IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2319-SB-2017 (O&M)
Date of decision: 01.02.2019

Rakesh Kumar Gupta **.....Appellant**

versus

State of Punjab **....Respondent**

CRA-S-2335-SB-2017 (O&M)

Ram Chander **.....Appellant**

versus

State of Punjab **....Respondent**

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Karanvir Singh Khehar, Advocate for the appellant in CRA-S-2319-SB-2017 and

Mr. Mandeep Kaushik, Advocate for the appellant in CRA-S-2335-SB-2017.

Mr. Karanbir Singh, AAG, Punjab.

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Kuldip Singh, J. **(Oral)**

By this common judgment, I dispose of the two connected appeals i.e. ***CRA-S-2319-SB-2017*** titled as ***Rakesh Kumar Gupta vs. State of Punjab*** and another ***CRA-S-2335-SB-2017*** titled as ***Ram Chander vs. State of Punjab***, against the same judgment and order dated 30.05.2017, passed by learned Judge, Special Court, Ludhiana, vide which, Rakesh Kumar Gupta was convicted under Section 13(2) of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for four years in addition to fine of Rs. 50,000/- and in default thereof, rigorous imprisonment for one year. Ram

Chander @ Sonu was convicted under Section 8 of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for two years in addition to fine of Rs.20,000/- and in default thereof rigorous imprisonment for six months. The case property including the cash of Rs.34,86,600 was ordered to be disposed of under rules. However, one of the co-accused Anil Kumar Bawa was acquitted of the charges framed against him. For brevity, facts have been taken from CRA-S-2319-SB-2017.

Brief facts of the case are that DSP Gurcharan Singh Vigilance Bureaue, Ludhiana Branch (Punjab) received a secret information that accused Rakesh Kumar Gupta, who is posted as Motor Vehicle Inspector(MVI) at Ludhiana, holding the additional charge of Fatehgarh Sahib, is passing around 300 vehicles including public carriers, commercial vehicles and passenger vehicles every day at Ludhiana. The MVI personally or with the help of his officials do such inspection and passing work. For the purpose of passing, the vehicle has to be produced before him. However, Rakesh Kumar Gupta is passing the vehicle without production and without their inspection. In addition to the government fee, he also collects extra amount as bribe through his agents. Very few vehicles are produced before him. To manage such illegal work and to extract such gratification, he has employed some agents and who have opened many branches/offices in the city. One of the such office is working under the name and style 'Jai Mata Di' at Jawahar Nagar Locality, Ludhiana, where agent Ram Chander @ Sonu and Anil Kumar @ Bawa handle the work. These agents complete the paper work regarding passing of vehicles and collect money for it. They also keep the concerned officials record and registers in their office. It was further alleged that one Mini Maxi Cab bearing

No.PB-10-CF-5057 was involved in an accident, regarding which, FIR No.23 dated 26.03.2012, under Sections 279, 337, 304-A of Indian Penal Code was registered at Police Station Khamano, District Fatehgarh Sahib against the owner. One person had died in the said occurrence. The vehicle was taken into policy custody and was released on superdari on 16.04.2012. Yet Rakesh Kumar Gupta (MVI) had passed this vehicle on 28.03.2012 when the said vehicle was still at police Station Khamano. The vehicle was patently passed without production, by collecting bribe through his agents. On the basis of the said secret information, the present FIR No.5 dated 18.07.2012 under Sections 7, 8, 12, 13(1)(D) read with 13(2) of the Prevention of Corruption Act, 1988 and under Sections 420, 467, 468, 471, 120-B and 201 of Indian Penal Code was registered at Police Station Vigilance Bureau, Ludhiana.

