

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

Crl. Appeal No.S-575-SB of 2003 (O&M)

Date of Decision: September 14, 2018

Hari Ram Singla

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Deol, Senior Advocate with
Mr.Himmat Singh Deol, Advocate
for the appellant.

Mr.Vikas Chopra, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction and order of sentence dated 11.03.2003 passed by learned Special Judge, Kaithal, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹3,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 7 of the Prevention of Corruption Act and further, to undergo rigorous imprisonment for a period of three years and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of five months under Section 13(1)(d) punishable

under Section 13(2) of the Prevention of Corruption Act. Both the sentences

were ordered to run concurrently.

The brief facts of the prosecution case as noted down in the judgment passed by learned Special Judge, Kaithal, are as under:-

“2. Brief facts of the prosecution case as available in the report under Section 173 of the Code of Criminal Procedure are that on 23.7.1996 Sh.Amir Singh, Deputy Superintendent of Police was present in his office alongwith Inspector Virender Kumar and Inspector Bhagmal (AEC) Kaithal, when Lila Ram son of Jethu Ram, resident of village Kangthali, who used to run a Saw Mill and Atta Chakki near bus-stop village Kanthali, came to his office alongwith Lachhman Dass son of Puran Chand, Harijan r/o village Kakeria. The complainant has shown his willingness to move some application before him. Accordingly, a complaint was made by them before the Deputy Superintendent of Police. As per contents of the said complaint, the complainant has not constructed 11 shops near bus-stop Kangthali legally on his own land. However, Sh.Hari Ram Singla, Junior Engineer, P.W.D. Visited his shops and asked him that he has constructed the shops on Govt. land and further demanded Rs.5,000/- from him in order to protect his illegal encroachment failing which he threatened that notice will be got issued to him and the shops of the complainant would be demolished. The complainant felt scared and paid Rs.1,000/- to Hari Ram Singla, J.E. As part payment and fixed the time of next day at 2.00 P.M. for payment of the balance amount to him at bus-stop Kangthali. The complainant has specifically mentioned in the complaint that Hari Ram Singla is demanding illegal gratification from him so he wants to get him apprehended red handed. On receipt of complaint Ex.P.F., the investigation was set into motion. The complainant and his companion Lachhman Dass submitted Rs.4,000/- on the denomination of Rs.50/- each number 5FC-065201 to 5FC-065280 to the D.S.P. who initialed all the said currency notes and phenolphthalein powder was applied on the same. Thereafter, the same were handed over to Lila Ram complainant with the direction that the complainant and Lachhman would pay the said amount on their Saw Mill to the accused as per scheduled time. The D.S.P. alongwith other members of raiding party reached the bus-stop, Kangthali. Lila Ram and Lachhman were sent to deliver the amount to Hari Ram Singla, J.E. on the Saw Mill. Inspector Virender Kumar was appointed as a shadow witness. He was in civil cloth and was asked to follow the complainant and his companion. Virender Kumar was directed to give signal after putting his hand on his head after making payment of bribe amount on demand by the accused. Accordingly, the complainant went to the accused and on his demand, he paid Rs.4,000/- to him as per plan and gave signal to the shadow

witness. Then the police party reached the spot and apprehended Hari Ram Singla, J.E., P.W.D. Guhla. At that time Rs.4,000/- were in the hand of the accused and he was putting the same in his bag. The currency notes as well as bag of the accused were taken into police possession. The hands of the accused and the currency notes were got washed. The water became light pink. The water was taken into a plastic bottle sealed with the seal of 'A.S'. The currency notes were separately sealed. The currency notes and the other articles recovered from the possession of the accused were taken into police possession vide memo Ex.P.H. The plastic bottle containing wash water was seized vide memo (Ex.P.J) Memo of zamatalasi of the accused was also prepared. The seal after use was handed over to Lachhman Dass P.W. Accused was arrested by the police for obtaining illegal gratification from the complainant. D.S.P. sent rukka to the police station on the basis of which formal F.I.R. was registered against the accused. Rough site plan was prepared with correct marginal notes regarding the place of occurrence. Statements of the witnesses under section 161 Cr.P.C. were recorded. On receipt of sanction for the prosecution of the accused, report from Forensic Science Laboratory, Madhuban and after completion of other necessary investigation, report under section 173 Cr.P.C. was prepared by Sh.Amir Singh D.S.P. and submitted in the court for trial of the accused.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Jai Singh, Sub Divisional Clerk, who brought the official record and proved post of accused as Junior Engineer from 22.05.1995 to 23.07.1996 and also proved certificate Ex.PA. PW-2 Head Constable Karam Chand and PW-3 Constable Brahm Singh, are formal witnesses, who tendered into evidence their affidavits Ex.PB and Ex.PC respectively. PW-4 SI/SHO Sube Singh

