

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

CRM No.A-1693-MA of 2015 (O&M)

Date of decision: August 28, 2018

State of Haryana

...Applicant

Versus

Maharam Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sukhdeep Parmar, DAG, Haryana
for the applicant-State.

Mr.Bijender Dhankar and Mr.Atul Pratap Dhankar, Advocates
for the respondent.

INDERJIT SINGH, J.

Applicant-State of Haryana has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondent Maharam Singh, challenging the judgment dated 04.03.2015 passed by learned Special Judge, Faridabad, whereby accused-respondent was acquitted.

It is mainly stated in the application that impugned judgment of learned trial Court is contrary to law and facts. It is further stated that judgment of acquittal of accused-respondent 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 Maharam Singh in case FIR No.31 dated 23.09.2011, under

Sections 7 and 13(1)(d) of the Prevention of Corruption Act, by police of Police Station State Vigilance Bureau, Gurgaon. The brief facts of the case as noted down in the judgment passed by learned Special Judge, Faridabad, are as under:-

“2. Per prosecution version, on 23.9.2011 complainant Sanjay Thakur presented an application before Inspector Jagat Singh of State Vigilance Bureau Unit at Faridabad alleging therein that he alongwith Umakant Dubey had gone to the nearby post office for opening his account. The Post Master present there had demanded rupees five hundred for opening the account saying that he would deposit Rs.100/- in his account and Rs.400/- would be the bribe amount. The Post Master also apprised the complainant that for opening two accounts double amount would be charged. He also apprised the complainant that rupees one hundred would be charged extra for every transaction of Rs.5000/-. Complainant narrated the incident to his neighbour Chander Kishore Jha, who, too, had a conversation with Post Master Maharam but he repeated same version and the conversation between them was recorded. The complainant further alleged that he had brought the two duly filled forms for depositing Rs.200/- in each account and Rs.400/- for each account for Maharam Singh as the bribe and he had no enmity or prior dealing with post master Maharam Singh. He did not want to pay the bribe and also asked for initiation of legal action. After receipt of application, Inspector Jagat Singh made his endorsement and sent the same for registration of a case, upon which the present case was registered under Sections 7 & 13 of the Prevention of Corruption Act. Thereafter Inspector Jagat Singh moved an application before the District Magistrate for constitution of raiding party upon which Bijender Singh Rana, Tehsildar / Duty Magistrate, Faridabad was deputed to join the raiding party by the City Magistrate. After that a raiding party was constituted and they were apprised about the matter. Complainant produced 12 (twelve) currency notes of the denomination of rupees one hundred each which were taken in possession by Inspector Jagat Singh. After applying phenolphthalein powder on these currency notes, the same were initialed by Inspector Jagat Singh and Bijender Singh Rana, Duty Magistrate and the said notes were handed over to the complainant for being passed on to the accused on demand. Thereafter the raiding party proceeded towards the post office in a Govt. vehicle and stopped at about one hundred (100) meters away. Complainant was directed to contact the accused and to hand over the currency notes to him on demand by the accused and to give a signal by putting his right hand

on his head, to the shadow witness Constable Jagesh Kumar who would follow him and Constable Jagesh Kumar was also directed to signal the members of raiding party who had hidden themselves near the post office. On receipt of the signal from the shadow witness, Inspector Jagat Singh and the Duty Magistrate reached the spot and on their asking the accused produced before them the aforesaid currency notes which he had kept in a plastic box. Inspector Jagat Singh prepared the solution of Sodium Carbonate with the help of clean water in a clean jug and thereafter got washed the hands of the accused and the said solution turned pink. Similarly, the hand wash of the complainant was also taken which also turned pink. These solutions were made into two separate sealed parcels after converting them into two separate nips. The currency notes were also put into a separate sealed parcel and all the parcels were taken in possession and the seal was handed over to the Duty Magistrate. The two receipts, duly sealed with the seal of post office regarding the receipt of forms for opening the accounts were also taken in possession. Rough site plan of the place of occurrence was prepared by Inspector Jagat Singh and thereafter accused was arrested. During investigation, the CD regarding the conversation of accused Maharam and Chander Kishore, which was recorded by Chander Kishore in his mobile phone was taken in possession. Scaled site plan of the place of occurrence was also got prepared. During investigation statements of the witnesses were recorded. On completion of investigation, report under Section 173 Cr.P.C. was prepared and after obtaining the sanction to prosecute the accused, the same was 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 Sections 7 and 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 ASI Madan Mohan, PW-2 Ramesh Chander, PW-3 Satya Narain Gaur, PW-4 ASI Anoj Kumar, PW-5 Sanjay Thakur, PW-6 Uma Kant Dubey, PW-7 Constable Jagesh Kumar, PW-8 EASI Daya Nand, PW-9 Chander Kishore Jha, PW-10 ASI Jagat Singh, PW-11 Gajraj Singh and PW-12 Bijender Rana.

