

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-1901-SB of 2003

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Date of decision:13.11.2018

Kurra Ram

...Appellant

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Subhash Godara, Advocate, Legal Aid Counsel for the appellant.

Mr. Sharad Kumar Yadav, Deputy Advocate General, Haryana for the respondent-State.

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Inderjit Singh, J.

This criminal appeal has been filed by appellant-Kurra Ram challenging the impugned judgment of conviction and order of sentence dated 24.09.2003/27.09.2003 passed by learned Additional Sessions Judge, Rohtak, whereby he has been held guilty and convicted for the offence under Section 7/13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹25,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. It has also been ordered that the bribe money be returned to the complainant.

The challan against accused Kurra Ram was presented by Police of Police Station, State Vigilance Bureau(H), Gurgaon in FIR No.09 dated 13.08.1996 registered for the offences under Section 7/13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'). The brief facts of the prosecution case are that on 13.8.1996, Man Singh-complainant made statement Ex.PA before Shri Jaswant Singh, Deputy Superintendent of Police (DSP) to the effect that he retired on 31.08.1995 from Co-operative Department, State of Haryana. He was to get the benefits of General Provident Fund (GPF), pension and gratuity. He approached accused Kurra Ram, the then Assistant Registrar at Rohtak so many times to pay the same. He did not pay any heed to his requests and asked to please him. Finding no other alternative, he pleased him. Thereafter, he cleared his case of GPF. After 08/09 days, the amount was paid to him. Accused took ₹10,000/- out of that under the pretext of credit. To complete the case of his pension, he took ₹500/- separately. He sent his service book and papers of pension to the Registrar, Co-operative Societies, Haryana, Chandigarh in the month of March 1996. Thereafter, he went to the office of Assistant Registrar i.e. the accused so many times regarding pension and gratuity. The accused demanded bribe to pay gratuity. He had shown his helplessness as he has retired one year ago and was living with hands to mouth. The complainant stated that he was not willing to give bribe, but the accused was not clearing his case without bribe. Therefore, he approached the DSP and gave five currency notes in the denomination of ₹100/- each to him. On the basis of the statement of the complainant, the FIR was

registered. Thereafter, PW-Jaswant Singh, DSP went to the Office of Deputy Commissioner, Rohtak and moved an application to direct some Magistrate to accompany them. As no Magistrate was available, so, Shri T.V.S.N. Prasad, the then DC, Rohtak accompanied the Police. Notes handed over by Man Singh were initialled by the DC and Phenolphthalein powder was applied thereupon. Those notes were handed over to PW Man Singh vide memo Ex.PJ to be given to the accused. Siri Ram, Inspector was deputed as shadow witness. Man Singh was directed to give signal to shadow witness after handing over the amount to the accused. Shadow witness was also directed to give further signal after receiving signal from Man Singh. Thereafter, they went to the office of the accused. After receiving signal from the shadow witness, the raid was conducted accordingly. The said notes were recovered from the bathroom situated by the side of room of the accused. The notes were taken into possession vide memo Ex.PK. The hands of the accused were washed in a tumbler with the water containing sodium carbonate. The colour of water turned pink. The water was taken into two nips as sample. Left side pocket of pant of the accused was also washed in the fresh mixture of aforesaid like water. Colour of that water also turned pink and regarding that the separate parcels were prepared. The proceedings were conducted. The accused was arrested. The statements of witnesses were recorded, rough site plan of the place of occurrence was prepared. After obtaining sanction to prosecute the accused, the challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie*

case against the accused, framed charges for the offences under Sections 7/13 of the PC Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Baru Ram Head Constable, who mainly deposed regarding delivery of special reports. PW-2 Mohinder Singh, Clerk in the office of Excise Commissioner, Haryana, Chandigarh mainly deposed regarding appointment letter of the accused. PW-3 Amrik Singh, Superintendent in the office of Financial Commissioner, Haryana mainly deposed regarding the sanction order Ex.PD and identified the signatures of the Commissioner and Secretary to Government, Haryana. PW-4 Hawa Singh Malik, Draftsman mainly proved the scaled site plan Ex.PE. Affidavits of Head Constable Surender Kumar and Inspector Ran Singh, who are formal witnesses, were tendered in evidence, but the defence counsel stated that he does not want to cross-examine them. The report of FSL was also tendered in evidence.

