

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

Crl. Appeal No.S-966-SB of 2003 (O&M)

Date of Decision: November 17, 2018

Kulwant Rai

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikram Chaudhari, Senior Advocate with
Ms.Isha Goyal, Advocate
for the appellant.

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 01.05.2003 passed by learned Special Judge, Amritsar, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 13(2) of the Prevention of Corruption Act and further, to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 7 of the Prevention

of Corruption Act. Both the sentences were ordered to run concurrently.

The brief facts of the prosecution case are that Darshan Singh Passi, complainant, was running a commission agent shop. Santokh Singh was employed by him as *muneem*. He was also selling the agricultural produce after its purchases from the farmers to the Government through PUNSUP. Accused-appellant Kulwant Rai was Inspector-in-charge for Thathi Sohan Mandi for purchasing such agricultural produce on behalf of the government in the year 1999. On 18.05.1999, the complainant was busy at his shop. Then accused came to his shop and told the complainant that his bills would be passed and cheque would be issued to him only if an amount of ₹3000/- was paid to him as illegal gratification. The complainant told the accused that he had never paid illegal gratification to get his work done. Then accused threatened the complainant that he would block his payment. The complainant made a false promise to pay to accused an amount of ₹2000/- on 19.05.1999. Thereafter, complainant along with Santokh Singh approached DSP Ranbir Singh of Vigilance Bureau, Amritsar on 19.05.1999 and produced ₹2000/- before him in the shape of twenty currency notes in the denomination of hundred rupees each and gave statement Ex.PJ. Then, DSP Ranbir Singh recorded number of currency notes and applied phenolphthalein powder to the notes and returned the same to the complainant with the instructions to hand-over the same to the accused on demand of bribe and not to shake hands with him. Then demonstration was also given by the Investigating Officer. Santokh Singh was nominated as shadow witness and he was instructed to accompany complainant, to overhear the conversation and oversee the transaction between the complainant and accused and to give signal after the acceptance

of bribe money. Ruqa was sent to the police station for registration of the FIR. Raiding party comprising Investigating Officer, Inspector Jaswant Singh, ASI Kanwalpreet Singh, ASI Gurinderpal Singh, Constable Kautilya Sharma, Constable Balwinder Singh, complainant, shadow witness and official witness was formed and went for the raid. The complainant and shadow witness went to the shop of Janta Traders, where accused was present. He asked the complainant if he has brought the money. The complainant replied in the affirmative and then handed over currency notes to the accused. The shadow witness immediately came out of the shop and signalled the raiding party. The accused was caught by his arms by the police officials. Investigating Officer disclosed his identity to the accused and asked him about the bribe money. Accused replied in the affirmative. A glass of plain water was requisitioned and sodium carbonate was added to the water but the colour of the water remained unchanged. Accused was made to wash his hands in the solution, whereupon, colour of the solution turned pink. The solution was put into a nip and sealed parcel was prepared. From the search of person of accused, ₹2000/- in the shape of twenty currency notes in the denomination of hundred rupees were recovered from the back pocket of the pant worn by him. After tallying the numbers, memo Ex.PB was prepared and currency notes were taken into police possession. Statements of the witnesses were recorded. Accused was arrested. Sanction was obtained from the competent authority. After completion of necessary investigation, challan was presented against the accused.

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 13(1)(d) punishable under Section 13(2) and 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 Om Parkash, Senior Assistant, who brought the original record of posting of accused Kulwant Rai. PW-2 Ravinder Kaur deposed that she has not brought the record. PW-3 Santokh Singh, shadow witness deposed that accused did not accept any money from anyone nor accused demanded any bribe money on 19.05.1999. He did not accompany Darshan Singh Passi as a shadow witness for giving any signal to the police. This witness was got declared hostile by learned Public Prosecutor. He was cross-examined and admitted his signatures on the memos but he stated that his signatures were obtained by the police on blank papers. He also stated that he never gave any statement, Mark-A to the police. PW-4 Vinod Kohli, Inspector, Food and Supply, Amritsar, deposed that he was summoned by DSP Vigilance Amritsar on 19.05.1999 and he joined the raiding party. They went to Sohan Thathi Market. The complainant and shadow witness were present there. He was with the DSP. The complainant and shadow witness were sent to give money to the accused. On receiving signal given by the shadow witness, they went ahead. Kulwant Rai was caught by the vigilance party. This witness further stated that he was told to recover money, which he recovered. In his presence, hands of accused were washed in the solution, which turned into pink and the solution was put into a nip and sealed with seal 'RS' and taken into police possession. Currency notes were also taken into police possession vide memo Ex.PE after tallying the numbers.

Thereafter, pocket of the shirt was also washed and solution turned into pink

and again stated that pant was washed and solution turned pink. PW-5 Darshan Singh Passi, complainant deposed that he does not know if any official witness was summoned by DSP Vigilance. He had taken his *muneem* for himself and no talk had taken place between the officer of the vigilance and his *muneem*. They went for raid in the jeep of the vigilance office. The officers kept standing outside the office of the accused at some distance. No other proceedings had taken place in the office of Vigilance Department, Amritsar nor any writing work was done there. Complainant further deposed that no direction was given to his *muneem* Santokh singh, shadow witness. There was no other official witness except the Vigilance Department. No process was done in his presence regarding washing of the hands in the solution in the vigilance office at Amritsar. He also deposed that no memo regarding handing over of currency notes by him to the vigilance officers was prepared. No memo was prepared by the vigilance officers regarding return of ₹2000/- to him. This witness did not support the prosecution and was got declared hostile. In the cross-examination by learned Public Prosecutor, this witness supported the case regarding preparing of memo but he stated that he does not know if any Vinod Kohli was joined by the Investigating Officer. He also stated that it is not a fact that Vinod Kohli was summoned by the Vigilance Department and he was joined in the raiding party after disclosing him the facts of the case. Complainant further deposed in the cross-examination that all the documents referred in his examination-in-chief were prepared by DSP Ranbir Singh in his own hands in his presence. He next deposed that earlier, bill amounting to lakhs of rupees was passed by the accused and he

