

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

Crl. Appeal No.S-2129-SB of 2011 (O&M)

Date of Decision: December 01, 2018

Dr.Vikas Chauhan

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Advocate
for the appellant.

Mr.Sharad Kumar Yadav, 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 09.08.2011 passed by learned Addl. Sessions Judge, Kurukshetra, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 7 of the Prevention of Corruption Act and further, to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 13 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 Addl. Sessions Judge, Kurukshetra, are as under:-

“2. Briefly stated the prosecution case is that on 5.4.2008, the complainant Shamsher Singh came to State Vigilance Bureau, unit, Kurukshetra (for short SVB) and submitted a written complaint Ex.P28 to the Inspector Vigilance, Kurukshetra to the effect that he was posted as Multiple Purpose Health Worker MPHW, at Sub centre Jyotisar. This sub centre used to come under the Primary Health Centre, Barna. Accused Vikas Chauhan was Incharge of this Centre. The complainant had availed long leave w.e.f. 24.3.2008 to 30.3.2008. He had come back to join his duty on 30.3.2008. He met the accused and tried to submit his joining report but he was persuaded by the accused to reach at Jyotisar temple on the plea that on that date Polio programme was performed at Jyotisar temple and his presence was required. The complainant reached at Jyotisar temple and performed his duty in the polio programme on 30.3.2008. Thereafter he performed his duty at the sub centre Jyotisar on 1.4.2008 and 2.4.2008. On 3.4.2008, he attended the monthly meeting of District Medical Officer. Now, he had been transferred to Sub Health Centre, Fattupur. Now, the accused was demanding a sum of Rs.4000/- from him in lieu of accepting his joining report dated 30.3.2008 and issuing a letter in this regard and was threatening to call for an explanation. He alleged that the accused was telling him that he had not submitted his joining report and he will also ask for an explanation if the complainant did not give him the bribe money. The complainant alleged that the accused was also giving threat to get him suspended and of not relieving him in pursuance of the transfer order. He further alleged that on 4.4.2008 the complainant had called him twice/thrice on his

mobile phone and had raised demand of money. The complainant had also made a request to him on 5.4.2008 but again the accused had raised demand of money. The complainant further alleged that the accused had told him to arrange for money and to give him the same till 11.00 a.m. on 5.4.2008. He alleged that he had told the accused that he would arrange for money from his uncle and would give him the same. It was further alleged by the complainant that on his request the accused had reduced this demand from Rs.4000/- to Rs.3000/-. He alleged that he did not want to give any bribe to the accused and prayed for taking action against the accused. On this, the police started investigation. Endorsement was made. FIR was registered. Inspector Karta Ram along with complainant visited the office of Deputy Commissioner, Kurukshetra and moved an application for appointment of duty officer to conduct raid for the purpose. Shri R.K.Sharma, District Revenue Officer (for short "DRO") Kurukshetra was deputed to join the raiding party. The complainant had given one currency note of Rs.1000/- denomination and four currency notes of Rs.500/- denomination. A list was prepared. Currency notes were initialed by the duty officer Shri R.K.Sharma and Inspector Karta Ram and were handed over to the complainant after applying phenolphthalein powder (for short "P" Powder). The complainant was asked to handover the said amount to the accused on demand of bribe. SI Tajinder Kumar was deputed as a shadow witness with direction to listen up the conversation between the accused and the complainant and to give a proper signal. The raiding party reached at the place fixed by the accused and the complainant. On receipt of agreed signal from the shadow witness, the accused was apprehended. The currency notes were recovered from the possession of the accused and were taken into custody. Different washes were conducted. The currency notes and

other articles were converted into parcels and were taken into custody by the police. Statements of the witnesses were recorded. The site plan was prepared. Accused was arrested. After completion of necessary investigation proceedings and usual formalities, challan was presented before 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 of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Sanju Chauhan, formal witness, who mainly deposed that he obtained the car bearing registration No.CH-01U-7300 on sapurdari. PW-2 Krishan Kumar mainly deposed that police officials asked him to prepare a C.D. from the recording of mobile Nokia No.2626 and he prepared the same and handed over the CD to the police. The said C.D. is Ex.P2 and it was prepared intact of recording of mobile No.94166-55126. PW-3 SI Tejender Kumar deposed that he was posted as Sub Inspector in police station SVB Ambala. He is a shadow witness. He deposed that he was called by Inspector Karta Ram, Incharge SVB Unit, Kurukshetra as a raid was to be conducted. He reached at SVB Unit, Kurukshetra. When he reached there, the application had already been scribed by Shamsheer Singh. Thereafter, Inspector Karta Ram went to Deputy Commissioner/District Magistrate, Kurukshetra, to get appointed a gazetted officer to join the raid party. Sh.R.K.Sharma was appointed to join raiding party. This witness also stated in chief-