PW-5 Man Singh-complainant mainly deposed as per the prosecution version. He stated that earlier he paid ₹1,000/- to the accused in the year 1995, but the accused only passed his bill of payment of G.P.F. ₹1 Lakh was paid to him in lieu of his G.P.F. The accused asked him to give ₹10,000/- as loan to him out of the amount of his G.P.F. The accused demanded ₹500/- from him for sending his papers of pension and service book to the office of Registrar, Co-operative Societies in the year 1996. Then he reported the matter to Vigilance Department and he deposed as per prosecution version. PW-6 Balbir Singh, Head Clerk, A.R. Office, Rohtak, mainly deposed regarding Man Singh that he was posted as Inspector at

that time in their office. Said Man Singh retired from service on 31.8.1995. The retiral benefits should normally be paid to the retired official within a month. Payment of G.P.F. was made to Man Singh on 22.12.1995. Final payment slip/sanction was received from A.G. Office, Haryana on 8.12.1995. PW-7 Dalip Singh, Ex-Accountant, A.R. Office, Rohtak deposed that he retired from service in November 1997. He was posted as Accountant in A.R. Office. He used to maintain record of pay of the employees. Man Singh was working in their office and retired from service on 31.8.1995. The case of grant of standard scale of Man Singh had been sent to the Head Office on 30.9.1994. Approval for grant of standard scale was received in their office on 10.10.1995. Pay of Man Singh was fixed and case for grant of pension was moved on 5.12.1995. Initially, the case for grant of ₹33,000/- towards gratuity was moved subsequently and revised case for grant of ₹65,000/- was prepared and sent to the Head Office on 31.5.1996. Man Singh should have been given all his retiral benefits soon after his retirement. PW-8 Siri Ram, Inspector, S.V.B. Rohtak deposed that he was posted in State Vigilance Bureau, Unit Rohtak. Around 10.00 a.m., DSP Jaswant Singh along with the Reader came to the Unit. At that time, besides him, Baru Ram Constable and Jai Bhagwan Head Constable were present there. He is the shadow witness. He also deposed as per prosecution version. PW-9 Shri T.V.S.N. Parshad, IAS, Director, Andhra Pradesh Power Finance Corporation, Andhra Pradesh deposed that in August 1996, he was posted as Deputy Commissioner, Rohtak. The DSP, SVB (Gurgaon) approached him in his capacity as District Magistrate at his

camp office, Rohtak. The aforesaid DSP had informed him that Kurra Ram, the then Assistant Registrar, Cooperative Societies posted at Rohtak had demanded illegal gratification from one retired Inspector of the Cooperative Societies Department for clearing certain papers relating to retiral benefits of that person (complainant). The DSP, SVB (H) had sought his permission in his capacity as District Magistrate to conduct anti-corruption raid in this connection. He also requested him to depute some Executive Magistrate to join the raiding party. He had given permission to the DSP, SVB, Gurgaon for conducting raid. He also tried to contact some Executive Magistrate, Rohtak for associating with the raiding party. Incidentally, no Executive Magistrate was available and, therefore, in view of the urgency of the issue, he himself decided to join the raid. Then this witness deposed regarding the raid. PW-10 Maharaja Singh, DSP, Vigilance Bureau, Gurgaon mainly deposed that he was posted in Vigilance Bureau, Gurgaon and on completion of investigation of the case, report under Section 173 Cr.P.C. was prepared and submitted in the Court. PW-11 Rohtas Singh, DSP retired, Najafgarh, Delhi, deposed that on 13.8.1996, he was posted in Police Station Vigilance Bureau as Inspector. On that day, statement of Man Singh Ex.PA having endorsement Ex.PA/1 was received in the Police S.B.V. Gurgaon through Constable Baru Ram on the basis of which formal FIR Ex.PR was registered by him. PW-12 Yeshwant Singh retired DSP, Investigating Officer mainly deposed regarding the investigation conducted by him in this case and has deposed as per prosecution version.

At the close of prosecution evidence, the accused was

examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He also stated that Man Singh retired on 31.8.1995. There was some enquiries pending against him. There was embezzlement to the extent of ₹1 Lakh and other amounts were also to be recovered. His service book was not in their office. He wrote letter to Head Office for sending of service book to his office. Those letters are Ex.D.5 to Ex.D.9. Hoshiar Singh, Cashier wrote letter Ex.D.4 that a sum of ₹18,000/- has to be recovered from Man Singh. As soon as, he received service book, he sent letter Ex.D.13 requiring him to fill-up certain forms and gave his photo and that of his wife. He filled-up those forms on 5.12.1995 and submitted photo. Service book was received in their office on 10.10.1995. Man Singh wanted him that he should send his pension papers without effecting recovery and informing about embezzlement. He refused to do so. The accused started nursing grudge against him. He connived with the Police and concocted the story. He placed the money underneath the cloth on the table in the bathroom. He never demanded any bribe nor accepted. Phenolphthalein powder matter is a concocted version. DSP caught him from his hand and Phenolphthalein powder may have struck on his hand and his hand may have gone to the pant pocket. No witness in defence has been examined.

