

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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C.R.A-S No.2462-SB of 2004 (O&M)
Date of decision : 21.01.2019

Swaran Singh

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the appellant.

Mr. Ramandeep Sandhu, Sr. D.A.G., Punjab.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment dated 25.11.2004 passed by the learned Special Court, Patiala convicting the appellant and sentencing him to undergo rigorous imprisonment of two years under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 in case FIR No.4 dated 23.01.1999 registered under Sections 7, 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Vigilance Bureau, Patiala.

The case of the prosecution in brief was that the complainant had supplied medicines to Central Jail, Patiala and his payment of more than Rs.5,01,800/- was due to be made for the period from March, 1998 to

August, 1998. In order to get release of his payment, the complainant met the appellant, who was the Jail Superintendent, and told him that the payment of March to May, 1998 had been released but the payment of subsequent period was still outstanding. For releasing this payment, the appellant demanded an amount of Rs.15,000/- as bribe. The complainant contacted his friend ASI Guriqbal Singh (shadow witness) and told him that the appellant was demanding a bribe from him upon which ASI Guriqbal Singh advised him not to pay any bribe and to approach the Vigilance Bureau, Patiala. Thereafter, a raiding party was set up and on the appointed date and time the complainant and the shadow witness went to the house of the complainant alongwith an amount of Rs.15,000/- on which phenolphthalein powder were applied. After the appellant had received the bribe money, the shadow witness flashed a signal to the raiding party, on which the raid was conducted. On seeing the police party coming inside the gate of his house, the appellant tried to go inside his house but in the meanwhile police party reached there and caught him from his upper arm. The currency notes were found lying on the table. Glass of water was called and sodium carbonate was added in it. Thereafter, the hands of the appellant were got dipped in the mixture, which turned light pink. Memo to this effect was prepared. Site plan of the case of recovery was also prepared and the appellant was formally arrested. The sample was later on sent to the Chemical Examiner and the challan against the appellant was presented. However, by the time the trial had started the complainant had died and thus the only substantive evidence was the shadow witness who stated that when they reached the house of the appellant, the appellant had asked them

whether they brought the bribe money upon which the complainant had stated that he had brought the bribe money and the complainant handed it over to the appellant, whereupon the shadow witness gave the signal.

Learned Senior Counsel for the appellant has argued that in the present case the testimony of the shadow witness cannot be considered to be enough to lead to the conviction of the appellant. Moreover, Davinder Singh who was the member of the raiding party had testified that when they reached in verandah of the house of the appellant, the investigating officer told him that he had picked up the currency notes from the table. As per the learned Senior Counsel, once there is no testimony that the investigating officer had washed his hands after picking up the notes there was a possibility that the powder was transmitted from the hands of the investigating officer to the fingers of the appellant or that the investigating officer himself may have dipped his hand into the water. He has argued that the appellant had placed on record the evidence that in three similar cases the testimony of this investigating officer had been disbelieved and rather he was facing charges for having tried to falsely implicate some other persons in a similar case on the ground of taking benefit of his posting in the Vigilance Department. He has further argued that in the present case, the shadow witness was himself a police officer and therefore he cannot be taken to be as an independent witness in any circumstances. He has further relied upon the judgment of the Supreme Court in the matter of ***P. Satyanarayana Murthy vs. The District Inspector of Police and Another, 2015 AIR (SC) 3549***. That was also a case where the complainant had died and the testimony of the shadow witness was the substantive piece of

evidence. In that case, the shadow witness had stated that when they reached the place of the accused, the accused asked them whether he had brought the amount which was directed on the previous date and then the complainant had handed over the bribe money. A three Judge Bench had held that this evidence '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'. As per the learned Senior Counsel, the principle laid down in that case has to be applied in the present case as well.

Learned Sr. Deputy Advocate General however argues that apart from this evidence, the prosecution has also led evidence to prove that even the subsequent payments of another medical supplier were cleared while the earlier ones of the complainant were not cleared and as per him this crucial link evidence would bring the case out of the ambit of the judgment passed in P. Satyanarayana Murthy (supra).

In my considered opinion, this appeal has to be allowed. The mere fact that later bills of another supplier were cleared earlier than the bills of the complainant cannot be taken to be link evidence. The bills could be withheld for various reasons and not all of them can be termed to be corrupt. The fact that the shadow witness was himself a police officer also cannot be discounted nor the antecedents of the investigating officer which was brought on the record. Moreover, in the absence of the complainant, the evidence of the shadow witness would have to come within the ambit of the observations of the Supreme Court in P. Satyanarayana Murthy's case (supra).

Resultantly, the appeal is allowed and the impugned judgment is set aside and the appellant is acquitted.

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

January 21, 2019
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No