IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1817-SB of 2004
Date of Decision: 14.10.2022

Suresh Kumar Joshi

... Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. ADS Sukhija, Advocate for the appellant.
Mr. Gurmeet Singh, Assistant Advocate General, Haryana.

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AVNEESH JHINGAN , J.(Oral)

1. This appeal is directed against conviction and sentence of Suresh Kumar (appellant) vide judgment and order dated 13.9.2004, in case of FIR No.20 dated 18.6.2001, under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at State Vigilance Bureau, Ambala.

Facts

2. As per the prosecution, on 18.6.2001 Jai Parkash, Sarpanch of Gram Panchayat, Sahapur, Block Jagadhri, District Yamuna Nagar gave an application to the Vigilance Bureau. It was alleged that the appellant demanded bribe of Rs.5,000/- for recommending the case to the Deputy Commissioner for release of funds of Rs.1,00,000/-. On the basis of the complaint, a trap was laid. Tehsildar-Amarjit Singh was joined in the raiding party, Rishi Pal was the shadow witness. Ten currency notes of

Rs.500/- each were initialled and laced with Phenolphthalein powder. The raid was conducted on 18.6.2001. The shadow witness was instructed to hear the conversation between the complainant and the appellant and to give signal on acceptance of the money. After some time the shadow witness came out and told that the appellant had accorded sanction for withdrawal of Rs.25,000/-. The appellant along with the complainant were going to Dhaba where money would be paid. The shadow witness and the complainant went inside the Dhaba and rest of the members waited outside. The appellant and the complainant came outside the Dhaba, on demand the laced currency was handed over to the appellant and he put it in the pocket of his pant. The raiding party apprehended the appellant. The hands and pocket of the pant of the appellant were washed with Sodium Carbonate solution and the colour turned pink. After grant of sanction the challan was filed, charges framed, the appellant pleaded not guilty and claimed trial.

3. The prosecution to prove its case examined eleven witnesses.

4. In statement under Section 313 Cr.P.C., the appellant stated that he was not authorised to sanction withdrawal of Rs.1,00,000/. The competent authority was Deputy Commissioner. He told the complainant that he had carried out the work without getting the estimate sanctioned from the competent authority and for this his explanation was sought, as also for keeping the auction money of the panchayat with him. On a complaint made by Shri Pyare Lal, an enquiry was pending against the complainant for mis-utilisation of the panchayat fund. The complainant had a grudge and by conspiring with Gram Sachiv concocted a false story and got him trapped in this case. In pursuance to the instructions received, he

had issued direction to the Sarpanch to deposit 20% of the auction money in the office of Deputy Commissioner for construction of Panchayat Bhawan On 18.6.2001, the complainant along with two Panchayat Members came to the office and asked to take Rs.5,000/- for depositing it in the account of Deputy Commissioner for construction of Panchayat Bhawan. They were directed to hand over the money either to the Accountant or to the Gram Sachiv. In spite of refusal to accept the money, the complainant followed the appellant to the Dhaba where he requested money be deposited and he will collect the receipt later.

5. The appellant examined two witnesses in his defence.

6. The trial court relying upon the statements made by PW4 to PW6, PW9 and PW11 concluded that demand and acceptance of Rs.5,000/- was proved. The defence of the appellant was rejected stating that no document was produced with regard to pending inquiry against the complainant. Further, no evidence was produced to show that 20% of which amount released to the Panchayat was given to the appellant for deposit. Considering that there was valid sanction to prosecute, the appellant was convicted under Sections 7 and 13(1)(d) of the Act vide judgment dated 13.9.2004 and vide order of even date was sentenced as under:

Under Section	Punishment	Fine	In default of payment of fine
7 of the Act	Rigorous imprisonment for two years	Rs.1,000/-	Rigorous imprisonment for six months
13(1)(d) of the Act	Rigorous imprisonment for three years	Rs.1,000/-	Rigorous imprisonment for six months

