

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-1883-SB of 2014

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Date of decision:20.7.2018

Naresh Kumar

...Appellant

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gopal Sharma, Advocate for the appellant.

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Inderjit Singh, J.

This appeal has been filed against the impugned judgment dated 17.2.2014 passed by learned Special Judge, Kaithal, vide which the accused has been acquitted in FIR No.17 dated 30.8.2011 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act (hereinafter referred to as 'the PC Act') at Police Station State Vigilance Bureau, Ambala.

The challan has been presented against Satpal-accused in FIR No.17 dated 30.8.2011 registered for the offences under Section 7 and 13 of the PC Act at Police Station State Vigilance bureau, Ambala.

The brief facts of the case as noted down by learned Special Judge, Kaithal, in his judgment dated 17.2.2014 are as under:-

“That on 23.1.2013, Inspector Ranbir (PW-11) was present in

his office at State Vigilance bureau (SVB) Unit Kaithal, meanwhile, complainant Naresh Kumar (PW-12) along with one Azad Singh (PW-13) came there and submitted a written complaint (Ex.PA) alleging therein that his father Aadi Purush and uncle Ishwar own about 10 acres of land in Village Harsola and they both are agriculturists by profession. In the Jamabandi pertaining to year of 2005-2006, the rectangle No.23 has been entered in the revenue record instead of rectangle No.22 due to inadvertence. His father and uncle both are uneducated. It has further been alleged that for correction in the revenue record, he had approached the accused Sat Pal Patwari for a number of time, but he demanded Rs.2,000/- as illegal gratification for making the necessary correction in the revenue record, but he does not want to give the bribe money to the accused and necessary action may be taken against him. He had also produced four currency notes of the denomination of Rs.500/- each to the investigating officer Inspector Ranbir Singh (PW-11), which were taken in police possession after preparing the list of currency notes (Ex.PK) by the investigating officer and he had also made his endorsement (Ex.PK/1) on the Rukka and sent the same to Police Station SVB Ambala through Constable Ramesh Kumar (PW-8), where on the basis of the same, formal FIR (Ex.PA/1) was registered by Inspector Satbir Singh (since retired) (PW-1) and he had also made his endorsement

(Ex.PA/2) on the Rukka and sent the special reports through Constable Ramesh Kumar (PW-8) to the quarter concerned. The investigations were commenced. The Investigating Officer Inspector Ranbir Singh (PW-11) arranged the raiding party consisting of the complainant Naresh Kumar (PW-12), Azad Singh (PW-13) and other officials and reached the office of Deputy Commissioner, Kaithal for obtaining the permission to conduct raid and for appointment of Duty Magistrate and moved the application (Ex.PN) before Deputy Commissioner Kaithal, who appointed Sh. Kishori Lal Tehsildar (PW-10) as Duty Magistrate. Thereafter, the raiding party reached the office of Sh. Kishori Lal Tehsildar, Pundri and apprised him of the facts of the present case. The Tehsildar verified the facts of the case and tallied the currency notes of the denomination of Rs.500/- each with the list (Ex.PK) which were found to be the same. The investigating officer and the Duty Magistrate appended their initials on each currency note and then the investigating officer applied phenolphthalein powder on the currency notes. The search of the complainant was taken and the currency notices were handed over to him vide Hawalgi Memo (Ex.PJ) with a direction to give the currency notes to the accused on his demand. Azad Singh (PW-13) was appointed a shadow witness and a direction was given to him to remain with the complainant at some distance and to hear the

conversation between the accused and the complainant and to flash a signal to the raiding party as and when the accused received the bribe money. Thereafter, the raiding party reached the office of the accused. The complainant and the shadow witness were sent to the office of the accused and the remaining raiding party remained present at some distance. After sometimes, the raiding party received the signal of the shadow witness and immediately the raiding party reached the spot and the investigating officer as well as Duty Magistrate disclosed their identity to the accused. The antecedents of the accused were also known. Thereafter on the direction of the investigating officer and the Duty Magistrate, the accused produced the bribe money received by him from the complainant out of the pocket of the shirt worn by him. The recovered currency notes were tallied with the list (Ex.PK) already prepared which were found to be the same bearing the initials of the investigating officer as well as the Duty Magistrate. Tainted notes were put in an envelope and converted into parcel. Thereafter, a jug and water were arranged and mixture of sodium carbonate was prepared. First of all, the left hand of the accused was got washed and the colour of the mixture became pinkish which was put in a nip and converted into parcel. The jug was cleaned and again the said mixture was prepared. Both the hands of the complainant