deposed regarding recording of FIR Ex.PD/1 on receipt of ruqa Ex.PD. PW-5 K.B.Lal Singal, Engineer-in-chief (Retd.) deposed regarding sanction for the prosecution of the accused in this case, which is Ex.PE. PW-6 Lila Ram, complainant, mainly deposed that he had installed a saw-mill and atta chakki at bus stand Kangthali. He had also constructed 11 shops. Accused came to him, who was posted as J.E., PWD B&R, Kaithal and told that he had constructed the shops on Govt. land belonging to PWD department. However, he (complainant) told him that he had constructed the shops on his own land after getting the same demarcated. However, accused told him that either complainant should pay him ₹5,000/- as illegal gratification or he would send him a notice for getting the said shops demolished. It is further deposed by the complainant that he told the accused that he was not having that much amount of ₹5,000/- with him. Upon this, accused told him to pay whatever he was having. He (complainant) agreed to pay ₹5,000/- to the accused as he became afraid and paid him ₹1,000/- as illegal gratification as part payment and also promised to pay remaining ₹4,000/- to the accused at his saw-mill on the next day at 2.00 p.m. and accused told the complainant that he will visit saw mill to take said amount. The complainant also deposed that next day, at about 12 noon, Lachhman came at his saw mill for getting the wooden logs cut. He narrated all the facts to Lachhman and he accompanied the complainant to the office of DSP, Kaithal. Complainant got written a complaint against the accused and handed over the same Ex.P6 which bears his signatures, to DSP Amir Singh. Complainant narrated all the facts to DSP orally and handed over currency notes worth ₹4,000/- to the DSP, who put his initials on the said currency

over to complainant with the direction that complainant should go at his saw mill and hand over the said currency notes to accused as per his demand and thereafter, he should give a signal. It is also stated by PW-6 Lila Ram that he and Lachhman accompanied the police party in police jeep. Police jeep was stopped at a distance from saw mill. He, Lachhman, Virender Kumar and Bhagmal got down from the jeep. Complainant accompanied by Lachhman reached the saw mill. Virender and Bhagmal followed them. Accused Hari Ram was already sitting on a cot on complainant's saw mill and asked the complainant as to where he had gone. Complainant told him that he had gone for some urgent work and then, handed over ₹4,000/- to him in the presence of Lachhman Dass. Accused had taken the currency notes from complainant and after checking the same, had placed in his bag which he was carrying. Thereafter, complainant gave signal by placing his hand on his head to Virender Kumar Inspector, who further flashed signal to Bhagmal Inspector, who was standing at a distance and Bhagmal gave signal to the DSP. Then, the DSP accompanied by Bhagmal, Virender and some other police officials reached there and searched the bag carried by the accused and from the bag, said currency notes of ₹4,000/- were recovered, which were taken into police possession. Accused was made to wash his hand by the DSP and the water turned pink. Thereafter, currency notes were also washed and water again turned pink. The water which had turned pink was taken into a bottle after sealing the same. The currency notes were sealed separately. DSP had checked his initials as well as number of currency notes recovered from the accused. Personal search of the accused was conducted. Currency notes are Ex.P1 to Ex.P80. DSP sent the ruqa