examination that complainant Shamsher Singh went to the accused and he asked from the complainant, as to whether, he had brought the money. On this, the complainant passed the money to the accused, who put the same on the dash-board of the car. The whole occurrence was witnessed by him. He passed on the signal to the raiding party and raiding party reached at the spot and also deposed regarding further proceedings. PW-4 Mukesh Kumar, Draftsman, mainly proved the scaled site plan Ex.P6. PW-5 Ved Parkash, Retd. Inspector, deposed that he prepared the report under Section 173 Cr.P.C. PW-6 Ram Kishan, Superintendent, brought the summoned record and deposed that Dr.Vikas Chauhan, was appointed as Medical Officer and his appointment order is Ex.P7. He was transferred from PHC Kirmach to PHC Barna vide order dated 15.9.2003, copy of which is Ex.P8. He also proved the joining report of the accused. PW-7 Dr.C.R.Khatri mainly deposed regarding handing over of copy of duty sheet of the officials in Pulse Polio campaign on 30.3.2008 and 03.4.2008 regarding the attendance of Shamsher Singh. He also proved on record other documents regarding attendance of Shamsher Singh. PW-8 Mohan Lal, Administrative Officer, mainly deposed regarding appointment order as well as amended appointment letter of accused Ex.P7/A PW-9 Dale Ram, Retd. Under Secretary, deposed regarding the sanction order Ex.P22 and forwarding letter of the same Ex.P23. PW-10 Sh.Pradeep Kumar, Addl. Sessions Judge, Nuh, mainly deposed that police moved application Ex.P24 for recording statement of Shamsher Singh. Shamsher Singh was produced in his court and he felt that complainant was under pressure of police, so Shamsher Singh was directed to appear on next day i.e. 07.06.2008 and he passed the order in this regard, which is Ex.P25. On 07.06.2008, Shamsher Singh

appeared in his Court and on that day, his statement Ex.P26 was recorded. He appended certificate Ex.P26/A under his signatures and passed the order Ex.P26/B. PW-11 Head Constable Balkar Singh, formal witness, deposed regarding delivery of Special Report. PW-12 R.K.Sharma, DRO, is the recovery witness and he deposed as per prosecution version. PW-13 Shamsher Singh, complainant deposed that on 05.04.2008, he again received a telephonic message from Dr.Vikas Chauhan, who directed him to arrange said money till 11.00 a.m., otherwise, his explanation would be called for. Again, he received a call on landline No.01744-274639 at 10.21 a.m. on the same day and asked for the arrangement of the money. He told accused that he has asked his *mausa* for arranging the money and he also requested that if and when the arrangement of money will be made, he shall inform him and also requested the accused to minimize the amount upto ₹3000/- and accused agreed for the same. He never wanted to pay money to Dr.Vikas Chauhan. Then he made complaint to the Vigilance Office and they asked him to come to the office of SVB Unit, Kurukshetra, where, Inspector Karta Ram met him. He told Inspector Karta Ram that accused was demanding money from him but he does not want to pay money. He also stated that he had recorded the version on his cell phone in this regard. He wrote down the complaint Ex.P28 and handed over the same to Inspector Karta Ram, which bears his signatures. He gave ₹3000/- to Inspector Karta Ram out of which, one currency note was in the denomination of ₹1000/- and remaining were in the denomination of ₹500/- each. He further deposed as per prosecution version. PW-14 Inspector Karta Ram, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW-15 Head Constable Ashok Kumar mainly deposed

regarding handing over the case property to ASI Rajinder Kumar for depositing the same with FSL. PW-16 ASI Rajinder Kumar, deposed regarding recording of formal FIR Ex.P28/B.

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 as under:-

“I am innocent and I have been falsely implicated in the present case. Nothing has been recovered from my possession and a false case has been planted upon me by the police at the instance of complainant Shamsher Singh. The investigation is false and tainted and entire proceedings are fake one. There are many glaring instances of untruthfulness in the case. There is no case at all against the accused. Complainant Shamsher Singh is a political bug and used to remain absent from duties time and again. He used to threaten the officials working with him. He, many times, contested the elections of the Cooperative Societies without the permission of the Department. Explanations were called time and again about his mis-conduct and absentation from duty. He was found absent from duty many times by the superior officers of the Health Department and thus, explanations, were called and he was reprimanded. Looking to the situation, he applied for his transfer from Jyotisar Centre which fell under P.H.C. Barna. He succeeded in getting him transferred from there on 12.3.2008. His transfer orders were received by the District Maleria Officer on 31.3.2008 and the intimation of the same was also received in C.H.C. Mathana on 4.4.2008. After 31.3.2008, he started managing the affairs under the guidance of a politician to falsely implicate me in a false case. Ultimately, he succeeded in getting me involved in the present false case. Nothing was recovered from my possession”

