

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

**CRM No.34640 of 2018 in/and
CRA No.S-3061-SB of 2014 (O&M)
Date of decision: October 26, 2018**

Sukhbir Singh

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.K.S.Phoolka, Advocate
for the applicant-appellant.

Mr.B.S.Virk, DAG, Haryana
for the respondent-State.

Mr.G.S.Sidhu, Advocate
for respondent No.2.

INDERJIT SINGH, J.

CRM No.34640 of 2018

Applicant Sukhbir Singh has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondents State of Haryana and Harcharan Singh, challenging the judgment dated 23.05.2014 passed by learned Addl. Sessions Judge, Sirsa, 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, therefore, prayed that leave to appeal be granted.

From the record, I find that challan was presented against accused Harcharan Singh in case FIR No.12 dated 03.06.2011 under Sections 7 and 13 of the Prevention of Corruption Act (for brevity 'PC Act) by police of Police Station SVB, Hisar. The brief facts of the case as noted down in the judgment passed by learned Addl. Sessions Judge, Sirsa, are as under:-

“2. Briefly, the prosecution case is that accused Harcharan Singh was working as Halqa Patwari of village Taruana, District Sirsa. Complainant Sukhbir Singh moved an application before the accused for partition of land. The application was supported by affidavits of all share holders of the land. About two months back, the accused entered a rapat to this effect in rapat roznamcha and all the formalities were completed by all the share holders but he was not effecting the next proceedings and demanded Rs.10,000/- as illegal gratification for the same. The complainant did not want to give the aforesaid bribe and he moved an application Ex.PC before Sh.Devi Lal, Inspector, Vigilance Sirsa for taking legal necessary action against the accused. On his application, Sh.Devi Lal Inspector (PW13) made his endorsement Ex.PC/1 and sent the same to the office of S.V.B.Hisar through constable Lalit Kumar where on its basis formal FIR Ex.PM was registered. Thereafter, a raiding party comprising of PW13 Devi Lal Inspector, complainant Sukhbir Singh, Virsa Singh ASI, Madan Lal ASI, constable Gurprem Singh reached in the office of DC Sirsa with application Ex.PP where they came to know that the D.C.Sirsa was out of station. Thereafter, they reached in the office of A.D.C.Sirsa and moved application Ex.PP and on that application Sh.Jagdish Chander Excise And Taxation Officer, Sirsa was appointed as Duty Magistrate vide order Ex.PP/1 by the A.D.C.Sirsa. Thereafter, PW13 reached in the office of Sh.Jagdish Chander E.T.O. who met there. He told him about the facts and introduced the complainant with him and shown order of A.D.C. and joined him in the raiding party and proceeded to Kallanwali. When they reached near Kalanwali they got stopped their vehicle and complainant Sukhbir Singh produced before him Rs.10,000/- of the denomination of Rs.500/- each, PW13 prepared list of numbers of the currency notes Ex.PD and, thereafter, he and Jagdish Chander ETO (PW-11) put their initials on the said currency notes and thereafter he applied phenolphthalein powder on the aforesaid notes. Thereafter, he handed over the said currency notes to complainant Sukhbir Singh (PW3) vide memo Ex.PE and directed him to hand over

the same to accused Harcharan Singh on demand and after handing over the same to the accused, he would pass the arranged signal to ASI Madan Lal who was appointed as a shadow witness. Thereafter, PW13 prepared demo wash with the manner that plain water was taken in a utensil and he mixed phenolphthalein powder and sodium carbonate in that water then the colour of the water was turned into pinkish. The solution was put into a nip and converted into a parcel and sealed with seal of SVB(H). The solution was taken into possession vide recovery memo Ex.PF. Memo Ex.PD was attested by complainant Sukhbir Singh (PW3) and Jagdish Chander ETO (PW11) and memos Ex.PE and Ex.PF were attested by the aforesaid witnesses and ASI Madan Lal. Thereafter, they all reached in the office of Tehsil Kallanwali and came to know that accused was not present there and he went to his office situated at Doctor Market, Kallanwali. Thereafter, they reached there and complainant Sukhbir Singh and shadow witness Madan Lal were sent to his office to perform their job. Accused Harcharan Singh, complainant Sukhbir Singh and Madan Lal ASI went to Baba Farid Hospital Kallanwali from there. The remaining members of raiding party followed them and took position at the back side of the gate of Baba Farid Hospital. After some time they received signal from the shadow witness and reached in a hall of Baba Farid Hospital where complainant Sukhbir Singh and accused Harcharan Singh were present and one another person was also present who was lying on the bed. Complainant told them that accused Harcharan Singh accepted bribe amount from him and handed over the same to that person who was lying on the bed. On enquiry that person disclosed his name as Swaran Singh resident of village Taruana (PW4) and produced the bribe amount and told that the same amount was given to him by accused Harcharan Singh after taking the same from the complainant. On checking the currency notes were found the same which were earlier handed over by PW13 to the complainant after putting initials by him and PW11 Jagdish Chander E.T.O. All the currency notes were converted into a sealed parcel after affixing the seal SVB(H) and were taken into possession vide recovery memo Ex.PG. Thereafter, hands of said Swaran Singh were got washed with the help of a clean water and sodium carbonate was mixed in that water and the water turned into pinkish in colour. This mixture was put into a nip and was converted into a sealed parcel after affixing the seal SVB(H) and the same was taken into possession vide recovery memo Ex.PI. Thereafter, hands of accused Harcharan Singh were got washed with a clean water and sodium carbonate was mixed in that water and then the colour of aforesaid solution was turned into pinkish and same was put in a Nip and converted into a parcel and sealed with the same seal and was taken into

