

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

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**Criminal Appeal No.-S-331-SB-2004
Date of Decision : 29.1.2019**

Bal Kishan Arora through his LRs

....Appellant

vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.D.S.Pheruman, Advocate
for the appellant.

Mr. Pawan Sharda, Senior DAG, Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the conviction of Bal Krishan Arora (since deceased) in case FIR No. 22 dated 30.4.1999 under Section 7/13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act') registered at Police Station- Vigilance Bureau, Jalandhar.

The allegations against Bal Krishan Arora was that he demanded bribe of Rs. 500/- (but settled Rs.300/-) from the complainant for the purpose of refund of Rs.10180/- odd (being 1/3rd of an amount of Rs.30,500/- as penalty imposed upon him) deposited by him while presenting his dispute before the Settlement Committee. The complainant did not want to pay bribe and consequently, approached the Vigilance Department where necessary preparation for raid was made and ultimately a raid was conducted and on a signal of the shadow witness a police party

apprehended him and on personal search recovery of the tainted currency note was made from the right side pocket of the pant of Bal Krishan Arora. Having been convicted, the present appeal has been filed.

Learned counsel for the appellant has argued that the shadow witness did not depose anything about the demand because he was standing outside. Further he was declared hostile but in his cross examination he stuck to his stand. He denied that he witnessed Bal Krishan Arora accepted the amount or that he had given a signal or that accused was searched in his presence. Learned counsel has further argued that the reason why Courts insist on independent corroboration is because the bribe giver is almost an accomplice and therefore his testimony has to be treated with circumspection. As per him, once the shadow witness had denied the entire transaction, the first part of the offence i.e. demand could not be said to have been proved and thus mere recovery would not bring in the presumption of Section 20 and consequently the appellant has to be acquitted. He has relied upon the Larger Bench judgment ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh 2015 (4) RCR (Criminal) 350*** where the Lordship held as follows :-

“22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or 13 of the Act would not entail his conviction thereunder.

23. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1-S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant

did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/- from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW1- S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW1- S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under [Section 7](#) or 13(1)(d)(i)&(ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4.10.1996. However, the testimony of PW1- S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under [Section 7](#) or 13(1)(d)(i)&(ii) of the Act against the appellant has been proved beyond reasonable doubt.”

Learned Senior DAG has argued that this is case where the shadow witness has been prevailed upon and turned hostile and once the shadow witness had admitted that he had gone to the vigilance department

with the complainant his subsequent resiling did not inspire any confidence.

In my considered opinion, this appeal has to succeed; which is not to say that the appellant is innocent but just to say that with the demand having not been proved, the presumption under Section 20 of the Act could not be invoked, and once that was so the mere recovery of the amount could not sustain a conviction.

Consequently, the appeal is allowed and the appellant Bal Krishan (since deceased) is acquitted. The impugned order is set aside. Bail bonds/surety bonds, if any, shall stand discharged.

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

29.1.2019
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No