

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

CRM No.A-274-MA of 2012 (O&M)

Date of decision: November 19, 2018

Dharam Parkash Dahiya

...Applicant

Versus

Naresh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Satnam Sishodia, Advocate
for the applicant.

None for respondent No.1.

Mr.Sukhdeep Parmar, DAG, Haryana
for respondent No.2-State.

INDERJIT SINGH, J.

Applicant-Dharam Parkash Dahiya has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Naresh Kumar and State of Haryana, challenging the judgment dated 06.12.2011 passed by learned Special Judge, Jhajjar, whereby accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that in case leave to file appeal is not granted, the applicant would suffer irreparable loss and injury. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that challan was presented against accused Naresh Kumar in case FIR No.223 dated 09.08.2005, under Sections 7 and 13 of the Prevention of Corruption Act. The brief facts of the case as noted down in the judgment passed by learned Special Judge, Jhajjar, are as under:-

“1. Briefly stated, the case of the prosecution is to the following effect. On 9.8.2005, complainant D.P.Dahiya made a complaint to the DSP, Bahadurgarh to the following effect. That he is the owner of plot No.45, at Sector-6, Bahadurgarh. Plot No.960 is owned by his relative Parveen Kumar. He wanted to get the transfer permission of plot No.45 and the final allotment of plot No.960 from the accused. Accused was working in the office of HUDA, Bahadurgarh. Accused had demanded a bribe of Rs.1100/- for each plot for performing the above said jobs. He also handed over Rs.2200/- in cash to the DSP, Bahadurgarh. Complainant sought suitable action by the police in this behalf. Thereupon, a raiding party was organized. Sh.Parveen Kumar was joined as a member in the said raiding party. Twenty two currency notes of Rs.100/- each quoted with phenolphthalein powder were handed over to witness Parveen Kumar. Shadow witness Dharam Parkash Dahiya was directed to give a signal upon receipt of bribe money by the accused. In pursuance of a trap, witness Parveen Kumar handed over the said currency notes to the accused in his office upon demand of bribe by the accused. Thereafter, upon receiving the signal from shadow witness, the bribe amount was seized from the accused by the raiding party. The hands of the accused, pocket of his pant and the currency notes were got washed in separate sodium carbonate solutions, which had turned pink in colour. Thereafter, the accused was arrested by the police. Statements of the witnesses were recorded by the police. After completing all the

formalities, police had filed the requisite challan against the accused under sections 7 and 13 of the Prevention of Corruption Act.”

Finding prima facie case, the accused was charge-sheeted under Sections 7/13(1)(d)/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 Dharam Parkash Dahiya, PW-2 Parveen Kumar, PW-3 ASI Telu Ram, PW-4 EHC Ravi Shanker, PW-5 EHC Jai Chand, PW-6 ASI Ram Bhagat, PW-7 Bhim Sain Bansal, PW-8 Anil Dhawan, DCP Crime, PW-9 Inspector Sat Narain, SHO, PW-10 Rampal, Clerk and PW-11 SI Dharambir Singh (Retd.)

At the close of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. He denied the correctness of the evidence and pleaded his false implication. In defence, accused examined DW-1 Jaipan Singh, Clerk, DW-2 Sh.Sant Lal Pachar, HCS, DW-3 Balbir Singh, Deputy Superintendent, DW-4 Bhim Sain Bansal, DW-5 Sh.Manoj Kumar, HCS, DW-6 Sh.M.Sharma, HCS and DW-7 Sh.Samwartak Singh, Joint Director.

Learned Special Judge, Jhajjar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 06.12.2011.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned State counsel appeared. Earlier, learned counsel for respondent No.1 appeared but today,

none has put appearance on behalf of respondent No.1.

Lower Court record was also requisitioned.

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

The perusal of the findings given by learned Special Judge, Jhajjar shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court.

The perusal of the record shows that during the tenure of the accused, sanction has been refused by the competent authority but when the accused retired from service, then the competent authority gave the sanction. It is settled law that if sanction has been refused when the accused was in service, then, challan cannot be presented after his retirement on the ground that no sanction is required under Section 19 of the Prevention of Corruption Act when the public servant has retired. In the present case, granting of sanction second time after the retirement, is of no consequence. Sanction has already been refused by the competent authority at the first stage for prosecuting the accused in this case. Therefore, on this ground, accused is entitled to acquittal.

Next, I find that no independent person was joined in the police party. The demand has been raised from complainant Dharam Parkash Dahiya but he has been made as a shadow witness. The money was given

and no independent person was joined as a shadow witness in this case. The decoy person and the shadow witness are interested witnesses.

Furthermore, DSP Anil Dhawan requested the District Magistrate to provide him Duty Magistrate and Duty Magistrate was promptly provided to him. Even then, the Investigating Officer did not intentionally join the Duty Magistrate in the raiding party and conducted the raid without him, which further creates doubt in the prosecution case and there is no explanation as to why the Duty Magistrate, who was promptly provided, was not joined in the raiding party. There is no other independent person.

Learned trial Court has held that shadow witness was very close relative of decoy witness, rather, is the complainant himself. Therefore, this is again the basic principles of natural justice and fairness. The complainant is highly interested witness who wants to get the accused trapped. Independent witness could have been joined to oversee the real transaction between the complainant and the accused. Learned trial Court further held that the conduct of Investigating Officer DSP Anil Dhawan, is also not beyond doubt as to why he has not joined Duty Magistrate, who, as per his request, has been promptly provided by the District Magistrate.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 06.12.2011 passed by learned Special Judge, Jhajjar, is

correct, as per law and evidence and does not require any interference from

this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

November 19, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No