

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

Crl. Appeal No.S-1911-SB of 2003 (O&M)

Date of Decision: September 17, 2018

Roshan Lal

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Mehndiratta, Advocate
for the appellant.

Mr.Sukhdeep Parmar, Deputy Advocate General, 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 01.10.2003 passed by learned Addl. Sessions Judge/Special Judge, Yamuna Nagar at Jagadhri, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1,000/- under Section 7 of the Prevention of Corruption Act and to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2,000/- under Section 13(1)(d) of the Prevention of Corruption Act and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under each Section. 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/Special Judge, Yamuna Nagar at Jagadhri, are as under:-

“2. Brief facts of the prosecution case are; that on 6.2.2001 one Balwinder Kumar son of Rulia Ram, Harijan, resident of Dwarka Puri, Jagadhri, Distt. Yamuna Nagar approached the Inspector State Vigilance Bureau, Ambala and gave application Ex.PR, inter alia, alleging that he is an unemployed youth. That in order to run the business of dry-cleaning, he has submitted form in August 2000 with the office of Harijan Kalyan Nigam, Yamuna Nagar. That he has gone number of times in that office and has requested many times that his loan be sanctioned. That his loan after being sanctioned from P.N.B. Jagadhri has been sent to that office. Even yesterday, on 5.2.2000 he went in the office of Harijan Kalyan Nigam and one Roshan Lal Sewadar employed in that office told him that no purpose would be served by having rounds in the office and that unless an amount of Rs.500/- is paid to him as bribe, his work will not be done and after payment of this amount his work would be done. It has further alleged that being a poor and unemployed person, does not want to give bribe and action be taken against Roshan Lal.

3. Upon this complaint Ex.PR rukka Ex.PR/1 was sent to the police station for registration of the case and F.I.R. Ex.PR/2 was registered. Thereafter, Mohar Singh Inspector arranged a raiding party and reached Yamuna Nagar in the office of Deputy Commissioner and moved an application Ex.P5 seeking permission for conducting raid and for appointment of some gazetted officer. That the complainant then gave five notes of Rs.100/- denomination each for giving the same to the accused. He then prepared the list of notes. He alongwith City Magistrate put their signatures on the said notes. Then on each note phenolphthalein powder was applied and the notes were given to the complainant for being given to the accused as bribe. Sunil Kumar Constable was made shadow witness to make signal to the raiding party. Memo in this regard was prepared by him. Then Balwinder Kumar went inside the room where the accused was sitting and gave five notes to him. Then shadow witness gave agreed signal on which all the persons entered in the office where the accused was sitting. He, in the presence of City Magistrate conducted the search of the accused and recovered five notes of Rs.100/- denomination from the pocket of his pant. The notes Ex.P1 to Ex.P5 were then washed in the solution of Sodium Carbonate and it turned pink. The hands of the accused were also got washed in the solution of sodium carbonate and the same turned pink. The

pocket of the pant of the accused from which money was recovered was also got washed in the mixture of water and sodium carbonate and that too turned pink. All the wash were converted into sealed parcels and were sealed with seal SVB and were taken into possession vide memo Ex.PO. The seal after use was handed over to the City Magistrate, Yamuna Nagar. Site plan Ex.PU was also prepared. The accused was arrested. The complainant then handed over a cheque to him which was taken into possession vide recovery memo Ex.PQ. Case property was deposited with the M.H.C. The above referred wash were sent to F.S.L. Haryana, Madhuban and the Director vide its report Ex.PY opined that sodium carbonate and phenolphthalein were detected in Ex.1, 2 and 3.

After necessary investigation, challan was presented against the accused-appellant. 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 Section 7 and Section 13(1)(d) of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Constable Mulakh Raj, who proved scaled site plan Ex.PA. PW-2 Head Constable Ramesh Chand, is formal witness, who tendered into evidence his affidavit Ex.PB. PW-3 Vijay Kumar, Clerk, mainly proved the transfer and posting order of accused Ex.PC. He also proved copy of cheque issued by District Manager Ex.PD, copy of agreement executed by Balwinder Kumar complainant Ex.PE, copy of letter written by District Manager to Manager, PNB Ex.PF, copy of letter by the bank to the District Manager Ex.PG, copy of ration card Ex.PH etc. PW-4 Inder Singh Bishnoi, City Magistrate, deposed as per prosecution version. PW-5 Inspector Mohar Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-6 DSP Sant Lal (Retd.) deposed regarding preparing

of report under Section 173 Cr.P.C. PW-7 ASI Tejinder Kumar, is also formal witness, who tendered into evidence his affidavit Ex.PW. PW-8 Raj Kumar Singla, Superintendent, proved the sanction order. PW-9 Dr.Vijender Singh, Director FSL, proved the report Ex.PY. PW-10 Balwinder Kumar, complainant, deposed as per prosecution version as stated in the brief facts of the case. PW-11 Sunil Kumar Mehta, shadow witness, supported the prosecution version.