the DSP. PW-7 DSP Virender Kumar deposed that on 23.07.1996, he was posted as Inspector. In his examination-in-chief, he deposed that he kept standing on the gate of saw mill. Lila Ram and Lachhman had gone inside the saw mill. After some time, Lila Ram gave signal to him after coming out of the saw mill. He further deposed that he gave signal to Inspector Bhagmal after putting his hand on his head and thereafter, DSP reached there. Then, all of them went inside the saw mill. PW-8 DSP Amir Singh, Investigating Officer, mainly deposed regarding investigation of the case conducted by him. He stated in his examination-in-chief that complainant and Lachhman first got down from the jeep and then went in the saw mill. Virender Kumar kept standing on the gate of saw mill and Bhagmal kept standing at some distance from Virender. On receiving signal from the complainant, Virender and Bhagmal also gave respective signal and he along with other police officials, Bhagmal and Virender entered the saw mill and found accused alongwith Lila Ram and Lachhman. Accused was having the bag in his hand. He searched the bag from which currency notes of ₹4,000/-, which were initialed by him and handed over to the complainant, driving licence and some other papers, were recovered.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication in the present case. He further pleaded that he had made report against Lila Ram complainant that he had constructed some shops unauthorizedly on the land belonging to PWD B&R Department to SDP and on his report, notice was sent to the complainant on

present on duty for repair work of Kaithal-Cheeka near village Poloar road on 23.07.1996, from where he was illegally arrested by DSP Amir Singh and taken to police station and he was falsely involved in his case and the bag, which he has carrying, in that bag, there were some papers, driving licence, wrist watch and ₹700/- and same was also taken by DSP.

In defence, accused examined DW-1 A.C.Gupta, Executive Engineer, who deposed that on 11.09.1996, he was posted as Executive Engineer, PWD B&R Kaithal. Hari Ram Singla accused was posted as Junior Engineer at that time. However, he was under suspension. The then S.E. Jind vide his letter No.5192 dated 29.07.1996 directed him to submit detailed report regarding complaint given by Lila Ram. He directed S.S.Sangwan, the then SDO, PWD B&R to enquire about the matter, who submitted his report vide memo No.732 dated 09.09.1996. On the basis of which, he sent report to S.E. Jind vide letter No.2481 dated 11.09.1996. DW-2 S.S.Sangwan mainly deposed regarding enquiry conducted against Hari Ram Singla accused. He also stated that copy of report is Ex.DE. He had given notice dated 11.08.1995 to Lila Ram on the report of the accused. He had seen said original notice, which bear his signatures. He further deposed that notice was sent to Lila Ram through accused and accused had returned the same to him after serving the same upon Lila Ram. DW-3 Kartar Singh, Naib Tehsildar, deposed that on 06.9.1996, he was posted as Kanungo in village Kangthali. On that day, he visited the spot and demarcated the disputed land and submitted his report, correct copy of which is Ex.DG. DW-4 Dr.Atul K. Singla, Handwriting and Fingerprint Expert and Forensic Document Examiner mainly deposed that he compared

handing over of currency notes Ex.PG. He gave the opinion that body writings of Ex.PF and Ex.PG have been written by one and the same person.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant accused as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that first of all, the complainant has enmity with the accused. Present appellant-accused had already given the notice to the complainant regarding encroachment much earlier to the occurrence i.e. in the year 1995 and on that, enquiries etc. have been conducted. Therefore, a false case has been planted by the complainant in connivance with the Vigilance Department. Secondly, he argued that Lachhman Dass, independent witness, was with the complainant, when they handed over money to accused but he was not examined by the prosecution. When private witness was available, then there was no necessity to make the official of the Vigilance Department as shadow witness. He next argued that the application Ex.PF, on the basis of which, FIR has been registered, has been got compared with the handwriting on the memo Ex.PG and Handwriting and Fingerprint Expert has given report that these are in the same handwriting. Ex.PG memo was scribed by Inspector Virender Kumar, who is stated to be a shadow witness. Learned counsel for the appellant also argued that perusal of Ex.PF itself shows that it was got scribed by the Investigating Officer. In the application, it is written that currency notes amounting to ₹4,000/- have been handed over to DSP, which means that it