<u>Contentions</u>

7. Learned counsel for the appellant submits that the prosecution

failed to prove the demand. The appellant put forth the reason for which money was given to him. It is argued that prior to the date of trap, two letters were written by the appellant, one to the Gram Sachiv and the other to the Executive Engineer for verification of the work carried out by the complainant and also for its valuation. The contention is that as per the cross-examination of the complainant prior to 18.6.2001, on two occasions he had met the appellant along with Panchayat Members and the appellant stated that without verification and valuation of the work, he cannot recommend the case. The argument is that the complainant had grudge against the appellant and none of the Panchayat Members were examined. He further submits that there are contradictions in the depositions of the prosecution witnesses.

8. Learned counsel for the State defends the impugned judgment. He submits that the prosecution was able to prove the demand and acceptance of the money. He further submits that in cross-examination, PW9-Jai Parkash stated that the appellant again demanded money near the scooter and then the bribe was handed over. The contention is that the stand taken by the appellant in statement under Section 313 Cr.P.C. that father of the complainant was suffering from cancer was factually wrong. The complainant during deposition denied it.

9. Heard learned counsel for the parties and perused the record.

<u>Legal position</u>

10. It is settled legal position that for conviction under Section 7 of the Act, demand and acceptance has to be proved. Recovery of the tainted currency in itself is not enough for conviction under Section 7 of the Act.

The presumption under Section 20 of the Act can be drawn if the acceptance of the amount is proved and for proving the acceptance, demand is pre-requisite. It is also settled that presumption under Section 20 of the Act can be inferred for conviction under Section 7 of the Act and not under Section 13(1)(d) of the Act. The defence taken by the appellant has to be tested on probabilities of preponderance. The onus is not as heavy on the accused as is on the prosecution to prove its case beyond reasonable doubt.

11. It would be gainful to cite the following judgments:

11.1 In **<u>K. Shanthamma v. State of Telangana</u>, 2022(2) RCR (Criminal) 195,** the Supreme Court held as under:

> *7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of* ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SC 152,*** *and another, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:*
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> > *23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring*

home the charge under these two sections of the Act. 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 Section 7 or 13 of the Act would not entail his conviction thereunder."

11.2 In **B. Jayaraj v. State of A.P., 2014(2) R.C.R. (Criminal) 410,** the Supreme Court held as under:

"9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

11.3 In **N. Sunkanna v. State of Andhra Pradesh, 2015(4) RCR (Criminal) 797,** the Supreme Court observed as under:

"The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the

time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. <u>It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow</u>. Reference may be made to the two decisions of three-Judge Bench of this Court in ***B. Jayaraj v. State of Andhra Pradesh (2014(2) RCR (Criminal 410; 2014(2) Recent Apex Judgments (R. A. J.) 570; (2014) 13 SCC 55] and P. Satyanarayna Murthy v. The District Inspector of Police and another [2015(4) RCR (Criminal) 350; 2015(4) Recent*** **Apex Judgments (R.A. J.) 625: (2015(0) SCALE 724].**

11.4 In **<u>State of Punjab v. Madan Mohan Lal Verma,</u> (2013) 14 SCC 153,** the Supreme Court held as under:

> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide:* ***Ram Prakash Arora v. The State of Punjab AIR 1973 Supreme Court 498; T. Subramanian v. The State of T.N., 2006(1) Apex Criminal 159; State of Kerala and another v. C.P. Rao, 2011 (3) RCR (Criminal) 688; 2011(4) Recent Apex Judgments (R.A.J.) 183: (2011) 6 SCC 450; and Mukut Bihari and another v. State of Rajasthan, 2012(3) RCR (Criminal) 980: 2012(4) Recent Apex Judgments (R.A.J.) 206:(2012) 11 SCC 642.***
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> *[Emphasis supplied]*

Conclusion

12. There is no dispute on the fact that the appellant was B.D.P.O.; resolution dated 6.6.2001 was passed for withdrawal of Rs.1,00,000/-, the amount spent for constructing two shops and Panchayat Bhawan; that on 18.6.2001 laced currency notes were recovered from the pocket of the

appellant at Dhaba and that raiding party was at a distance from B. D.P.O. Office as also from the spot at Dhaba where Rs.5,000/- were given to the appellant.

