

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

342

**CRA No.-S-2404-SB-2004
Date of Decision : 30.1.2019**

Rajinder Pal Sharma and another

....Appellants

vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. K.S.Dadwal, Advocate
for the appellants.

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.203 dated 29.9.1992 under Sections 13 (2) read with Section 13 (i) (d) of the Prevention of Corruption Act, 1988.

Counsel for the appellants states that appellant No.1 Rajinder Pal Sharma has passed away on 20.9.2016. This fact has been corroborated by the learned Senior DAG. In the circumstances, proceedings qua him stands abated.

The allegations against the appellants are that on 26.9.1992 the appellant No.1 came to the shop of the complainant and told him that the load which was being used by him is more than the sanctioned load. The complainant told him that the load was correct as separate meters were installed in shop and house. On this the appellant No.1 told the complainant to meet him on 28.9.1992. The complainant alongwith Rachhpal Singh

went to meet the appellant No.1 where the appellant No.2 was also present. The complainant was informed that the penalty amount is Rs.22000/- and asked the complainant to meet him tomorrow with Rs.7000/- and the remaining amount he will see. The complainant was also told that receipt would be issued of lesser amount. The complainant pretended to agree and came back. He went to the Vigilance Bureau, Ludhiana and informed about the whole incident. Vigilance Bureau, Ludhiana decided to conduct a raid. Necessary preparation for raid was made and ultimately raid was conducted, both the appellants were apprehended and marked currency notes were recovered from them. Having been convicted, the present appeal has been filed.

The main argument raised by the learned counsel for the appellants is that the shadow witness has not supported the case of the prosecution. As per them in a case under the Prevention of Corruption Act the complainant is in a position of quasi accomplice and therefore a conviction based on the sole interested testimony of the complainant cannot meet the strict parameters laid down in the law. Apart from that, it is argued that it has come in evidence that in the same room the Clerk and the SDO were also present but they were not shown as witnesses. Learned Senior DAG has argued that once the complainant had withstood the test of cross-examination and the recovery of the marked currency was made from the accused persons, the conviction was a logical consequence and the appeal must fail.

In my considered opinion, it cannot be lost sight of that the sole testimony of the complainant is a dangerous tool to base the conviction.

Being a complainant he would obviously be interested that his stand be vindicated and that is why the law has provided for a provision of shadow witness who is normally none other than a person of the confidence of complainant.

In the present case also, as per the complainant the shadow witness accompanied him on the first occasion to the office of the Rajinder Pal Sharma, to the Vigilance office, and also on the raid. In the circumstances, the fact that he has not supported the prosecution version as well as the other factors do lead me to believe that prosecution has not been able to prove the case beyond reasonable doubt.

Resultantly, the appeal is allowed and the appellant No.2 is acquitted. Bail bonds/surety bonds, if any, stand discharged.

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

30.1.2019
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No