Vigilance Department, which makes whole prosecution case doubtful and further proves connivance of Vigilance Department with the complainant. He next contended that even as per statement of complainant in the Court, at the time of handing over the money, no demand was raised by the accused. Rather, accused had simply asked the complainant as to where he had gone and complainant handed over ₹4,000/- to him. The shadow witness has also not heard anything regarding the demand. Now, regarding demand, only evidence on record is earlier statement of the complainant that appellant-accused has demanded ₹5,000/-, which in the facts and circumstances of the present case, is not believable. The complainant has enmity against accused-appellant, who had given him notice regarding encroachment. He further argued that at the time of raid, no matter was pending before the appellant as he had already given the notice. Learned counsel for the appellant relied upon the law laid down by the Hon'ble Supreme Court in ***Mukhtiar Singh (Since deceased) through his L.R. Vs. State of Punjab, 2017 (3) RCR (Criminal) 694***, in which, prosecution version was that, accused who was SHO, demanded ₹3,000/- from complainant to help in a criminal case. Complainant paid the amount and on completion of investigation, accused again demanded ₹2,000/-. A trap was laid. Complainant along with shadow witness entered the room of accused, who asked the complainant whether he had brought the money on which, complainant handed over currency notes of ₹2,000/- to accused, who kept notes in a box. The Hon'ble Apex Court held that this does not amount to demand and conviction of the accused was set aside. Learned counsel for the appellant has further cited law laid down by the Hon'ble Supreme Court

that search witnesses being interested witnesses, evidence as to giving bribe and recovery of money cannot be relied upon. Learned counsel for the appellant has also reliance upon the judgment passed by this Court in ***Lakhbir Singh vs. The State of Punjab, 1982 C.C.C. 213 (HC)***, wherein, it is held that appellant alleged to have been found in possession of ₹200/-, an amount of illegal gratification offered by the complainant for sanctioning mutation in his favour. No independent and respectable witnesses associated. Shadow witness was found to be having shady antecedents and in the circumstances of the case, appellant was ordered to be acquitted. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The demand and acceptance of bribe has been duly proved and recovery has been effected from the accused-appellant. There are no material contradictions or improvements in the statements of the witnesses. He further argued that there is nothing on the record to disbelieve the statements of the official witnesses. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, first of all, I find that there was no demand of bribe at the time of raid. The complainant PW-6 Lila Ram has nowhere stated that at the time of raid, accused demanded bribe. He deposed that he

as to where he had gone and he (complainant) told him that he had gone for some urgent work and then handed over ₹4,000/- to the accused-appellant in the presence of Lachhman Dass, which shows that accused has simply asked the complainant as to where he had gone and the complainant handed over ₹4,000/- to him and it is clear that at the time of raid, no demand was raised by the accused-appellant. Further, Lachhman Dass has not been examined, who was along with the complainant, at the time of raid. Secondly, in the present case, notice Ex.DF has already been given by present accused-appellant to the complainant on 11.08.1995, which fact has been duly proved by bringing defence evidence. As notice had already been given much prior to the occurrence by the appellant, then there was no ground for asking bribe.

Further, from the perusal of the record, I find that Ex.PF is the application given by Lila Ram to the police, who is complainant in the case and the same is not in the handwriting of Lila Ram and it is proved that it is in the handwriting of Inspector Virender Kumar. The accused has examined Handwriting and Fingerprints Expert, who has compared handwriting on the application Ex.PF with the memo Ex.PG and opined that both are written by one and same person. Ex.PG is scribed by Inspector Virender Kumar, who is shadow witness in this case. Moreover, Ex.PF shows that in this application, numbers of currency notes of ₹4,000/- were written, which itself shows that application has been dictated by the Investigating Officer and scribed by the shadow witness Inspector Virender Kumar. Keeping in view all these facts, much reliance cannot be placed on the statements of PW-7 DSP Virender Kumar, the then Inspector and PW-8 DSOP Amir

Singh, Investigating Officer and reasonable doubt exists in the prosecution

version.

Keeping in view of the above facts, it is clear that investigating agency has taken active participation by dictating and scribing the application in the office and it is also contradictory to the complainant's version that application was scribed earlier. Rather, it is clear that application was scribed in the presence of the Investigating Officer and currency notes were handed over to the Investigating Officer at that very time while giving the complaint.

In view of all these facts and in view of the law down by the Hon'ble Supreme Court cited by learned counsel for the appellant, I find that a reasonable doubt exists in the prosecution version. There is no explanation as to why independent witness was not joined as shadow witness. The official who has scribed the complaint, is the shadow witness which means that he is interested witness in this case.

Keeping in view the above discussion, I find that the judgment of conviction and order of sentence dated 11.03.2003 passed by learned Special Judge, Kaithal, are not as per law and the same are set aside. Appellant Hari Ram Singla, is acquitted of the charges framed against him.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Hari Ram Singla, is on bail, his bail/surety bonds stands discharged.

September 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No