13. As per the appellant, the complainant was carrying a grudge as his explanation for spending the money on construction without prior sanction was sought, as also for non-deposit of the auction money of the Panchayat. He had written letters (Ex. D15 and Ex.D16) for inspection and valuation of the work got done by the appellant. In view of the defence taken that the complainant was inimical, caution needs to be exercised while relying upon the deposition of the complainant. The depositions of the complainant and shadow witness need to be analysed for determining the demand and acceptance.

14. The complainant in his examination-in-chief had not mentioned the date on which demand of Rs.5,000/- was made from him, he only mentioned June, 2001. He deposed that on the following day when the demand was made by the appellant, the complainant along with Rishi Pal went to the office of Superintendent of Police, Vigilance, Ambala. Ten currency notes of Rs.500/- each handed over by him were returned after lacing them with Phenolphthalein powder. Thereafter, the Deputy Superintendent of Police told him that the raid would be conducted on 18.6.2001. He further stated that on 18.6.2001 when he visited the office, Rishi Pal was standing outside and the appellant was sitting alone in the room. He took out the currency notes and wanted to give it to the appellant but he refused by stating that the money be given to the Secretary. The complainant accompanied the appellant to Dhaba and after coming out,

handed over the notes to the appellant. In cross-examination, it was stated that one person was sitting in the office of the appellant, hence the money was not given there. It was stated in the cross-examination that after coming out of Dhaba, the appellant again demanded the money and then the currency was handed over.

15. It was not specifically stated by the shadow witness that on 18.6.2001, he heard the appellant making demand. It is consistent stand that the shadow witness was informed by the complainant about demand made by the appellant. There is contradiction of time as to whether this information was given one day prior or on 18.6.2001.

16. There was a contradiction between his examination-in-chief and the cross-examination of shadow witness. In examination-in-chief, he stated that the appellant demanded money and on his demand the amount was paid. In cross-examination, it was stated that there was no conversation between the complainant and the appellant outside the Dhaba. The court pointed out the contradiction to PW11-Rishi Pal and then he stated that he meant except for demand, there was no conversation.

17. The complaint was signed by Superintendent of Police on 18.6.2001 and as per complainant, the preparation for raid started earlier and laced currency notes were not handed over to the complainant on that day but earlier to it.

18. The depositions of the formal witnesses were to the extent of giving details of the complaint received, procedure adopted for laying the trap and for recovery of the money. These witnesses were standing outside the office of B.D.P.O. and were at some distance from the spot where the

money was handed over.

19. The appellant took the defence that the amount given to him was for depositing it in the account of Deputy Commissioner for construction of Panchayat Bhawan, in compliance of the official letters. To substantiate the defence, letters dated 9.6.1999 and 23.3.2001 (Ex.D1 and Ex.D2) were produced. As per these letters, the instructions were to collect 15% of the auction money from the Gram Panchayat and deposit it in the office of Deputy Commissioner for construction of Panchayat Bhawan. Further reliance is placed upon the letter (Ex.D3) written by the Deputy Commissioner to the Financial Commissioner while dealing with the representation given by the wife of the appellant. In reply to column No. 6 of that letter, it was stated that 15% of the auction money was to be deposited for construction of Panchayat Bhawan and 5% in Red Cross Account.

20. The prosecution failed to prove beyond reasonable doubt the demand made by the appellant. It is doubtful that the appellant accepted the amount as bribe hence, no presumption under Section 20 of the Act can be inferred against him.

21. The procedure with regard to lacing the currency and laying the trap was not followed, as deposed by the complainant, the laced currency notes were handed over to him prior to constituting the raiding party and the date of conducting the raid.

22. The impugned judgment of the trial court convicting the appellant and the order of sentence consequent thereto, are hereby set aside.

23. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

14th October, 2022
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No