On the same day, Investigating Officer DSP Gurcharan Singh along with his police party conducted a raid and searched the house of the accused situated at H.No.307-C, Model Town Extension, Ludhiana. From the search, 36 stamps; seven electronic speed limiters; another pair of electronic speed limiters; 135 fitness certificates; registers/files relating to office of MVI and DTO; RCs; licenses; Computer; CPU; Monitor; LCD; Scanner; HP Key Board; Canon LBP 2400-V Printer; and Indian currency worth Rs.34,86,600/- were taken into the possession vide separate memo. During the search, opium weighing 1300 Kgs was also recovered, regarding which, separate FIR No.82 dated 18.07.2012 under Section 18 of the NDPS Act was registered. Thereafter, the police party lead by Inspector Baldev Singh raided the shop of accused Ram Chand @ Sonu titled as 'Jai Mata Di' where indian currency notes of Rs.19800/-; mobile phone; RCs (which were yet to be deposited with the DTO office); 32 files; 19 old RCs (which were yet to be deposited); 85 learned licenses, which were to be converted into permanent/renewed; 18 RC Smart Cards; 5 Licence Smart Cards; 14 licences; 10 coloured photocopy licences and some other documents were also recovered. On 16.08.2012, one Car bearing No.PB-10-BU-0786 belong to Rakesh Kumar Gupta was recovered. On 17.08.2012, Lab Superintendent Amandeep Singh and Lab Superintendent Gurmukh Singh from G.N.E. College, Ludhiana joined the investigation, who extracted the Hard Disk Drive (HDD) from CPU of computer recovered from the house of accused Rakesh Kumar Gupta. The same was sent to the CFSL, Chandigarh on 24.08.2012 and it was returned due to paucity of staff and then again, it was sent on 05.10.2012. During investigation, it was found that vehicle No.PB-10-BU-0786 was in the custody of Khamano Police from 26.03.2012 till 16.04.2012. Statement of Ajay Pal Goyal/DW1 was recorded under Section 161 Cr.P.C. After the completion of investigation, challan was presented in the Court. Accused were charge-sheeted under Sections 8, 13(1)(b) of the Prevention of Corruption Act and Sections 467, 468, 471, 201, 420, 120-B of Indian Penal Code on 31.08.2015 to which the accused pleaded not guilty and claimed trial.

In support of its case, prosecution examined as many as 30 witnesses. When examined under Section 313 Cr.P.C. accused Ram Chander denied as incorrect evidence lead against him and took the following plea:-

> "*I am innocent and falsely involved in the present case by the police. In fact I was posted as MVI at Ludhiana since long time. I was approached by officials of Vigilance Department and was told that I was called by the DSP Gurcharan Singh. I met DSP Gurcharan Singh and he wanted me to set up terms with him and to pay him some amount every*

month but I expressed my inability and I told him that I was not involving in any nefarious activities, when i did not accept the terms of DSP he threatened me with dire consequences. Ultimately, he involved me in a false cases inducting present case and raided hosue No.307-C, Model Town Extension, Ludhiana, where I was not residing. Due to family circumstances, I had shifted from that house too earlier before the registration of the present case. Till today still i am not residing at H. NO.307-C, Model Town Extension. I remained away from sometime to evade my arrest. DSP raided the shop of my friend Ajay Pal Happy and took away his car and threatened him to involve him in a criminal case. Under fear Ajay Pal Happy agreed to pay him money and also informed the vigilance police and raid was conducted on DSP Gurcharan Singh and he was arrested and ultimately convicted in that case. This case was foisted on me by the DSP Gurcharang Singh to pay him some amount monthly and on my refusal,m present case was registered against me and he also got registered as to other false cases.

The amount and each and every thing recovered in t he present case from House No.307-C, Model Town Extension does not relate to me in any way. The vigilance department sent this case to income tax department for taking the action against me as well as on my family members. The income tax department also inquired from me regarding the amount recovered in this case. I have satisfied income tax department in TEP Report that I have no concern with the amount. My wife and son have satisfied about the source of amount recovered from them and they have proved that the same was belongs to them. Ultimately on the satisfaction of income tax department the TEP was filed and I was not held responsible for anything."

Accused Ram Chander @ Sonu denies the evidence lead against him.

In defence, accused examined Ajay Pal Goyal/DW1, Dalip Singh-Inspector/DW2 and Ajay Gupta/DW3 enclosed the defence evidence. After hearing the prosecution and the defence and going through the evidence, the learned Judge, Special Court, Ludhiana held that charges under Sections 467, 468, 471, 201, 420-B, 120-B and 201 of Indian Penal Code are not proved against the accused. However, charges against Anil Kumar @ Bawa are also not proved. However, charges against the petitioner-Rakesh Kumar Gupta under Sections 13(2) of the Prevention of Corruption act are proved and charges against Ram Chander @ Sonu under Section 8 of the Prevention of Corruption Act are also proved. Therefore, they were accordingly convicted and sentenced.

I have heard learned counsel for the parties and carefully gone through the file.

First of all, I will take up the role of Ram Chander @ Sonu, who was stated to be running shop under the name and style of 'Jai Mata Di'. The allegations against him are under Section 8 of the Prevention of Corruption Act stating that he was bribing Rakesh Kumar Gupta-Motor Vehicle Inspector. When the search of the shop was carried out by Inspector Baldev Singh, smart cards; licenses which were old and new; some files for applying for learned licenses and certificates regarding road tax etc. were recovered. This at the most shows that the said Ram Chander @ Sonu was running work of preparing such files for submission before the authorities. Section 8 of the Prevention of Corruption Act reproduced as under:-

> *"8.Taking gratification, in order, by corrupt or illegal means, to influence public servant-Whoever accepts or obtains, or agrees to accept, or attempts to*

> *obtain, from any person, for himself for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine."*

It has to be proved that he has accepted and obtained illegal gratification for himself or any other person with a motive or reward for inducing by corrupt or illegal means by any public servant. In this regard, the statement of complainant-Balwant Singh/PW-5 who is the owner of Mini Bus bearing No. PB-10-BU-0786 shows that he had gone to the shop of 'Jai Mata Di'. There two persons used to sit who were called Sonu and Bawa. He handed over the documents of the bus i.e. RC, passing tax papers to them and they also demanded Rs.10,000/- for the services. He paid them Rs.10,000/-. Ram Chander @ Sonu was sitting in the shop. He visited the said shop three times but papers were not given to him. Then he was given a photocopy of the passing certificate. He was not given the original passing certificate even till date. The witness are stated to be Sonu and Bawa. The persons who were present in the Court are not the same persons and he does not identify them. He was declared hostile by the prosecution. In cross-examination he has stated that shop of Ram Chander @ Sonu is located in Bharat Nagar Chowk, Ludhiana. He did not make any complaint regarding payment of Rs.10,000/-. He had not paid Rs.300/- Government fee required for passing of the vehicle. He claimed that he had paid Rs.10,000/-. In this way, Balwant Singh had turned hostile. Now it is to be seen whether from the said statement, it can be presumed that Rs.10,000/- were paid to Ram Chander @ Sonu who was not identified in the Court and it can be presumed that the same was taken as illegal gratification for paying the same to Rakesh Kumar Gupta? I find the reply negative. It is commonly observed that some people have opened the shop which help the people by providing different services for which they charge their fee. Balwant Singh does not claim that Ram Chander @ Sonu had taken Rs.10,000/-, out of which some payment was to be made to Rakesh Kumar Gupta (MVI). Even the said Ram Chander @ Sonu, who was even not identified, took the money for himself to provide the services of passing of the vehicle. He even did not supply the original passing certificate. Balwant Singh never made any complaint against the said Ram Chander @ Sonu. Therefore, it cannot be said from the statement that the money was taken as illegal gratification for payment to Rakesh Kumar Gupta. Similarly situated Anil Kumar @ Bawa has already been acquitted by the trial Court. Therefore, same benefit has to be extended to Ram Chander-appellant.

Now coming to the role of Rakesh Kumar Gupta, he has been convicted by the trial Court under Section 13(2) of the Prevention of Corruption Act, 1988. It also comes out that in fact he was charge-sheeted under Section 13(1)(b) of the Prevention of Corruption Act and was never charge sheeted under Section 13(2) of the Prevention of Corruption Act. However, for ready reference, Section 13(1)(b) and Section 13(2) are reproduced as under:-

> *"13. **Criminal misconduct by a public servant.**—(1) A public servant is said to commit the offence of criminal misconduct,—*
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> *(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or*
>
> *(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or*
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> *(c).........*
>
> *(d)........*
>
> *(e)..........*
>
> *(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."*

Perusal of the said sections shows that 13(1)(b) pertain to habitually accepting or obtaining or agreeing to accept or attempts to obtain for himself or for any other person, for valuable thing without consideration connected with the official functions of himself or of any public servant to whom he is subordinate etc. etc.

The perusal of the judgment of the trial Court shows that it came to the conclusion that huge amount of Rs.34,86,600 was recovered from his H.No.307-C, Model Town Extension, Ludhiana. He could not prove that this amount belong to his wife or his son. He also could not prove that he had severe relations with remaining family and was residing in rented accommodation in H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana. According to the trial Court, this amount to criminal mis-conduct.

I am of the view that Rakesh Kumar Gupta was never charge-sheeted under Section 13(2) of the Prevention of Corruption Act. Therefore, he could not convicted for the charges which was never framed against him. This Court has been intimated that a separate case for disproportionate asset was registered against Rakesh Kumar Gupta and the sum of Rs.34,86,000/- was transferred to the said case as a part of disproportionate assets along with some other titled documents. The trial of the said case is pending. Therefore, at the very outset, Rakesh Kumar Gupta could not be convicted for the offence for which he was never charge-sheeted and for which a separate trial is already pending.

Further, the evidence on file shows that DSP Gurcharan Singh conducted a raid on H.No.307-C, Model Town Extension, Ludhiana from where certain stamps, electronic speed limiters and the said amount of Rs.34,86,600/- was recovered. Accused has raised a plea that he was not residing at the said address on account of differences with his family and was residing in a rented accommodation at H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana. Therefore, any recovery from the said place cannot be attributed to him. Therefore, a question arise as to whether accused was residing with his wife and son in the said house in H.No.307-C Model Town Extension, Ludhiana or rented house in H.No.3402, Gurcharan Park, Kochhar

