was no occasion with the accused to demand or accept any such illegal gratification. There is no force in those arguments of the learned defence counsel. The injured had been examined by the accused at 10.45 A.M. and 11A.M. Whey he had not send the M.L. reports to the police station immediately and what was the reason for sending the same at 2 P.M. It is an admitted fact that police station Sadar Jalalabad adjoins Civil Hospital, itself. Had there been no such intention on the part of the accused to accept such bribe he must have sent the copies of the M.L. reports to the police station immediately. The accused cross-examined the complainant at length but in that process he has not been able to elicit any such fact that on the basis of which it may be held that he had already admitted his brother Krishan Kumar in the hospital or that he did not demand any such bribe from him for that admission. It was suggested to the complainant that Tarsem Pal A.S.I. had come to the hospital before 2 P.M.

and a written compromise signed by his brother, Ramesh Chand and others was produced before him. He denied that suggestion. There was no question of the A.S.I. coming to the hospital before 2 P.M. as the copies of the M.L. reports were received in the police station at 2 P.M. and it was possible for the A.S.I. to come to the hospital only after that. However, it appears that a compromise was entered into the injured and the complainant was also a signatory to that compromise. No doubt, he showed his ignorance if a compromise signed by the injured and others was produced before police but when it was put to him that he had also put his signatures thereon he stated that he did not render that fact. It is incorporated in the report Ex.P11 that the compromise had the signature of this complainant Raj Kumar also. Even if it is assumed even then it has no effect on the merits of this case. The accused had already made a demand of bribe for the admission of the injured in the hospital and had already accepts Rs.200/- as such from the complainant.”

The trial Court thus, recorded the finding about compromise but gave no reasons to discard the hospital record. The documentary evidence stands at a high pedestal. The trial Court casually ignored the above aspects of the matter. It has caused miscarriage of justice to the appellant. The reason given by the trial Court for ignoring documentary evidence is not only preposterous, but has been given just to justify the order of conviction. There is a entry about sending the report immediately. The trial Court ought to have taken into consideration the fact that the complainant had thereafter, in the evening itself got the matter compromised with the accused and that must be for some extraneous consideration, but he had already lodged a false case against

the appellant ruining the entire career of appellant-Dr. Shingara Singh. In other words, the prosecution case as has been found by me, was false and the appellant had to suffer for no reasons.

As to the mere acceptance of money as incriminating evidence, the Apex Court held thus, in the following two decisions:-

The Apex Court in the case of **State of Maharashtra versus Dnyaneshwar Laxman Rao Wankhede**, 2009 (15) SCC, 200, has held thus in Para 16:-

“16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

The Apex Court in the case of **Suraj Mal versus**

State (Delhi Administration), (1979) 4 SCC 725, has held thus in Para 2:-

“2. The defence of the appellant was that he was falsely implicated and nothing was recovered from him nor did he make any demand for bribe. The Special Judge on the basis of the evidence led before the Court held that the evidence was extremely shaky and unconvincing and was not sufficient to convict Ram Narain but nevertheless the trial court convicted the appellant on that very evidence. In upholding the conviction of the appellant the High Court completely overlooked the fact that the very evidence on which the conviction of the appellant was based, had been rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case failed. In other words, the position was that while PWs 6, 8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the recovery of the money, regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. For these reasons, therefore, when the Special Judge disbelieved the evidence of PWs 6, 8 and 9 in regard to the complicity of Ram Narain, it was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for which the said evidence was disbelieved regarding the complicity of Ram Narain. If

the witnesses draw no distinction in the examination-in-chief regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could not be believed with respect to the other. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible. Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mal. Although, in his statement at p. 71 of the paper-book, the complainant has clearly stated that all the three accused including the appellant had met him and demanded bribe of Rs 2000, the appellant having demanded Rs 100, yet in the report which he lodged before Mr Katoch, there is no mention of the fact that the appellant at any time demanded any bribe at all. Even the presence of the appellant at the time when the demand was made by Davender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the SHO Davender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly from the complainant. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not understandable why this fact was not mentioned in the report which the complainant submitted to the D.S.P. Katoch and which is the FIR constituting the evidence. We have perused the statements of PWs 6,8 and 9 and we find that while in the examination-in-chief they have tried to implicate all the three accused persons equally without any distinction, in their cross-examination, they have tried to save Ram Narain and made out a

different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the appellant. Mr Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bushshirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under Section 342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement under Section 342 of the CrPC. Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal, set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds.”

Apropos, the service period after conviction by trial Court, the apex Court has rendered a few judgments declining backwages and counting of the period of service lost. I have already found that the appellant had to suffer prosecution and conviction in a false case. Therefore, I think the appellant deserves to be acquitted honourably in the first place with a further recommendation that the State Government ought to consider the case of the appellant regarding award of some amount back-wages and counting of service period for pension with sympathy.

In that view of the matter, CRA-S-1033-SB of 2003 is allowed. Impugned judgment and order dated 16.05.2003 passed by the learned Special Judge, Ferozepur, in Sessions Case No.22 of 07.12.1998, is quashed and set aside. Appellant is honourably acquitted of the charges against him.

(A.B. CHAUDHARI)
JUDGE

July 31, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**