

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

CRM No.A-287-MA of 2013 (O&M)

Date of decision: August 28, 2018

State of Punjab

...Applicant

Versus

Virsa Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Monika Jalota, DAG, Punjab
for the applicant-State.

Mr.L.M.Gulati, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-State of Punjab has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondent Virsa Singh, challenging the judgment dated 07.01.2013 passed by learned Special Judge, Amritsar, whereby accused-respondent was acquitted.

It is mainly stated in the application that impugned judgment of learned trial Court is against the law and facts. It is further stated that judgment of learned trial Court has caused grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that challan was presented against accused Virsa Singh in case FIR No.34 dated 15.11.2007, under Sections 13

(2) read with Section 7 of the Prevention of Corruption Act, by police of Police Station Vigilance Bureau, Amritsar. The brief facts of the case as noted down in the judgment passed by learned Special Judge, Amritsar, are as under:-

“2. Briefly, stated the prosecution story is that on 15.11.2007, one Daya Singh son of Jagir Singh, resident of village Cheeta Kalan, Tehsil and District Amritsar got recorded his statement with Ashok Kumar, Deputy Superintendent of Police (here-in-after referred to as the DSP), Vigilance Bureau Unit, Tarn Taran, which is to the effect that on 14.6.2006, he has purchased a land measuring one acre from Amrjit Singh son of Chanan Singh, resident of village Boot, District Amrtisar alongwith $\frac{1}{2}$ share of Tubewell connection No.K-1154, but subsequently aforesaid Amarjit Singh got the aforesaid tubewell connection transferred in his other piece of land, for which he (Daya Singh) had to file a Civil Suit in the court and for that purpose, copies of jamabandi and site plan regarding connection were required and accordingly, he moved an application in this regard to the Executive Engineer, Punjab State Electricity Board (here-in-after referred to as the PSEB), Jandiala, who has marked the same to the Sub Divisional officer (here-in-after referred to as the SDO), Bandala. On 14.11.2007, the complainant contacted Virsa Singh, Consumer Clerk, PSEB to obtain the copies of the aforesaid documents, who has made a demand of Rs.3000/-, but the complainant told him that he is a poor person and is unable to pay this much amount and consequently, a deal was struck for Rs.2000/- and he has called the complainant with amount of Rs.2000/- in the office for 15.11.2007. Since the complainant was not interested in paying illegal gratification, he has discussed the matter with Parminder Singh son of Ajit Singh, resident of village Shahabpur, Tehsil and District Tarn Taran, his friend, who has advised the complainant to approach the Vigilance Bureau. On 15.11.2007, the complainant alongwith Parminder Singh aforesaid reached in the office of the Vigilance Bureau, Tarn Taran and tendered currency notes of Rs.2000/- to take action against Virsa Singh, Consumer Clerk PSEB, Bandala and his statement was recorded, which was signed by him in English. Then Dr. Ranbir Singh and Tilak Raj, Pharmacist, Civil Hospital, Tarn Taran reached there and they were introduced with Daya Singh and shadow witness Parminder Singh and they were associated with the police party. Then four currency notes of Rs.500/- each bearing No.7EG997921, No.6AP-348693, No.4 BQ-897299 and No.6 AH-844827, total amounting to Rs.2000/- were smeared with Powder

phenolphthalein and were handed over to Daya Singh so as to further hand over to Virsa Singh on demand as illegal gratification and to make a signal to the police party. Parminder Singh, one of the shadow witness, was also advised to accompany Daya Singh to the seat of aforesaid Virsa Singh to hear the conversation between them and to give a signal to the police party by putting hand on his head. Recovery memo of the currency notes was prepared, which was signed by the attesting witnesses. Then a water mixture was prepared in a glass of water and detergent powder was put in the same, but colour of the water was not changed, but when a piece of paper smeared with phenolphthalein Powder, colour of the water changed to light pinkish. The entire raiding party has cleaned their hands with soap. From the statement of Daya Singh, offence under Section 13 (2) read with Section 7 of the Prevention of Corruption Act 1988 was disclosed and accordingly, Ruqa was sent through HC Amanpreet Singh No.9/50, Vigilance Bureau, Amritsar. Special reports were sent. Raid was conducted. Accused was nabbed while accepting currency notes of Rs.2000/- with his right hand. DSP Ashok Kumar disclosed his identity to Virsa Singh. Then after completion of investigation, challan against the accused was prepared and presented in the Court.”

