

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

326

CRA-S-1268-SB of 2004

Date of decision: 13.02.2019

Bhagwan Dass

...Appellant

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. P.S. Ahluwalia, Advocate
for the appellant.

Mr. Pawan Sharda, Sr. DAG, Punjab.

AJAY TEWARI, J.(ORAL)

1. This appeal has been filed against the judgment dated 24.05.2004 convicting the appellant in case FIR No. 50 dated 08.09.1999, under Sections 7, 13(1) (d) and 13 (2) 88 of Prevention of Corruption Act, 1988 (for short 'the P.C. Act' registered at Police Station Vigilance Bureau, Patiala to the following effect:-

Sr. No.	Offence for which convicted.	Substantive sentence awarded.	Fine imposed.
1.	U/s 7 of PCA.	R.I. for 1-1/2 Years (18 months).	Rs. 1000/- and in default of payment of fine to undergo R.I. for 1-1/2 month.
2.	U/s 13(1) (d) r/w 13(2) of PCA.	R.I. for 2-1/2 yrs. (30 months).	Rs. 1500/- and in default of payment of fine to undergo R.I. for 3 months.

Both the substantive sentences to run concurrently.

2. The allegations made by the complainant were that on his request a Medical Board had been constituted to examine the injuries on his son. The appellant who was SMO (and who had constituted the Board as per orders of Civil Surgeon, Patiala) had demanded a bribe of ₹1,000/- to ensure that the report was in his favour. On the helplessness shown by the complainant bribe amount was reduced to ₹ 500/-. Since the complainant, did not wish to pay the bribe, he reported the matter to the vigilance and all necessary preparations for raid were made. The raid was conducted and the money was recovered from the front pocket of the accused/appellant. The appellant having been convicted has preferred this appeal before this Court.

3. The first contention of learned counsel is that there is no other evidence of demand and acceptance except that of the complainant. Senior Deputy Advocate General, Punjab argues that as the shadow witness had died, therefore, he could not be produced. Counsel for the appellant has countered the said argument by arguing that though shadow witness had died yet the official witness was also not examined for reasons best known to the prosecution. When asked the reason, Deputy Advocate General, informs that official witness could not be traced. I find explanation unworthy of credence. Admittedly, the official witness was a Government servant and, therefore, it does not lie in the mouth to say that at the time of trial he could not be traced. Even if he had retired by then, the Government must have had his

details for the purpose of reviewing his pension etc. In the circumstances, the omission to examine the official witness goes against the prosecution.

4. The second argument of learned counsel is that in fact the complainant himself was a criminal and facing trial in more than one case and, therefore, his testimony had to be dealt with even more circumspection than the testimony of an untainted complainant.

5. Third argument is that on the date when the alleged bribe was given, the appellant had already forwarded his medical opinion to the Civil Surgeon without any comments. Deputy Advocate General is not in a position to challenge any of these factual assertions.

6. In this view of the matter, it has to be concluded that the prosecution has not been able to prove its case beyond reasonable doubt. Therefore, the instant appeal stands allowed and the appellant is acquitted of charges framed against them. Personal bond/surety if any stands discharged.

7. Since, the main case is decided, pending applications, if any stands disposed of.

February 13, 2019

Poonam Sharma

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No