

314 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2379-SB-2003 (O&M)

Date of Decision : 23.01.2019

Dr. Charanjit Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. P.S.Ahluwalia, Advocate
for the appellant.

Mr. Pawan Sharda, Sr. DAG, Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of the appellant under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 (for short the P.C. Act) in FIR No.90 dated 11.11.1997 registered at Police Station Vigilance Bureau, Patiala.

The sentence awarded to the appellant is as under:-

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| Under Section 13(i) (d)
read with Section 13 (2)
of P.C. Act | : To undergo R.I. for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo R.I. for 3 months. |
| Under Section 7 of P.C.
Act | : To undergo R.I. for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo R.I. for 3 months. |

The allegations were that he had demanded a sum of Rs.200/- for issuing a fitness certificate for a buffalo. As per the complainant he had gone to the office of the appellant (who is a Veterinary Doctor) in the

morning on 11.11.1997 at 09.30 AM when the appellant had raised a demand for the money. Thereafter the appellant approached the Vigilance Department. A trap was prepared and, as arranged, the complainant went to the office of the appellant to hand him over the money along with a shadow witness. When the money was handed over and the signal was given the police party entered the office and apprehended the appellant where the marked notes were found from his pocket.

The case of the appellant on the other hand was that he had been falsely implicated due to party faction in the village and that infact on 11.11.1997 he had first gone to the office of his superior Deputy Director in connection with an ongoing audit and after getting free from there had gone to Civil Veterinary Hospital to acquire some medicines for his dispensary and was not present in office at all in the morning on 11.11.1997 and therefore there was no question of his having demanded any amount. It further deserves mention that the shadow witness also resiled and the independent witness never turned up for examination. Further the appellant had placed on record the circular informing all the Doctors about impending visit of the audit party and the direction to them to be present. The appellant had also placed on record a certificate of the Deputy Director who had certified that on 11.11.1997 the appellant was present in the office in connection with audit work. Besides this, two other colleagues of the appellant had also similarly gone to the office of the Deputy Director in connection with the audit of their units and testified that the appellant was present in the office of the Deputy Director along with them in the morning on 11.11.1997. There is a written certificate also to that effect signed by

five doctors. The subordinate staff of the appellant also came and testified that on 11.11.1997 the appellant had gone to the office of the Deputy Director for the audit. The pharmacist of the Civil Veterinary Hospital, Patiala also appeared and testified that the appellant had come on 11.11.1997 to take medicines. This entire evidence was brushed aside by the trial Court in one line by observing that all these persons were colleagues/superior/subordinates of the appellant and thus their testimony was of no value.

In my considered opinion, this broad brush rejection of the testimony of Government officials (who have otherwise no connection with the appellant) can not be justified. By rejecting their testimonies, the trial Court has infact accused them of perjuring themselves.

Learned Senior Deputy Advocate General, Punjab has argued that it should have been no problem for the appellant to have produced the audit report which would have proved his presence. That of course is there and had the appellant produced that document it would have proved his presence in the office of the Deputy Director beyond reasonable doubt. In the first place, it is trite to say that the onus on an accused to prove any fact is not that he has to prove it beyond reasonable doubt but that he has to prove it by preponderance of probability. Apart from that, the question is that even if this evidence does not prove the presence of the petitioner in the office of the Deputy Director then it atleast casts a reasonable doubt on the prosecution story, coupled with the fact that the shadow witness has resiled and the public witness has not been examined; and the conviction of the appellant is based only on the testimony of the complainant and the official

witnesses.

Counsel for the appellant has relied upon ***V.Sejappa Vs. State By Police Inspector Lokayukta, Chitradurga, 2016 AIR (SC) 2045*** wherein it has been held as follows :-

“18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.”

In the present case also once I have come to the conclusion that since there is a reasonable doubt cast on the story of the demand, then the only thing which has been proved by the prosecution is the recovery of money, which would be completely covered by the above said judgment.

In view of these facts, the appeal is allowed and the appellant is acquitted.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

23.01.2019

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No