After going through the evidence on record, the learned trial Court, vide its impugned judgment and order, convicted and sentenced the accused-appellant for the offence as mentioned above. Aggrieved from the

impugned judgment and order, the present appeal has been filed by the appellant-accused.

I have heard learned counsel for the appellant and learned State counsel for the respondent-State and have gone through the record.

At the time of arguments, learned counsel for the appellant argued as per defence version and stated that the complainant was annoyed with the accused as he wanted that the appellant should send his pension papers without effecting recovery and informing about embezzlement and has motive to falsely implicate the appellant. He further argued that there is no independent shadow witness and Siri Ram is an official witness which further creates a doubt. Learned counsel for the appellant further submitted that the recovery has not been effected from the person of the appellant-accused, rather, it has been effected from underneath the cloth on the table lying in the bath room. Therefore, the recovery cannot be connected with the appellant. He argued that the case of the prosecution is false and the prosecution has failed to prove the same by leading cogent evidence.

On the other hand, learned Deputy Advocate General, Haryana appearing for the respondent-State argued that the case of the prosecution has been duly proved beyond doubt by the prosecution. The District Magistrate himself associated with the raid and has consistently deposed regarding the prosecution version. There is no enmity or motive alleged and proved against any of the Police officials and the District Magistrate. There is no reason or ground as to why they will depose falsely against the appellant-accused. The demand and acceptance of the bribe has been duly

proved by the complainant as well as the shadow witness. The recovery has been duly effected during the raid which is also proved beyond doubt. Therefore, the learned State counsel argued that the presumption arose under Section 20 of the PC Act and the accused has not led any evidence to rebut the same. The defence version is not believable. He argued that there is no merit in this appeal and it should be dismissed.

I have gone through the evidence on record minutely and carefully and have heard learned counsel for the appellant and learned Deputy Advocate General, Haryana appearing for the respondent-State.

From the record, I find that the PWs have consistently deposed regarding the prosecution version. There are no material contradictions or improvements in the statements of the witnesses. There is no evidence on record to show that there was any embezzlement committed by the present complainant or any recovery was to be effected from him. The appellant-accused has not led any defence evidence. Furthermore, even if it is taken that there was some occurrence or case of any type, then as to why DSP Vigilance, the Investigating Officer, Siri Ram Inspector shadow witness and the District Magistrate will depose falsely against the appellant. They have no enmity or motive against the appellant. These official PWs as well as complainant have deposed consistently against the appellant. No material contradictions or improvements have been pointed out at the time of arguments. Furthermore, a perusal of the cross-examination shows that there is nothing in the cross-examination which may make the statements of the PWs as unreliable. There is also nothing to show as to why these

witnesses be not believed. There is also nothing on record including the cross-examination to show as to why these PWs be not believed and relied upon.

In the present case, the District Magistrate, who is an IAS Officer had himself joined the raid as no Executive Magistrate was available at that time and deposed consistently regarding the recovery. Nothing has been pointed out as to why this PW be disbelieved. The complainant, the shadow witness and the Investigating Officer have also deposed regarding the recovery against the appellant-accused. The demand and acceptance has also been duly proved in the present case. The appellant-accused has not led any evidence to rebut the presumption under Section 20 of the PC Act. Furthermore, I find that even in the statement recorded under Section 313 Cr.P.C. the accused has not contested the fact that his hands were washed or his pant was washed and the water turned pink. Rather he has given the explanation that the Investigating Officer had caught his hand and Phenolphthalein powder may have struck on his hand and his hand may have gone to the pant pocket. The recovery has been effected from underneath the cloth on the table lying in the bath room. There is no evidence that this bath room was easily accessible for any person. Furthermore, if it is taken that it is accessible and the complainant had kept it there, then as to how the washing of the pant has turned the water pink or when the hands of the accused were washed the water has turned pink which means the accused has received the money and then put into his pant and later on he has kept it underneath cloth on the table lying in the bath

room. The prosecution has proved its case beyond a reasonable doubt while leading cogent evidence.

Therefore, finding no merit in this appeal, the same is dismissed. The impugned judgment of conviction and order of sentence recorded by the learned trial Court are upheld.

The sentence of the appellant was suspended by this Court vide order dated 14.10.2003 and he was released on bail during the pendency of the appeal. As he is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

Mr. Subhash Godara, learned Advocate was appointed as Legal Aid Counsel on behalf of the appellant in the present case. The fees be paid to him by the High Court Legal Service Committee as per rules.

November 13, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No