

CRA-S-156-SBA of 2005

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

CRA-S-156-SBA of 2005
Date of Decision: 31.07.2018

State of Haryana

....Appellant

Versus

Sachin

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Yashwinder Singh, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, the State has laid challenge to judgment dated 11.05.2004 of the learned Additional Sessions Judge (I), Faridabad, whereby respondent was acquitted of the charge under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'), in case FIR No.212 dated 27.04.2002 pertaining to Police Station Sadar Palwal.

Briefly stated, on 27.04.2002, respondent-accused was caught red-handed accepting bribe of ₹300/- from complainant Mahabir, for filling up his form to apply for buffalo loan with the Harijan Welfare Nigam.

On filing report under Section 173 Cr.P.C. and holding trial, the respondent was acquitted by the trial Court vide impugned judgment.

Learned State counsel contends that the trial Court has illegally ignored cogent and convincing evidence led by the prosecution to base conviction of the respondent. It was proved beyond any doubt that respondent was caught red-handed receiving bribe on a signal from the

complainant. That apart, on personal search of the respondent, ₹300/- was recovered from his pocket. FSL report has also supported the prosecution

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story. The trial Court has given unnecessary weightage to the statements of defence witnesses. The trial Court has also failed to appreciate that there was valid sanction to prosecute the respondent vide sanction order Ex.PE duly signed by the authorised signatory to whom powers were delegated by the Governor.

Having considered the submission made by learned State counsel, this Court finds no substance in the appeal for the reasons to follow.

According to the prosecution, complainant-Mahabir approached DSP Inder Singh Saini (PW11) on 24.04.2002 and complained about illegal demand of bribe of ₹300/- from him by the respondent. But the DSP did not react promptly and made any effort to conduct raid immediately at the office of the respondent. The story put-forth by the prosecution that on 26.04.2002 DSP aforementioned instructed the complainant to see and report as to whether respondent was sitting in his office, does not seem to be probable and genuine, inasmuch as if in such type of cases, investigating agency does not come into action promptly, there are always chances of failure to apprehend accused. Since no explanation for conducting the raid on 26.04.2002 has come on record, therefore, this Court is not inclined to differ with the findings recorded by the trial Court.

Statement of DW2 bull attendant of the Veterinary Hospital, Aurangabad, has rightly been relied upon by the trial Court while acquitting the respondent-accused, considering his deposition that on 27.04.2004, respondent-accused was taken away by a constable in civil dress from the hospital in a Tata Sumo jeep to the police station and thereafter the respondent-accused did not turn up till 1.00 p.m. He had gone to meet the

him. Resultantly, he informed the family members of the respondent. The

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Investigating Officer too, during his cross-examination, has admitted that compounder of the respondent-accused was present at the time of alleged raid, who has specifically denied any raid having been conducted by the police on the alleged date and time. Testimony of the compounder is further corroborated by DW1 Ho Ram, independent witness, who has testified that on 27.04.2002, he had taken his ailing mare to the veterinary hospital at Village Aurangabad. Respondent-accused prescribed some medicines. During that process, the police had taken the respondent along with him to the police station. The testimony of this witness was further corroborated by the entry regarding his visit with his mare on the given date and time to the veterinary hospital. DW3 Dharmender has also corroborated the statements of DW1 and DW2, testifying that on the given date and time, he had visited the veterinary hospital with his ailing buffalo to whom the respondent had prescribed medicines. In the meantime, a policeman in civil dress had come to the hospital and took the doctor with him, asking the respondent that he was summoned by the DSP. DW4 Dhan Singh has also deposed on the similar lines.

PW4 Sanjay Ahlawat, Investigating Officer, did not ever claim about hearing of the conversation between the complainant and the respondent regarding alleged demand of bribe. Instead he testified that he had merely seen passing of ₹300/- by the complainant to the respondent.

It would be apt to mention that complainant did not support the prosecution version rather turned hostile. Therefore, it cannot be said that prosecution has been able to prove its case to the hilt. Even the form for obtaining buffalo loan to fill up for which, respondent demanded ₹300/-,

was not taken into custody by the police.

There are major contradictions in the prosecution story.

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According to the Investigating Officer, complainant Mahabir was instructed to give a signal by putting his hand on his head to the shadow witness after passing on the bribe amount to the respondent, but the complainant signalled to him by twirling his moustache. Since the complainant had acted contrary to the instructions given to him for signal, therefore, it was impossible for the Investigating Officer to understand the signal of the complainant. It is not explained under which circumstances a wrong signal given by the complainant was rightly understood by the Investigating Officer.

PW9 Rajiv Sharma, official recovery witness, also did not identify the respondent in the Court. He testified that he could not say as to whether the person from whom the money was recovered was present in Court. Therefore, the prosecution could not prove its case to the hilt beyond any shadow of doubt.

In view of above, finding no merit in the appeal, same is dismissed.

July 31, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No