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 Section 13(2) read with Section 7 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.Ranbir Singh, PW-2 Daya Singh, PW-3 Bawa Dass, PW-4 ASI Hardeep Singh, PW-5 Smt.Shashi Bawa, PW-6 Balwinder Singh, PW-7 Parminder Singh, PW-8 Narain Singh, PW-9 Som Nath, PW-10 Ashok Kumar DSP (Retd.), PW-11 Rashpal Singh, PW-12 Kashmir Singh and PW-13 Bawa Dass (renumbered).

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.

Learned Special Judge, Amritsar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 07.01.2013.

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 counsel for the respondent appeared and contested the application.

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

From the record, firstly, I find that in the present case, when the statement of PW-2 Daya Singh was recorded, he suppressed the true facts before the Court and he was got declared hostile by learned Public Prosecutor (PP) and then he was cross-examined by learned PP and in the cross-examination he stated the facts as per prosecution version. In the examination-in-chief, Daya Singh stated that when he handed over the money to the accused, shadow witness Parminder Singh accompanied him, who passed the signal as and when transaction was over and then vigilance officials came and caught hold the accused. Then, scuffle between him and accused started and vigilance officials asked him to sit outside so that matter may not aggravate. This statement of complainant regarding the raid, creates reasonable doubt in the prosecution version. Furthermore, Daya Singh stated that money was taken by accused and he put the same in his pocket of his pant, whereas, as per Investigating Officer, the currency notes

were recovered from the table. PW-7 Parminder Singh deposed that he along with complainant went to the office of DSP and currency notes were handed over to Daya Singh, complainant, at that time, he stated that, no document was prepared by the DSP in his office. This witness was also got declared hostile by the learned PP and then cross-examined by learned PP. The recovery witness PW-1 Dr.Ranbir Singh, has nowhere deposed regarding demand and acceptance of bribe. Furthermore, in the present case, there is no document on record to show that the file in question was ever dealt with by the accused-respondent. Rather, PW-12 Kashmir Singh has stated that the file in question was never dealt with by the accused-respondent. PW-3 Bawa Dass also deposed that he along with Virsa Singh, used to sit in the same office but he had never seen Daya Singh complainant visiting the office in connection with any official work. This witness was got declared hostile by learned PP.

PW-8 Narain Singh was also got declared hostile by making request to the Court that witness was suppressing the truth. PW-12 Kashmir Singh also did not support the prosecution version regarding dealing of file by Virsa Singh and he was also got declared hostile by learned PP.

The perusal of the record shows that reasonable doubt exists in the prosecution version. The complainant, shadow witness and 3-4 other witnesses were got declared hostile by learned PP by himself making the statement that they are suppressing the truth. Reasonable doubt exists in the prosecution version, especially, when it was not proved on the record that file in question was ever dealt with by accused-respondent. No such record has been produced by the Investigating Officer on the judicial file.

recovered from the table of the accused and was not got recovered from the personal search of the accused. None of the witness from the office of accused was associated with the police party to witness the alleged recovery. PW-2 Daya Singh has stated that he paid the bribe money to the accused, which he had put in his pocket but PW-10 Ashok Kumar stated that money was recovered from the table.

In view of the above findings given by learned Special Judge, Amritsar, I find that reasonable doubt exists in the prosecution version and benefit of doubt always goes to the accused. The perusal of the findings given by learned Special Judge, Amritsar 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.

In view of the above discussion, I find that the impugned judgment dated 07.01.2013 passed by learned Special Judge, Amritsar, 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.

August 28, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No