

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

**CRA-S-1142-SB-2004 (O&M)
Date of Decision : 28.02.2019**

Shankar Dass Jindal

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Ashok Singla, Advocate
for the appellant.

Mr. Pawan Sharda, Sr. DAG, Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the conviction of the appellant under Section 12 of the Prevention of Corruption Act, 1988 (for short the Act) in FIR No.18 dated 04.04.2002 registered at Police Station Vigilance Bureau Patiala.

2. The sentence awarded to the appellant is as under:-

Under Section 12 of P.C. Act : To undergo R.I. for a period of 2 ½ years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo R.I. for 3 months.

3. The case which unfolds was that the appellant approached the Vigilance Department, Patiala with a complaint that one Mr. V.A.Ghai (who was a senior officer) in the Bank was demanding money from him to help him in a case relating to departmental inquiry. The necessary preparations

transpired that Mr. V.A.Ghai had neither demanded any money and in fact it was the appellant who was trying to force the money upon him in order to falsely implicate him in a case under the Act. Having been convicted the appellant is before this Court.

4. The primary argument raised by the learned counsel for the appellant is that the appellant was charged and found guilty under Section 12 of the Act but that is wholly inapplicable because Section 12 of the Act deals with punishment for abetment of offences under Sections 7 or 11 of the Act. Learned counsel for the appellant has argued that abetment in the present case could only have been invoked if the appellant actually wanted to give a bribe but as per the case of the prosecution the appellant did not want to give a bribe but rather wanted to implicate Mr. V.A.Ghai in a false offence of taking a bribe. As per him the appellant could have been charged for false implication-whether under Sections 182/193 or 211 IPC-but the offence of abetment could not have been brought home against him.

5. Learned Deputy Advocate General has argued that the offence of abetment is defined under Section 107 IPC and it clearly envisages a situation where offence of abetment can be brought even if an offence is not committed and here that particular interpretation of Section 107 IPC would be applicable.

6. In my opinion, the appeal has to succeed. The basic requirement which permeates most criminal offences is the intention to cause that offence. In the present case, the appellant had no intention to pay a bribe and his intention was actually to falsely implicate Mr. V.A.Ghai. In the context of the Prevention of Corruption Act a genuine bribe giver can be

7. Faced with this learned Senior Deputy Advocate General has argued that once the facts were proved the mere fact that the charge was framed under Section 12 of the Act could not absolve the appellant. No doubt the mere framing of charge under wrong Section is not fatal to the case of the prosecution but then it is incumbent upon the Court to alter the charge and without altering the charge he can not be convicted either under Sections 182/193 and 211 IPC as the case may be.

8. Resultantly, the appeal is allowed and the appellant is acquitted of charges. Personal bond/surety, if any, stands discharged.

9. Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

28.02.2019

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No