possession vide separate recovery memo Ex.PH. Memo Ex.PG and Ex.PH and Ex.PI were attested by the witnesses. Thereafter, PW13 prepared rough site plan Ex.PQ of the place of recovery and recorded statements of witnesses Jagdish Chander ETO, Madan Lal ASI, complainant Sukhbir Singh and Swaran Singh and arrested accused Harcharan Singh in this case and was put in the lock up and deposited the case property with the P.S.SVB, Hisar.

3. PW13 interrogated accused Harcharan Singh and he suffered disclosure statement Ex.PM. During the course of investigation, PW13 collected the posting order of accused Ex.PW9/A , and letter Ex.PW9/B vide memo Ex.PN from Sanjay Chaudhary Naib Tehsildar Kallanwali. PW13 also collected the revenue record regarding land of complainant from Iqbal Singh Patwari and same was taken into possession vide recovery memo Ex.PB which was attested by Iqbal Singh Patwari and ASI Madan Lal. Thereafter, he produced the complainant Sukhbir Singh and Swaran Singh before Learned Illaqa Magistrate and got recorded their statements u/s 164 Cr.P.C. On 4.7.2011 PW13 had also taken in possession revenue record regarding pendency of mutation no.4362 from complainant vide memo Ex.PO. PW13 had also obtained sanction order from D.C. Sirsa to launch the prosecution against him. After completion of investigation, challan under section 173 of the Code of Criminal Procedure against the accused was presented and filed in the court for trial.”

On presentation of challan against accused-respondent, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused was charge-sheeted under Sections 7 and 13 of the PC Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined 14 witnesses. 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 all the incriminating evidence. He further pleaded that he did not demand any bribe from the complainant and nothing was ever

Vigilance Department at the instance of the complainant. He never demanded or accepted any amount from the complainant nor he handed over the same to Swaran Singh at any point of time. The mutation regarding the partition of the land for which he has been allegedly entangled in this case was already sanctioned by Naib Tehsildar on 24.05.2011, so there was no question of any demand of any amount in this case at all.

Learned Addl. Sessions Judge, Sirsa, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 23.05.2014.

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

Notice of the application was issued. Learned State counsel appeared and learned counsel for respondent No.2 also appeared and contested the application.

Lower court record was requisitioned.

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

The perusal of the findings given by learned trial Court 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 while passing the impugned judgment.

Further from the record, I find that at the time of raid, the amount has been recovered from Swaran Singh and not from the accused Harcharan Singh. Tainted currency notes were in the hands of Swaran Singh, who was in the hospital and brother of the complainant. It creates doubt in the prosecution version. If accused Harcharan Singh had demanded bribe of ₹10,000/- from the complainant for entering mutation etc. and has taken money as per prosecution version from the complainant then, why he would hand-over the same to Swaran Singh within one period i.e. within a very short period immediately, in which signal was given by the shadow witness, Investigation Officer and recovery witness came there and raid was conducted. Furthermore, it also looks unnatural that accused Harcharan Singh would give money to Swaran Singh by telling him that same be returned to him after adding an amount of ₹800/- of his share. There is no such case that accused had ever demanded bribe of ₹10,000/- with shares of other also. If the case of the prosecution is taken as it is that Harcharan Singh demanded ₹10,000/- as bribe and accepted the same, then, it is not believable that he would immediately hand-over this amount to brother of the complainant and also ask for more share from Swaran Singh i.e. ₹800/- and will ask him to pay him ₹10,800/- after adding his amount. The mere fact that hands of the accused were washed and water turned pink, there is every possibility that complainant may have shaken hands with the accused etc. The money was not recovered from the accused and this version of the prosecution is unnatural, therefore, reasonable doubt exists in the prosecution case.

Learned trial Court has also discussed the statement of ASI

Madan Lal, who was stated to be shadow witness and stated that he was standing 15-16 feet from the complainant, Swaran Singh and accused but he deposed as he was present in the room where occurrence took place. Learned Court below has discussed other evidence also in minute details. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 23.05.2014 passed by learned Addl. Sessions Judge, Sirsa, 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.

CRA No.S-3061-SB of 2014

As the application for grant of leave to appeal has been dismissed, as stated above and no ground is made out for grant of leave to appeal, consequently, present appeal stands dismissed.

October 26, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No