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. He denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that he has nothing to do with the sanctioning of loan to Balwinder Kumar. Balwinder Kumar never met him in the office in connection with the loan or issuing cheque. He has no concern with the sanction of loan and issuance of cheque. Accused further pleaded that he has never demanded any bribe from complainant Balwinder Kumar. He is simply a Peon and never dealt with any loan case.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that a false case has been planted upon the appellant. The cheque is to be issued by the accountant as deposed by PW-3. He further argued that there is photocopy of the cheque. PW-4 Inder Singh Bishnoi stated that shadow witness was not visible, therefore, he cannot hear the conversation.

He next argued that there are lot of discrepancies in the statements of the

PWs regarding presence of other employees, time, site plan etc. Learned

counsel for the appellant contended that PW-5 Inspector Mohar Singh has stated that complainant has not met him on 05.02.2001 and he has come to his office on 06.02.2001 at around 9.30 a.m. but when complainant Balwinder Kumar was examined, he stated that he went to the office on 06.02.2001 at 9.00 a.m. In cross-examination, he also stated that he had gone there on 05.02.2001 and he also visited the office of Nigam on 02.02.2001. Learned counsel for the appellant, in the alternative, prayed for reduction of sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. There is no reason or ground as to why PWs have deposed against the accused-appellant to falsely implicate him in this case. City Magistrate has also deposed regarding recovery from the present appellant. He also argued that presumption is there but there is no explanation regarding recovery from the accused and presumption has not been rebutted by the accused-appellant by giving any cogent explanation. He next argued that discrepancies in the statements of the witnesses are minor in nature and will not go to the root of the case. The demand and acceptance of bribe has also been proved. PWs have deposed consistently regarding the raid and there is no material contradiction or improvement in their statements. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

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

From the record, I find that in the present case, accused-appellant is Peon and the complainant is a poor person. There is no enmity

the police officials, City Magistrate against the appellant nor there is anything that complainant is, in any way, knowing to the police officials or City Magistrate or in any way, have influence. As there is no motive or enmity of the complainant with the accused-appellant, why he will falsely implicate the accused. Secondly, there is nothing on the record to show any enmity or motive upon the official witnesses including City Magistrate and there is nothing as to why they will depose against the accused-appellant, who is a Class-IV employee.

Furthermore, PWs have consistently deposed regarding the raid and there is no material contradiction or material improvement in their statements which may go to the root of the case. Similarly, after perusing the statements of material witnesses, I do not find anything in their cross-examinations, which may make their statements unreliable. The discrepancies pointed out by learned counsel for the appellant are minor in nature. Such type of discrepancies can occur in the statements of truthful witnesses due to gap of time. Otherwise also, currency notes having phenolphthalein powder have been recovered from the accused. The PWs have consistently deposed regard demand of bribe and acceptance of bribe by the appellant. The presumption under Section 20 of the Act is to be rebutted by the accused but accused has not given any explanation as to how currency notes came to him. There is nothing to disbelieve the statement of the City Magistrate, who is recovery witness.

Next, I find that it is in the evidence that after handing over ₹500/- to the accused by the complainant, the cheque was handed over to the complainant, photocopy of which is taken into police possession. The statement of the Investigating Officer that the complainant had come to his

office on 06.02.2001 to meet him is also supported and corroborated by the statement of the complainant in chief-examination. In cross-examination, the complainant stated that he had gone on 05.02.2001, which, in no way, can be held as discrepancy. Similarly, the question, whether shadow witness was visible to the accused or complainant, or not, should have been asked to the shadow witness. PW-4 Inder Singh Bishnoi has stated that shadow witness was not visible from the place, where he was standing. The better explanation would have been given by the shadow witness on this point.

Again, the argument that cheque was to be issued by the Accountant on 02.02.2001, is having no significance because it was handed over by the present appellant to the accused after receiving bribe money of ₹500/-. In no way, it can be held improbable as the cheque might have been issued on 02.02.2001 but it might be kept by present appellant and was handed over at the time of raid to the complainant. It is nowhere case of the prosecution that cheque was to be issued by the present appellant or he was demanding money for that purpose.

The discrepancies pointed out by learned counsel for the appellant are minor in nature and do not go to the root of the case. The prosecution has proved its case beyond reasonable doubt by leading cogent evidence. The complainant, shadow witness, City Magistrate and Investigating Officer have consistently deposed on material points. Therefore, the judgment of conviction dated 01.10.2003 passed by learned Addl. Sessions Judge/Special Judge, Yamuna Nagar at Jagadhri, is correct, as per law and does not require any interference from this Court.

find that accused-appellant has been suffering from long protracted criminal trial since 27 years. Keeping in view the facts and circumstances of the present case, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of one year under Section 7 and Section 13(1) read with Section 13(2) of the Prevention of Corruption Act instead of two years under each Section. However, sentence of fine and in default thereof, shall remain the same. Both the sentences shall run concurrently.

Accordingly, present criminal appeal stands dismissed with above-said modification in the sentence.

Since appellant Roshan Lal is on bail, his bail bonds stand annulled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

September 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No