

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

337

**CRA-S-No.2203-SB-2004
Date of Decision : 29.1.2019**

Vijay Kumar

....Appellant

vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Deepak Sabharwal, Advocate
for the appellant.

Mr. Pawan Sharda, Senior DAG, Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of the appellant in case FIR No.21 dated 22.12.1998 under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, Phase-I, at Mohali, District Ropar, Punjab.

The case of the complainant was that he wanted to go abroad and for that purpose he needed birth certificate. The appellant was working as a clerk in Municipal Corporation and demanded Rs.5000/- from him. Under pressure the complainant had made the part payment of Rs.2000 already but since he did not wish to pay remaining amount he approached the Vigilance Department. After making necessary preparation a raid was conducted and on signal the police party entered and when the fingers of the appellant were dipped into the water it turned pink, but before he could be checked a mob of municipal workers collected in the office and prevented the raid party from making recovery. Having been convicted, the

present appeal has been filed.

The first contention of the learned counsel for the appellant is that in this case both the complainant and the shadow witness stated that when they met the appellant he asked them whether they had brought promised amount. These words do not constitute demand. He has relied upon the judgment of the Supreme Court passed in the matter of ***Mukhtiar Singh (since deceased) through his LR vs. State of Punjab*** reported as ***2017 (3) R.C.R (Criminal) 694*** wherein after relying upon the Larger Bench judgment ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh 2015 (4) RCR (Criminal) 350***, their Lordships held as follows :-

25.Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.”

Counsel for the appellant has then argued that firstly, the complainant did not approach the local Vigilance Department, Phagwara but approached the office of DSP, Vigilance Bureau (Economic Offences Wing) Punjab, Chandigarh. Strangely, though they approached DSP on 22.12.1998 but the shadow witness stood already joined on 21.12.1999. He has argued that the complainant and shadow witnesses were stock witnesses of the police and there were cases where the complainant was shadow

witness and the shadow witness was the complainant, and in one case it is on the record that proceedings under Section 182 were initiated against them. These facts have not been denied by the learned Sr. DAG but he has argued that this is case where a mob attacked the raiding party and did not permit them to search the appellant and that is why the recovery was not made. He has further argued that it is most unreasonable and unnatural that when a public person approach a corrupt officer, the corrupt officer would ask him (almost as a rehearsed speech) whether he has brought bribe money and give the details of the work for which the bribe money has been demanded. As per him, in such circumstances, a normal person would make a guarded reference and can never be expected to speak with such directness.

In my considered opinion, though there may be some weight in the argument of learned Sr. DAG yet this Court is bound by the pronouncement of the Supreme Court in this regard. Consequently, I hold that the demand was not proved. Once that is so, the appeal is allowed and the appellant is acquitted. Bail bonds/surety bonds, if any, shall stand discharged.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

29.1.2019
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No