were got washed and the colour of the mixture became pinkish which was put in a nip and converted into parcel. The jug was again cleaned and again the said mixture was prepared. Thereafter the shirt worn by the accused was taken off and the pocket of the shirt was got washed in the mixture and similarly the colour of mixture became pinkish which was also put in a nip and made into a sealed parcel. The shirt of the accused was also converted into parcel after putting in a cloth bag. All the parcels were duly sealed and specimen impression of the seal was also prepared. All the parcels were taken in police possession vide recovery memo (Ex.PL), photo copy of jamabandi pertaining to year of 2005-2006 was also collected and the same was taken in police possession vide memo (Ex.PM), the spot was inspected, rough site plan (Ex.PO) of the place of occurrence was prepared with correct marginal notes, the statements of the witnesses were recorded, the accused was arrested, personal search of the accused was taken as per rules, the accused was got medico legally examined and then taken to the police station and put behind the bars. All the parcels were deposited with MHC. On the next day, the accused was produced before the learned Magistrate and he was remained (sic. - remanded) to judicial custody. During further investigations, the sealed site plan (Ex.PF) was got prepared from Rishi Pal Police Draftsman (PW-5), the necessary

documents were collected and taken in police possession. After completion of necessary investigations, final report under Section 173 of the Cr.P.C. was prepared and presented in the Court for putting the accused on trial.”

On presentation of challan, the trial Court finding prima facie case against the accused, framed charges for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 14 PWs and closed its evidence.

On the other hand, at the close of the 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. In defence he examined Jagdish Singh Patwari as DW-1 (wrongly mentioned as PW-1), Satnarain Halqa Patwari, Rakesh Kumar Draftsman, Vimal Kumar Assistant Banking, Mini Secretariat Kaithal, Pardeep Customer Assistant SBI Kaithal and closed the defence evidence.

After hearing learned counsel for the parties and going through the evidence on record, the learned trial Court, vide its impugned judgment acquitted the accused of the charges as framed against him.

Aggrieved against this judgment, the complainant has filed the appeal. First of all no application seeking leave to file appeal has been filed and learned counsel for the appellant requested for leave to appeal.

A perusal of the impugned judgment passed by learned Special Judge, Kaithal, shows that the findings given by the learned trial Court are correct as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. Nothing has been argued at the time of arguments, as to how the findings given by the learned trial Court are perverse or against the evidence or law.

It is admitted by the complainant himself that the shadow witness, namely, Azad Singh is his close friend whereas complainant party as well as the accused are from one common descendant. During cross-examination, he has also admitted that before raiding upon the accused on the basis of the complaint made by his son, his son had taken a loan from the accused, but he had denied the suggestion that due to some dispute, the accused has been falsely implicated in the present case. The trial Court held that when the father of the complainant had admitted this fact that his son, who happens to be the complainant, had taken loan from the accused, it was quite possible that the complainant was no longer interested to repay the friendly loan which he had raised from the accused by way of a cheque and moreover, cell phone numbers of the complainant as well as the accused had also been mentioned on the overleaf of the cheque issued by the accused and the payment was received by the complainant. PW-10 Kishori Lal, Tehsildar had deposed that both the hands of the accused were got washed with sodium carbonate whereas one of his hands had been amputated and it

appears that he has deposed in the Court as being an important witness in a very casual manner. He also admitted that on 20.3.2011, the Farad Badar regarding Killa Nos.23/2 and 24 were entered by the accused Sat Pal and he had further admitted that the work had already been done before conducting the raid upon the accused. It is the case of the accused that he had already done whatever was required from his side to make correction in the revenue record, then there was no occasion to raise the demand of bribe from the complainant party. Sat Pal Patwari, who had produced the record has deposed that this relevant entry including Farad Badar Ex.DA has already been recorded by the accused and forwarded to the Halqa Kanungo, namely, Mohinder Singh for doing the further needful. Further the trial Court held that the complainant had denied the relationship with the accused. From the copies of Farad Badar (Ex.DG and Ex.DH), it is proved that the complainant party and accused are from a common descendant. The trial Court discussing the evidence found that it was ulterior motive with mala fide intention that the complainant Naresh Kumar, who owed ₹30,000/- to the accused with an intention not to return it which in fact he had raised as friendly loan, the entire exercise has been done in order to implicate the accused falsely in the present case, particularly, when the work has already been done by the accused. The complainant, accused and the father of the complainant are from the common descendant and as such the testimony of these witnesses is to be scrutinized with all caution. After appreciating the evidence led by the complainant, the learned trial Court held that the accused has been falsely implicated by the complainant. The findings given

by the learned Special Judge, Kaithal are correct as per evidence and law. The accused has been acquitted by appreciating the evidence in right and proper perspective. The findings, in no way, can be held as perverse or against the evidence or law.

Therefore, from the above, I do not find any ground to interfere in the impugned judgment passed by the learned Special Judge, Kaithal and the same is upheld. No ground is made out for leave to appeal.

Finding no merit in the appeal, the same is dismissed.

July 20, 2018.

(Inderjit Singh)
Judge

hsp

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