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 and false implication. He further pleaded that several days prior to 23.09.2011, more than once complainant had come to get the account opened and he was asked to bring two ID proofs which he was not having at that time. Instead of agreeing to bring the two ID proofs, he got irritated and annoyed and insisted upon opening the account without furnishing the ID proofs and left his office. At no stage he (accused) demanded or received any bribe from him. On 23.09.2011, the date of incident, complainant again came in his office alongwith two persons and placed a sum of ₹1200/- at his disposal by stating that he was to get the accounts opened. On his (accused) instructions the said amount was placed in a tin box and he (accused) started filling the account opening forms which could not be completed as there was no witness for nomination. In the meantime the vigilance staff swung into action and asked him to hand over the amount of ₹1200/- that was placed in the tin box and he was then taken from there in the office of the vigilance and booked in the case. Several persons including Phool Singh and Hari Singh, Lumberdar were also present at that time. Phool Singh was also present earlier when he had demanded two ID proofs from the complainant. Accused further stated that complainant and a self styled social worker Chander Kishore Jha have planted this case with a view to get money from him and the case is entirely false and fabricated.

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

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.

The perusal of the findings given by learned Special Judge, Faridabad 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.

As per the record, PW-5 Sanjay Thakur, complainant, was present at the time of raid. PW-7 Constable Jagesh Kumar was also present. PW-5 Sanjay Thakur has not supported the prosecution version and he was declared hostile at the request of learned Public Prosecutor. During cross-examination PW-5 stated that he handed over an amount of ₹1000/- to the accused and the accounts were opened in respect of the two persons, namely, himself as well as Uma Kant Dubey and thereafter the matter was reported to the vigilance department by PW-9 Chander Kishore Jha. He stated that he did not hand over any amount to vigilance staff for laying the trap. During cross-examination, he also deposed that Chander Kishore Jha

reported to the vigilance department. The version of PW-5 Sanjay Thakur is totally contradictory and he has not deposed as per prosecution version, which means that reasonable doubt exists in the prosecution case.

Further, PW-7 Constable Jagesh Kumar is the shadow witness. He deposed that he accompanied PW-5 Sanjay Thakur to the Post Office where accused was present but he has not categorically deposed that accused has raised demand of illegal gratification. He has nowhere categorically stated that he has heard the conversation between the complainant and accused. He further deposed that amount of ₹1,200/- was handed over by the complainant near the bridge of Palla during the transit at about 1.30 p.m. and his aforesaid deposition is contradictory to the prosecution version, that amount of ₹1,200/- was handed over by the complainant to PW10 Inspector Jagat Singh, Investigating officer. PW-5 Sanjay Thakur says that money was handed over by PW-9 Chander Kishore Jha. PW-5 further deposed that he did not accompany the vigilance staff, rather, he met vigilance staff, after the raid was conducted and accused was apprehended. He also deposed that he met members of the vigilance department after accounts were opened. Otherwise also, as per prosecution version, the amount was lying in a plastic tin and the accused was filling the forms. The accused was asked by the Investigating Officer to hand over that amount and the accused handed over the amount lying in the tin to the police. The prosecution version regarding washing of hands of the accused etc. is of no consequence when the Investigating Officer himself asked the accused to hand over the money lying in the tin and accused, in his presence, after taking out the money from the tin, handed over to the

automatically, it will come on the hands of accused and then washing of hands and fact that colour of the water changed to pink, is of no use. Furthermore, when the complainant is not supporting the prosecution case, it creates serious doubt on the prosecution version regarding demand. Moreover, PW-9 Chander Kishore Jha has not identified the accused and his statement is also contradictory. The contents of compact disk are also not proved as per the Evidence Act. All these facts, create reasonable doubt exists in the prosecution version and by giving benefit of doubt, accused-respondent has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 04.03.2015 passed by learned Special Judge, Faridabad, 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