In defence, accused examined DW-1 Dr.K.K.Sharma, who mainly deposed that he was entrusted with an enquiry against Dr.Vikas Chauhan and his wife working in PHC Barna, moved by Shamsheer Singh, by Civil Surgeon, Kurukshetra vide office letter dated 12.08.2008. He conducted the enquiry on 10.09.2008. Before that, he issued notices to Dr.Vikas Chauhan and Shamsheer Singh. On his notice, both of them joined in the enquiry and statements of both the sides were recorded. He submitted his enquiry report to the Civil Surgeon on 01.02.2008. This witness brought the original enquiry report, attested copy of which is Ex.DW1/B. DW-2 Anil Kumar, Laboratory Technician mainly deposed that a letter was entrusted to him by Dr.Vikas Chauhan for delivering the same in District Malaria Office, Kurukshetra. DW-3 Mrs.Anita Kashyap, Staff Nurse deposed that in the months of March and April, Shamsheer Singh had altercation with Dr.Vikas Chauhan many a times in her presence. Many times, Shamsheer Singh did not attend his duties properly, whereupon Dr.Chauhan used to reprimand him. On 02.04.2008, she was present in the office of Dr.Vikas Chauhan and it was about 2.00 p.m. Shamsheer Singh was also present in the office. At that time, Dr.Vikas Chauhan was giving him a letter calling his explanation but Shamsheer Singh was not accepting the same. In her presence, Shamsheer Singh told Dr.Chauhan that he had been issuing such like letters previously also and now, he will not receive that letter. Saying so, while leaving the room, Shamsheer Singh said that he would see the doctor and would get him involved. DW-4 Dr.T.P.Nagar, District Health Officer, deposed that Shamsheer Singh, MPHW, was working in Sub Centre Jyotisar. He used to remain absent from duties without any

permission or information. He visited the Sub Centre, Jyotisar on 24.09.2007 and found Shamsheer Singh absent from duty from 21.09.2007 to 24.09.2007. He also made his endorsement in the attendance register which is Ex.DW4/A and certificate underneath the same is Ex.DW4/B, which bears his signature and stamp. This witness further similarly deposed regarding absence of Shamsheer Singh from duties.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant 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 accused-appellant has been falsely implicated by complainant Shamsheer Singh, who used to remain absent from duty and his explanations were sought and his complaint was made to higher officers. Therefore, he was inimical to the accused and in connivance with the Investigating Officer and other officials of State Vigilance Bureau (SVB), implicated the accused-appellant in the present case. Learned counsel for the appellant further argued that the appellant neither demanded any money nor he accepted any bribe money. He next argued that except complaint, there is no other private witness to support and corroborate version of the complainant. PW-3 Tejender Kumar is police official i.e. Sub Inspector in SVB, who was made as a shadow witness. No reason or explanation has been given as to why private independent person was not joined as a shadow witness, which creates reasonable doubt. He also contended that in the cross-examination SI Tejender Kumar stated that he has not heard the conversation regarding demand of bribe money. Learned counsel for the appellant further

contended that as per the case of the complainant himself, as deposed in the evidence by him, he received the last call regarding demand on landline telephone at 10.21 a.m. and then, he went to SVB, Kurukshetra where, he says, he scribed the complaint/application and endorsement under the complaint/application shows the time as 10.30 a.m., which is impossible that within nine minutes, the complainant went to SVB and then he scribed the complaint and then endorsement was made by Inspector Karta Ram, Investigating Officer. It is mentioned in the application that Shamsher Singh had received the telephonic call on landline on that day at 10.21 a.m. Learned counsel for the appellant argued that this fact falsifies the case of the prosecution. He further argued that as per prosecution version, the matter was reported to the police, at the most at 10.30 a.m. on 05.04.2008 but as per statement of PW-3 SI Tejender Kumar, shadow witness, he was posted as Sub Inspector in SVB, Ambala and he received telephonic call for coming to Kurukshetra earlier in the morning for participating in the raid. When first time, Inspector Karta Ram, Investigating Officer came to know regarding demand of bribe by the accused at 10.30 a.m., how PW-3 supposed to know about three hours earlier in the morning that a raid is to be conducted against the accused-appellant. Learned counsel for the appellant argued that this fact itself shows that accused-appellant has been falsely implicated in this case after pre-planning. He also contended that as per evidence on record, accused was asked by the Investigating Officer to hand-over the money from the dashboard of the car and accused handed over the same to the Investigating Officer. If that is the case, then, he argued that there was no purpose of washing hands and conducting other proceedings. 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. PWs have consistently deposed regarding the prosecution version. He further argued that demand and acceptance of bribe is duly proved by the witnesses. The official witnesses have no enmity or motive against the accused-appellant to falsely implicate him. 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, I find that PW-13 Shamsher Singh has specifically stated in his deposition that he received telephonic call on landline No.01744-274639 at 10.21 a.m. on the same day and asked for the arrangement of the money. He told accused that he has asked his *mausa* for arranging the money and he also requested that if and when the arrangement of money will be made, he shall inform him and also requested the accused to minimize the amount upto ₹3000/- and accused agreed for the same. He never wanted to pay money to Dr.Vikas Chauhan. Then he made complaint to the Vigilance Office and they asked him to come to the office of SVB Unit, Kurukshetra, where, Inspector Karta Ram met him. He told Inspector Karta Ram that accused was demanding money from him but he does not want to pay money. He also stated that he had recorded the version on his cell phone in this regard. He wrote down the complaint Ex.P28 and handed over the same to Inspector Karta Ram, which bears his signatures. This

