

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

349

CRA-S-25-SB-2005

Date of Decision : 30.1.2019

Baldev Singh

....Appellant

vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Kulvir Narwal, Advocate
for the appellant.

Mr. Gaurav Bansal, AAG, Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of the appellant in case FIR No.29 dated 22.7.2003 under Sections 7 and 13 (1) (d) (i) of Prevention of Corruption Act registered at Police Station-State Vigilance Bureau, Ambala.

The precise contention of the learned counsel for the appellant is that in this case the complainant had stated that he had approached the appellant for sanctioning the mutation and then after 2-3 months after the purchase of land he approached the appellant for registration of the mutation. After 10-20 days he again enquired from the appellant. Then the appellant demanded bribe of Rs. 7000/-. The appellant came home and confabulated with his family members and decided that he would not pay the bribe and instead made a complaint to the State Vigilance Bureau, Kurukshetra where after the necessary preparation, a raid was conducted on

22.7.2003. The appellant was apprehended and the register was taken into custody and the marked currency was recovered from him. Having been convicted, the present appeal has been filed.

Learned counsel for the appellant has argued that actually it has come on record that the appellant had entered the mutations on 15.7.2003. As per him, thereafter the role of appellant had come to an end and the only thing left was for the Kanoongo to compare the same and for the Tehsildar to then finally sign it. It is his contention that had the petitioner wanted money he would not have committed himself by entering the mutations. He has argued that it has come on the record that the Kanoongo and the Tehsildar visit the various Patwar circles from time to time and then take up all the matters on their visit. As per learned counsel for the appellant, the appellant was not in a position to influence the Tehsildar to visit Patwar circle either early or late. Thus, once he had entered the mutations there was neither any scope or any occasion for him to demand any money. On the other hand, learned Assistant Advocate General has argued that unshaken testimony of the complainant and the shadow witness and the recovery of the amount clearly prove the offence. Learned counsel for the appellant has countered this argument by saying that in any case where a shadow witness has no relation/interest with the complainant this argument may be accepted but in the present case shadow witness was a nephew and in fact a co-complainant (because his father had also purchased the land) and therefore, the interested testimony of these two witnesses coupled with the contradictions pointed out above would give rise to a reasonable doubt.

In my considered opinion, the appeal must succeed. In a case

where the shadow witness is a disinterested third party the evidentiary value of his testimony is very different from the evidentiary value of the testimony of an interested witness. In fact the very concept of shadow witness has been implanted on to the Prevention of Corruption Act to provide a safeguard against the interested testimony of a complainant. In this case Rakesh Kumar was the nephew of the complainant and his father Bachna was also one of the co-purchasers of the land with the complainant. His testimony would be subject to the same limitations as the testimony of the complainant himself. This infirmity coupled with the fact that the appellant had actually entered the mutation as far as back 15.7.2003 does in my opinion create a reasonable doubt on the story of the prosecution.

Consequently, the appeal is allowed and appellant is acquitted. The impugned order is set aside. Bail bonds/surety bonds, if any, stands 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