

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

CRA-S-2497-SB of 2007

Date of Decision: 9th December, 2022

Harbans Singh

Appellant

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Keshwam Choudhri, Advocate for the appellant.
Mr. Arun Luthra, Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') in FIR No. 48 dated 8.10.2003, registered at Police Station Vigilance Bureau, Amritsar, Harbans Singh (appellant) is in appeal.

2. The story as put forth by the prosecution is that Tata Sumo bearing registration No. PB-08U-6333 was being plied by Bhupinder Singh, nephew of the complainant- Harbhajan Singh. The vehicle met with an accident on 8.10.2003. FIR No. 231 dated 8.10.2003, under Sections 304-A, 279, 337, 338 IPC was registered at Police Station, Sadar Gurdaspur. Kulwinder Singh, Bhupinder Singh and Fatehjang Singh were taken into custody by the appellant and on next day except Bhupinder Singh, others were released. When the complainant approached the appellant for release of Bhupinder Singh, he demanded Rs.5,000/- and the deal was struck for Rs.4500/-. On complaint, trap was laid, nine currency notes of the denomination of Rs.500/- each were laced with Phenolphthalein Powder.

Tasvir Singh and Surjit Singh were the official witnesses and Dilbagh Singh was appointed as shadow witness. After giving instructions to the complainant and the shadow witness, they were sent to the appellant and on demand by him, the laced currency was handed over. On receiving signal from the shadow witness, raiding party apprehended the appellant, tainted money was recovered from the front pocket of the shirt of the appellant. On washing the hands and pocket of the shirt of the appellant with Sodium Carbonate solution, the colour turned pink. On receipt of sanction, charges were framed.

3. The prosecution to support its case examined nine witnesses.
4. In statement under Section 313 Cr.P.C., the appellant claimed innocence and stated that it was a case of false implication.
5. In defence, the appellant examined three witnesses.
6. The trial court noting that PW1-Bhupinder Singh supported the allegation of the complainant to the extent that he was involved in the accident, detained by the appellant and further that he was released at the instance of Vigilance officials; PW7-Tasvir Singh official witness had proved the recovery of the tainted currency from the pocket of the shirt of the appellant and further that the Investigating Officer supported the case of the prosecution, convicted the appellant under Sections 7 read with Section 13(2) of the Act vide judgment dated 3.12.2007. Vide order of even date, the appellant was sentenced as under:

Under Section	Punishment	Fine	In default of payment of fine
7 read with section 13(2) of the Act	Rigorous imprisonment for two years	Rs.5,000/-	Rigorous imprisonment for six months

7. Learned counsel for the appellant submits that the prosecution failed to prove demand and acceptance of bribe. The complainant had not supported the case of the prosecution and shadow witness was not examined.

8. Learned counsel for the State defends the impugned judgment. He submits that Bhupinder Singh (PW1) had supported the case of the prosecution. He further submits that the deposition of hostile witness should not be ignored in totality.

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

10. The law is well settled that for conviction under Section 7 of the Act, proving demand and acceptance is *sine qua non*. Reference can be made to the decision of the Supreme Court in **N. Sunkanna v. State of Andhra Pradesh**, 2015(4) RCR (Criminal) 797.

11. Adverting to the issue of demand and acceptance of the bribe, the depositions of PW1-Bhupinder Singh and PW4-Harbhajan Singh would be relevant. Complainant PW4-Harbhajan Singh had not stated that demand of bribe was made by the appellant and thereafter he paid the illegal gratification. He further stated that he went to the office of Vigilance where some writing was done and his signatures were obtained. He was declared hostile. In his cross-examination, he denied the demand of bribe being made by the appellant. He even denied that he had made any such statement before the police. Relevant portion of his statement is reproduced

below:

“It is neither a fact nor I stated in Ex.PD that I along with Dilbagh Singh went to P.P. Tibber and requested to the accused Harbans Singh to release his nephew Bhupinder Singh and the accused demanded illegal gratification of Rs.5000/- from us and on our request he agreed to accept Rs.4500/- as illegal gratification. (Attention of the witness is drawn towards B to B.1 of Ex.PD wherein it is so recorded but the witness has denied this fact). It is neither a fact nor I stated in Ex.PD that on 8.10.2003, I along with Dilbagh approached the Vigilance Deptt.”

12. Bhupinder Singh who was detained in FIR No. 231 dated 8.10.2003 and for whose release the demand of bribe was made, deposed as PW1. In examination-in-chief, he stated that Kulwinder Singh and Fatehjang Singh were released by the police after accepting the illegal gratification and he was released at the instance of Vigilance officials. It would not be out of place to mention that it is not the case of the prosecution that illegal gratification was demanded for release of Kulwinder Singh and Fatehjang Singh.

13. Dilbagh Singh was appointed as a shadow witness. He was instructed to accompany the complainant and to hear the conversation between the complainant and the appellant. For the reasons best known to the prosecution, the shadow witness was not examined. It is not in dispute that apart from the complainant and the shadow witness, no other member of the raiding party was privy to the demand and acceptance of illegal gratification.

14. From the above discussion, the only possible conclusion is that the prosecution failed to prove demand and acceptance of illegal

gratification by the appellant. In such circumstances, the judgment of conviction and order of sentence under Section 7 read with Section 13(2) of the Act cannot be sustained and are set aside.

15. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

9th December, 2022

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |