

773

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-4153-SB-2014 (O/M)

Date of decision : 24.1.2019

Sudhir Kumar

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Karanvir Singh Khehar, Advocate,
for appellant.

Mr. Sandeep Vashisht, DAG Haryana.

:-

:-

KULDIP SINGH, J.

This appeal is directed against judgment of conviction dated 26.9.2014 and order of sentence date 29.9.2014, passed by learned Additional Sessions Judge, Bhiwani, vide which appellant was convicted under Section 7 of Prevention of Corruption Act, 1988, and was sentenced to undergo rigorous imprisonment for three years and fine of Rs. 10,000/-, in default thereof, to undergo simple imprisonment for six months. Fine was paid. The period of custody already undergone during investigation and trial was ordered to be set off against substantive sentence.

Facts of case are that Krishan Kumar (complainant) is running a business under the name and style of M/s Sanjeev Jangra Engineering Works and used to sell carrot washing machine and spray pump mounted on tractor throughout Haryana. His firm was certified by Government of Haryana. As machines were usually purchased from his firm, 50% subsidy was allowed by Government to farmers. Krishan Kumar (complainant) moved a complaint (Ex.PC) before Mahavir Singh, Deputy Superintendent

of Police, Vigilance, Bhiwani, alleging that accused, who is working as District Horticulture Officer, Bhiwani, is keeping the cheque of Rs. 3,00,000/- regarding sale of machinery pertaining to his firm with him. Out of said amount, he has released Rs. 2,30,000/- on receiving assurance from complainant to pay him bribe, amounting to Rs. 30,000/-, being 10% commission on sale of machinery and thereafter, rest of Rs. 53,000/- was to be released by accused District Horticulture Officer, Bhiwani. Complainant did not want to pay bribe. Therefore, he made said complaint on 15.5.2012 to Mahavir Singh, DSP, Vigilance, Bhiwani. Mahavir Singh, DSP, Vigilance, Bhiwani, accordingly approached the Deputy Commissioner, Bhiwani, and got appointed Naib Tehsildar Shri Ramanand as Duty Magistrate, vide order (Ex.PV). Rohtash (PW) was joined as a shadow witness. The Naib Tehsildar-cum-Duty Magistrate was informed about raid and shadow witness. Thereafter, complainant handed over 60 currency notes of denomination of Rs. 500/- each, total amounting to Rs. 30,000/-, to DSP Mahavir Singh and Duty Magistrate, on which both of them put their initials and thereafter phenolphthalein powder was applied on said currency notes and these were handed over to Krishan Kumar (complainant), vide memo Ex.PF. Rohtash Kumar (PW) was directed to act as a shadow witness and give a signal to raiding party when currency notes are handed over to District Horticulture Officer. Thereafter, entire raiding party accompanied by shadow witness and Duty Magistrate went to the office of District Horticulture Officer, Bhiwani. When the bribe was paid, Rohtash (shadow witness) gave a signal to raiding party, which immediately entered the office of accused Sudhir Kumar, District Horticulture Officer, Bhiwani. DSP Mahavir Singh disclosed his identity to accused. Thereafter, Duty Magistrate in the presence of raiding party opened right side drawer of

office table of accused, from where all 60 currency notes of denomination of Rs. 500/-, bearing initials of Duty Magistrate and DSP were recovered. In addition to that, two cheques (Ex.PL and Ex.PM) for Rs. 13,500/- each and one cheque (Ex.PK) for Rs. 25,900/-, issued by Punjab National Bank, Bhiwani, were also found and taken in possession by raiding party. Thereafter, hands of accused were got washed with mixture of sodium carbonate powder, on which colour of water turned pinkish. Thereafter, accused was arrested. The hand wash solution was sent to FSL, Madhuban. After completion of investigation, challan against accused was presented in Court.

Accused was served with a chargesheet under Section 7 of Prevention of Corruption Act, 1988, to which he pleaded not guilty.

In support of its case, prosecution examined HC Yashbir Singh (PW1), Inspector Gyan Singh (PW2), ASI Ramesh Kumar (PW3), Krishan Kumar (complainant) (PW4), Rohtas (shadow witness) (PW5), Krishan Singh, Reader to District Magistrate, Bhiwani (PW6), Dharmender Singh (Draftsman) (PW7), ASI Sanwarmal (PW8), Jagmal Chand, Superintendent in the office of Financial Commissioner, Revenue, Haryana, Chandigarh (PW9), Satpal, Accountant in the office of District Horticulture Officer, Bhiwani, (PW10), Mahabir Singh, DSP/Investigating Officer (now retired) (PW11), Ramanand, Naib Tehsildar (now retired) (PW12), Shri R.K. Jain, Additional District and Sessions Judge, Karnal (PW13) and thereafter closed the evidence.

When examined under Section 313 Cr.P.C., accused denied as incorrect evidence led against him and claimed innocence. He took following plea :-

'Neither I demanded any money from the complainant nor any amount was accepted by me and not recovered from my

possession. Several complaints of the farmers to whom the complainant had supplied the machines were pending due to this reason the payment of the complainant was withheld and he was directed to removed the complaints of the farmers to whom he had supplied the machines. Aggrieved by the decision, the complainant had made a false complaint against me and in connivance with the vigilance staff, a false case was registered against me to make a pressure upon me. During lunch hours, when I had gone to my house for taking lunch and when I came back to my office (wrongly typed house), the complainant was already sitting in my office and enquired about my cheques. I called my Accountant and asked him to hand over the cheques to the complainant as the complainant had removed the complaints of farmers. In the meantime, five/six persons came in my office and enquired me about the money. I asked them I do not know about the money. Immediately, I was arrested by the vigilance team after shaking hand with me by the DSP and Naib Tehsildar and they had taken to me in vigilance office and a false case was registered against me.'

In defence, accused examined Rajpal (DW1), Mandeep, Assistant Project Officer (DW2), Rajender Singh, Horticulture Development Officer, Loharu (DW3), Sandeep Bhakar, Horticulture Development Officer, Tosham (DW4), Jogender (DW5) and thereafter, closed evidence after tendering copy of information obtained under Right to Information Act, 2005 (Ex.DS).

After hearing prosecution, learned defence counsel and going through evidence, the learned Additional Sessions Judge, Bhiwani, who is also Special Judge under Prevention of Corruption Act, convicted and sentenced accused, as aforesaid.

I have heard the learned counsel for appellant, learned State counsel and have also carefully gone through file.

In order to prove offence under Section 7 of Prevention of

Corruption Act, 1988, prosecution is required to prove that accused demanded and accepted illegal gratification for doing something or omitting to do something.

In this case, complaint of Krishan Kumar (complainant) is that on account of sale of carrot washing machine and spray pump mounted on tractor by his firm in Haryana, farmers were to get 50% subsidy. He was to get cheque of Rs. 3,00,000/- which was pending before present accused, who was working as District Horticulture Officer, Bhiwani. The accused wanted 10% of said amount as bribe. He released payment of Rs. 2,30,000/- and retained payment of Rs. 53,000/- with him to compel complainant to pay bribe. Complainant did not want to pay bribe. As such, raid was conducted after joining Duty Magistrate and shadow witness.

Now, when the evidence of complainant as well as shadow witness is examined, the case of prosecution falls flat. Complainant, Krishan Kumar, while appearing as PW4, stated that payment of supply of machinery was made through horticulture department. 50% payment is made at the time of installation of machines and rest of payment is made after the work. Therefore, 50% is payment which was due from department. His three cheques were pending. Out of said three cheques, two cheques for Rs. 13,500/- each and one cheque for Rs. 26,000/-, were due from horticulture department and his payment of said cheques was not being made. He used to supply machines for last 5/6 years to farmers through horticulture department. The said cheques were pending for last more than 4/5 months. 1 or 2 persons asked him to contact Vigilance Department for payment. He went to office of Vigilance Office, Bhiwani and signed a complaint which was not read over to him by Vigilance Officer. Thereafter, he was taken in a vehicle and applied powder on 60

currency notes of denomination of Rs. 500/- each. Thereafter, he along with Rohtash (shadow witness) and one police man went to office of District Horticulture Officer, who was not present in his office. He came after half an hour. In the meanwhile, Rohtash (shadow witness) came from outside and on the asking of Vigilance person, he placed amount in the drawer of office of District Horticulture Officer. Thereafter, on receiving signal from Rohtash (shadow witness), vigilance party came to office and Rohtash told them that he had put all currency notes in the drawer of table. The vigilance department thereafter took District Horticulture Officer to their office. They were asked to sit in a separate room. After 2/3 hours, they were called by vigilance staff and asked to put their signatures on some papers and thereafter, they were set free.

The witness was declared hostile by prosecution and he was put to searching cross examination.

In the questions in the nature of cross examination by public prosecutor, witness denied to have made statement (Ex.PD) to vigilance department. He denied that accused had demanded Rs. 30,000/- from him. He also denied that he alongwith Rohtash (shadow witness) had gone to office of vigilance department. He also denied that Naib Tehsildar was joined as Duty Magistrate. He also denied that he handed over 60 currency notes of denomination of Rs. 500/- each to vigilance staff and that Duty Magistrate and Vigilance Officer put their signatures on said currency notes and applied phenolphthalein powder on said currency notes. He also denied to have handed over said currency notes to accused. He also denied that said tainted amount was recovered from the drawer of office table of accused. When he was put to recovery memos Ex.PE, Ex.PF, Ex.PG, Ex.PH, he admitted that these bear his signatures, but same were taken by vigilance

officers on some blank papers. When he was confronted with his application/complaint (Ex.PC), he stated that he has never told that accused had demanded Rs. 30,000/- for handing over cheques to him. He denied the suggestion that he had compromised with accused and therefore, he is intentionally resiling from his statement Ex.PD.

When complainant was cross examined by learned defence counsel that some farmers had made complaint against him that his machines are not properly working, he admitted copies of said complaints Ex.DA to Ex.DH. He also admitted that complaints were made by farmers regarding machines supplied by him. He admitted that Horticulture Department had issued letter (Ex.DH) for removing said complaints of farmers, failing which his payment will be withheld. He claimed that said complaints of farmers were removed on 6th May. He admitted that no payment was due from years 2009 to 2011. He stated that only two cheques amounting to Rs. 13,500/- and one cheque of Rs. 25,900/- were due as per letter Ex.DJ. He admitted that after removing complaints of farmers, District Horticulture Officer had ordered to issue cheques to him. He further stated that he used to supply machines for last five-six years, but accused never demanded money from him. He further admitted that no cash payment was made to him by department and only cheques were handed over to him. He further stated that DSP Vigilance and Naib Tehsildar shook hand with accused at the time of introduction/raid. He admitted that on the direction of Vigilance Officer, he put tainted currency notes in the drawer.

Rohtash (shadow witness), while appearing as PW5, stated that he accompanied Krishan Kumar (complainant) on his asking. They went in a vehicle having blue light. Krishan told him that they had to visit office of

District Horticulture Office. When they went to the office of District Horticulture Office, he was not present as it was lunch time. Thereafter, he came outside for drinking water. One person, who was employee of vigilance department, was also with them. That vigilance official and Krishan went inside office. He was standing outside office. He did not hear any conversation regarding demand from Krishan to any person. He was sitting in gallery. He saw 3/4 persons taking accused with them. No proceedings were conducted by police in his presence. Said witness was also declared hostile.

During questions in the nature of cross examination by public prosecutor, witness denied that any statement was made in his presence. He also denied his statement (Ex.PN) made to Vigilance Department. He also denied to have given any signal to vigilance party. He also denied that accused was apprehended in his presence or that tainted money was recovered from drawer of office of District Horticulture Officer in his presence. Regarding recovery memos, he admitted his signatures on said memos, but stated that these were not read over to him by vigilance department. In this way, complainant and recovery witness did not support prosecution case.

Krishan Singh (PW6) merely proved appointment of Naib Tehsildar as Duty Magistrate to accompany raiding party.

Dharmender Singh, Draftsman (PW7) stated that in the room of accused, only one table was lying, as told by vigilance officer and no other table was lying in room where District Horticulture Officer used to sit.

Jagmal Chand, Superintendent, Office of Financial Commissioner, Revenue, Haryana, Chandgiarh, (PW9), proved sanction (Ex.PS), granted by Principal Secretary, Agriculture Department, to

prosecute accused.

Satpal, Accountant in the office of District Horticulture, Bhiwani, (PW10) also turned hostile and also did not support prosecution case. He stated that during lunch hours, complainant came to office alongwith 2/3 other persons on 15.5.2012. Sandeep Bhankar, Horticulture Development Officer was sitting with him. At that time, Sudhir Yadav was not present in office and had gone to his house for lunch. Krishan Jangra inquired from him about Sudhir Yadav and he told him that District Horticulture Officer had gone for lunch. He asked him (complainant) to sit in the office of DHO. After sometime, two other persons, who were accompanying Krishan Jangra, came outside from office. Complainant was sitting alone in office. DHO returned to the office after half an hour after lunch break. Then, peon came to him and asked him that DHO is calling him and inquiring about handing over of cheques. He told DHO that cheques are pending as a complaint was received by farmers against complaints. In the meantime, 5/6 persons entered the office and one person introduced that he is Deputy Superintendent of Police and other persons introduced him as Naib Tehsildar. They inquired about money after shaking hand with accused. Accused told DSP that he has no knowledge about money. Then, complainant told DSP that amount is lying in the drawer of table. Then, one of team members opened drawer and recovered the said amount. When DSP asked accused about money, accused replied that he does not know who has placed amount in this drawer. The witness was reexamined wherein he reaffirmed his story.

Now, left is statement of Mahabir Singh, DSP (now retired) (PW11), who support prosecution story which need not to be reiterated over and again. He stated that they had applied phenolphthalein powder on

currency notes with the help of paper.

Rama Nand (PW12) Duty Magistrate stated that when after joining raiding party, he went alongwith shadow witness to office of accused, after one hour, he received signal from shadow witness and they went to room of office of accused and recovery was effected from drawer of table. Three cheques (Ex.PK, Ex.PL, Ex.PM) were lying on the table and accountant was also present there. Then, hands of accused were got washed and water turned pinkish in colour. Accused was taken to office of vigilance. In the vigilance office, they prepared document and then he came back.

During cross examination, he (PW12) stated that phenolphthalein powder was applied on currency notes by DSP Vigilance with his hand. Said currency notes were given to complainant without any envelope. He further stated that when raid was conducted, accountant of accused was present there. He shook hand with accused, but he does not remember that whether DSP Mahabir Singh had also shook hand with accused or not before recovery. He further stated that when accused was inquired about tainted amount, he told that he has no knowledge about currency notes. He affirmed that vigilance officer took currency notes from drawer of table, though he did not name the officer, who took out currency notes and handed over those currency notes to DSP, Vigilance and washed hand of accused with help of a bowl.

In defence, accused has examined defence witness, namely, Rajpal (DW1), Sandeep Bhankar (DW4) to prove complaints of farmers. Other defence witnesses also stated that complaints from farmers were received against complainant, on account of which payments were withheld.

Copy of inquiry report, addressed by Director General,

Horticulture, Haryana, Panchkula, to Principal Secretary to Government of Haryana, Agriculture Department, Chandigarh, goes to show that when departmental inquiry was conducted, it was found that cheques were withheld on account of complaints received from farmers. It was found that version put forth by vigilance department is contradictory and there was every possibility that accused was falsely implicated in this case. Therefore, it was found that accused has become victim of conspiracy. The then Chief Minister, Haryana, desired that matter be reinvestigated by vigilance department. However, Principal Secretary overruled the objection and granted sanction.

Now, this Court is to examine from evidence discussed above as to whether demand and acceptance of bribe is proved? I find reply in negative.

In this case, complainant and shadow witness have not supported prosecution case. They have not stated that accused ever demanded bribe from complainant and bribe was ever accepted by accused. Rather, case of complainant is that on the instructions of vigilance department, he put tainted money in drawer of accused, who was not present in office and had gone for lunch. Accused also informed vigilance raiding party that he does not know who has put tainted money in his drawer. As per statement of Duty Magistrate Rama Nand, at the time of raid, accountant of DHO was also present, who has also supported case of accused, stating that cheques were withheld on account of complaints received from farmers. Shadow witness has nowhere stated that in his presence, accused had demanded bribe and complainant paid bribe to him. Rather, complainant and shadow witness had stated that raiding party

shook hands with accused. Naib Tehsildar-cum-Duty Magistrate has stated that DSP Vigilance had applied phenolphthalein powder on currency notes with his hands. Therefore, naturally, part of phenophthalein will come in touch with hands of accused and when his hand will be washed, colour of mixture of sodium carbonate in water is likely to turn pinkish. There was heavy burden on prosecution to prove the case beyond all reasonable doubts. However, in this case, prosecution has miserably failed to prove its case as complainant and shadow witness had not supported prosecution case and even accountant of DHO who was present at the time of raid had stated that when complainant visited office of accused, he had gone out for lunch. When complainant inquired about accused, he told him to sit in office of accused. Therefore, possibility is that complainant put tainted money in the drawer of accused. Defence witnesses also proved that there were complaints of farmers against complainant regarding defective machinery. Therefore, amount of subsidy was ordered to be withheld. Same is statement of accountant who was examined by prosecution.

Net result is that prosecution has miserably failed to prove its case against accused. Accordingly, offence under Section 7 of Prevention of Corruption Act, 1988, is not proved.

As a result of foregoing discussion, appeal is allowed. Accused is acquitted of charges framed against him. His bail bond and surety bond are discharged. Fine paid by him be refunded to him. Needless to say that penal action, if already taken against appellant by department on account of his conviction, has to be reversed.

(KULDIP SINGH)
JUDGE

24.1.2019
sjks

Whether speaking order :Yes / No Whether reportable : Yes / No