Market, Ludhiana? For this purpose, the statement of Investigating Officer DSP Gurcharan Singh is relevant. DSP Gurcharan Singh admitted in cross-examination that he had made enquiry about the whereabouts of Rakesh Kumar Gupta from the neighbors and persons present in the house. He learnt from them that accused is residing in rental house at H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana. Inspector-Baldev Singh along with some officials were sent there, who informed them that Rakesh Kumar Gupta is not present there. They did not tell him about the recovery of any objectionable articles from his rented house. He did not conduct raid on the said rented house. He further stated that even after he learnt that accused Rakesh Kumar Gupta is residing in rental house at H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana, he did not conducted any enquiry about his residence. He also does not know that accused has shown his residence in H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana and send the information to his office in this regard. He denied that he was demanding monthly money from Rakesh Kumar Gupta and on his refusal, he has registered this case. He further admitted that a case was registered against him at the instance of Ajay Pal Happy which has been decided. The present case was registered on 18.04.2012. The police collected the information from office of the complainant which was supplied vide letter dated 18.09.2012 by State Transport Commissioner, Punjab where the date of recruitment and date of retirement is given and salary statement is also enclosed and the address of the accused as in the office was given as H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana. In addition to this, accused examined his son-Ajay Gupta as DW-3. Ajay Gupta stated that his father Rakesh Kumar Gupta left their house about 19-20 years back and started living in some rented accommodation in H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana due to differences with his mother (wife of accused). He further stated that he along with his mother is continuously residing in the said house along with his grand mother and grand father. When his father accused/Rakesh Kumar Gupta left the house, his grand father had got published an advertisement in various papers at that time. He produced the said newspapers dated 21.11.1997 DW3/A and DW3/B. He further stated that in the joint ration card, name of his father was got deleted. He produced the ration card (Ex. DW3/C). He further stated that they got issued a new ration card and he brought the new ration card (DW3/A). He stated that police raided their house on 18.07.2012 and got recovered some document and cash about Rs.35 lac. They had submitted the Income Tax Return to Income Tax Department and submitted to Vigilance Bureaue officials that Rakesh Kumar Gupta is living separately and has no connection with the papers/documents and cash. Perusal of the said newspaper publication shows that in fact parents of the accused/Rakesh Kumar Gupta and his wife has given an advertisement way back in the year 1997 disinheriting the petitioner stating that he is out of their control. Even at the time of raid, it had come to the notice of police that the petitioner is residing in rented accommodation at H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana and even Inspector Baldev Singh was sent to the said place, who returned empty handed as accused was not found there and nothing was recovered from there. Therefore, from the above noted evidence, it is clear that accused was in fact not residing with his wife, son and parents in H.No.307-C, Model Town Extension, Ludhiana and was residing separately in rented accommodation at H.No.3402, Gurcharan Park, Kochhar Market, Ludhiana for several years. Though the amount of Rs.34,86,600/- has been transferred to the case of disproportionate assests against the petitioner, however, it also comes out that Vigilance Bureaue has also intimated the Income Tax Authorities in this regard. The Income Tax Authorities conducted an enquiry into the matter. The report of Income Tax Authorities was duly proved by DW2-Dalip Singh Inspector of Income Tax Office (ITO) which is DW2/E. In the said report, the Income Tax Authorities while noticing that wife and son of Rakesh Kumar Gupta are living separately and having their own source of income, also noticed that assessee's wife is investing in the properties and selling the same. She had properties owned by her and having nothing to do with assessee. Assessing Officer has already assessed Renu Gupta wife of Rakesh Kumar Gupta and her son Ajay Gupta for the year 2006-07, 2007-08, 2008-09. The copy of the order of Assessing Officer was relied upon. Therefore, the Income Tax Officer came to the conclusion that taxation cannot be done in two hands i.e. assessee-Rakesh Kumar Gupta and his wife Smt. Renu Gupta. The order of the Income Tax Officer shows that Renu Gupta has shown her income in the said income tax return and the same was assessed by the Assessing Officer. She had taken the plea before the Income Tax Authorities that she and her son sold two plots No.211 and 2198 for Rs.21 lac and Rs.17.50 lac (total Rs.38.15 lac). Copies of the sale deed were also submitted to the Income Tax Authorities. Same income was also shown in the Income Tax Return and was duly assessed. Therefore, the said income was successfully explained to the Income Tax Authorities as a legal income. Therefore, it cannot be called unexplained income and cannot be attributed to accused Rakesh Kumar Gupta. Therefore, even if it is assumed that the accused had been charge-sheeted under Section 13(2) for possessing Rs. 34,86,600/-, he could not have been convicted for the same for the above noted reasons. Ajay Goyal/DW1 disclosed of one trial against DSP Gurcharan Singh and Baldev Singh for demanding money, in which they were convicted by Additional Sessions Judge, Amritsar. He also proved FIR/DW1/A which was recorded on his statement. Therefore, from the foregoing discussion, I come to the conclusion that at the first instance accused Rakesh Kumar Gupta was not charge-sheeted under Section 13(2) of the Prevention of Corruption act, 1988. Therefore, he cannot be convicted for the same and secondly, recovery of Rs.34,86,600/- which was recovered from the house of his wife cannot be attributed to him and further that the said money was satisfactory explained by his wife to the Income Tax Authorities and was shown in the Income Tax Return having been received on account of sale of two plots. The accused has already been acquitted of the remaining charges. So far as accused Ram Chander is concerned, it has already been held that there is no evidence against him for offence committed under Section 8 of the Prevention of Corruption Act.

In view of the foregoing reason, I come to the conclusion that the conviction of accused Rakesh Kumar Gupta under Section 13(2) and conviction of Ram Chander under Section 8 of Prevention of Corruption Act, 1988 is not sustainable in the eyes of law. Consequently, the appeals are allowed. Both the accused Rakesh Kumar Gupta and Ram Chander are acquitted of the charges framed against them. Bail bonds and surety bonds are discharged.

(KULDIP SINGH)
JUDGE

01.02.2019
anju rani

Whether speaking/ reasoned: Yes
Whether Reportable: Yes