a.m. The conversation took place between the complainant and accused for sometime and then, the complainant rang up Inspector Karta Ram, who asked him to come in the office of SVB. Then, complainant went there and told about the demand of bribe by the accused. Thereafter, as per the statement of PW-13, he wrote the complaint. The complaint bears detailed note of Inspector Karta Ram and endorsement at the last has been made at 10.30 a.m. All this happened within 8-9 minutes, which creates doubt in the prosecution version, especially when the accused has duly proved that Shamsher Singh, who was working under him, used to remain absent from duty and so many notices have been given. This fact is also proved by the DWs regarding absence of the complainant from his duties. This fact further shows that complainant was inimical towards the accused-appellant and as per DW-3 Mrs.Anita Kashyap, the complainant has even given threat to the accused to involve him in some matter.

Secondly, from the evidence on record, I find that PW-3 SI Tejender Kumar, SVB, Ambala, is shadow witness in the present case. First of all, he is official witness of SVB. There is no explanation as to why private person has not been made shadow witness in the present case. This fact, in the facts and circumstances, shows that version of the prosecution is doubtful. PW-3 SI Tejender Kumar has stated in his chief-examination that he was posted as Sub Inspector at SVB, Ambala. On 05.04.2008 he was called by Inspector Karta, Incharge SVB Unit, Kurukshetra, as a raid was to be conducted. When he reached there, the application had already been scribed by Shamsher Singh, who is complainant of this case. In cross-examination, this witness specifically stated that on 05.04.2008, he was

may be 8.30 a.m. Sh.Mohinder Singh Ahlawat, was the I.G. at that time, whereas, SI Rajinder Singh was working as his Reader and the said Reader told him that he along with other police officials should go to SVB Unit, Kurukshetra and to report his presence to Inspector Karta Ram posted at Kurukshetra. Thereafter, he accompanied Jagjit Singh, driver of Sumo, Head Constables Karan Singh and Balwant Singh and left SVB Ambala for Kurukshetra. He made his entry of departure in Daily Diary Register of SVB Ambala. In further cross-examination, PW-3 SI Tejender Kumar deposed that he has brought Daily Diary Register pertaining to SVB, Ambala of 05.04.2008. His posting was in Police Station Ambala and according to entry No.12 of DDR pertaining to 05.04.2008, he had left the police station SVB, Ambala in Tata Sumo on 05.04.2008 at 7.30 a.m. along with Head Constable Balkar Singh, Constable Jagtar Singh and Constable Balwan Singh.

This fact that SI Tejender Kumar was summoned from Ambala and was directed to meet Inspector Karta Ram for conducting raid and he started in the morning at 7.30 a.m., falsifies the whole prosecution version. It means that there was already pre-planning to conduct the raid in the morning itself on 05.04.2008, when shadow witness was called from Ambala, who started in the morning at 7.30 a.m. The prosecution version, that complainant, first time, informed Inspector Karta Ram at 10.30 a.m., in the morning regarding demand of bribe, is doubtful. This version of the prosecution cannot be relied upon in these circumstances. Keeping in view the fact that complainant has enmity with the accused and shadow witness is official witness, I find that reasonable doubt exists in the prosecution

version. Furthermore, there is no purpose of washing the hands of the

accused when the Investigating Officer himself asked the accused to hand-over the money, which was lying on the dashboard of the car and accused handed-over the same to the Investigating Officer after picking up from the dashboard of the car. Moreover, there is no cogent evidence on record regarding demand of bribe, except the statement of the complainant, as shadow witness, in cross-examination, has specifically stated that he had not heard conversation between the complainant and the accused at the time of raid.

Keeping in view the above discussion, I find that the judgment of conviction and order of sentence dated 09.08.2011 passed by learned Addl. Sessions Judge, Kurukshetra, are not as per law and the same are set aside. Appellant Vikas Chauhan, is acquitted of the charges framed against him.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Dr.Vikas Chauhan, is on bail, his bail/surety bonds stands discharged.

December 01, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No