never took any money from him for passing those bills. PW-6

Smt.Davinder Kaur, Clerk, PUNSUP, produced the summoned record. PW-7 Constable Pawan Kumar, is formal witness, who tendered into evidence his affidavit Ex.PW7/A. PW-8 Nirmal Singh Dhiman mainly proved the sanction order Ex.PL. PW-9 DSP Ranbir Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. He also deposed that in the first instance, hands of Kulwant Rai accused were got washed through official witness in sodium carbonate solution in a tumbler made of glass and colour of the solution turned pink. He further deposed that ₹2000/- were recovered from the pant of the accused. In cross-examination, he admitted that none of the document exhibited on record, is in his hand. He also stated that currency notes Ex.P5 to Ex.P24 were recovered by official witness and handed over to him. He also admitted in the cross-examination that Ex.P26 is empty, while Ex.P25 contains solution to the extent of 1/10th of its capacity and solution is white in colour. PW-10 Head Constable Mukhtiar Singh, is also formal witness, who tendered into evidence his affidavit Ex.PO.

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 and he denied the correctness of the evidence and pleaded himself as innocent. Accused further pleaded that he neither demanded nor accepted any money and a false case has been registered against him.

No witness was examined in defence.

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

Aggrieved from the above-said judgment of conviction and

order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that prosecution has failed to prove its case beyond reasonable doubt against the accused-appellant. He further argued that shadow witness Santokh Singh, who was *muneem* of the complainant has not supported the prosecution version and turned hostile and similarly, complainant also has not supported the prosecution version in chief-examination. He next argued that complainant in the cross-examination stated that recovery witness PW-4 Vinod Kohli was not joined in the raiding party. It is further contended by learned counsel for the appellant that there are material discrepancies in the statements of the witnesses regarding conducting of proceedings, regarding scribing of documents, regarding joining of Vinod Kohli as a witness and regarding search and recovery by Vinod Kohli from the accused etc. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. The demand and acceptance of bribe has been duly proved and recovery has been effected from the accused-appellant. There are no material contradictions or improvements in the statements of the witnesses. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

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

From the record, first of all, I find PW-3 Santokh Singh, shadow witness has not supported the prosecution version and was got

declared hostile. Even, the complainant in his examination-in-chief, has not

supported the prosecution version and also turned hostile. Regarding conducting proceedings by the Vigilance Department in the office etc. he specifically stated that no proceedings had taken in the office of Vigilance Department at Amritsar. No writing work was done in the office. No direction was given to his *muneem* Santokh Singh, shadow witness. He also stated that there was no other official witness except the vigilance officials. Even, when complainant Darshan Singh Passi was cross-examined by learned Public Prosecutor, even then, he deposed that he does not know that Vinod Kohli, Inspector, Civil Supply Officer was joined by the vigilance officers. He specifically stated that it is not a fact that Vinod Kohli Inspector was summoned by the vigilance department and he was joined in the raiding party after disclosing him the facts of the case. The above-statement of the complainant creates reasonable doubt in the prosecution version. He has not supported the prosecution version on material facts regarding conducting of proceedings, regarding giving instructions to his *muneem* Santokh Singh, who was shadow witness and further regarding joining of Vinod Kohli, recovery witness, in the raiding party. Furthermore, the complainant has stated that all the documents were prepared by DSP Ranbir Singh in his own hands in his presence but the Investigating Officer DSP Ranbir Singh has stated that he has not prepared any document himself. This is again a material contradiction. If the complainant was present at the spot and proceedings were done in this presence, then he should might be knowing this fact as to who scribed the documents, which further creates doubt in the prosecution version.

PW-4 Vinod Kohli deposed that he was told to recover money,

which he recovered and the Investigating Officer also stated that money was

recovered by Vinod Kohli, Inspector, Food and Supplies and handed over the same to him but the complainant, in his cross-examination, has stated that Vinod Kohli was not joined in the police/raiding party. As already discussed, shadow witness has also not supported the prosecution version and he has not deposed that he has heard any conversation regarding demand of bribe money. Furthermore, the fact that the complainant has also not supported the prosecution and is discrepant on material facts, creates doubt in the prosecution version. Presence and joining of recovery witness in the raiding party is also doubtful in the present case as complainant in cross-examination, has stated that Vinod Kohli, Inspector, Food and Supplies was not present at the time of raid. In these circumstances, oral testimony of the complainant to the extent that bribe was demanded and he paid it, cannot be believed. There is no other proof regarding demand of bribe money.

In view of the fact that complainant himself has not supported the case in chief-examination and there being material contradictions regarding conducting of proceedings at the Vigilance Office at Amritsar or regarding documents that as to scribed the documents, I find that a reasonable doubt exists in the prosecution version and benefit of doubt, always go to the accused. Therefore, by giving benefit of doubt of the accused-appellant Kulwant Rai, he is acquitted of the charges framed against him.

Keeping in view the above discussion, I find that the judgment of conviction and order of sentence dated 01.05.2003 passed by learned Special Judge, Amritsar, are not as per law and the same are set aside.

Therefore, finding merit in the present appeal, the same is

allowed. Since, appellant Kulwant Rai, is on bail, his bail/surety bonds stands discharged.

November 17, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No