

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-125-SB of 2006

Date of Decision: 20th December, 2022

Wazir Singh

Appellant

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nikhil Ghai, Advocate for the appellant.
Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act') in FIR No. 378 dated 14.10.2002, registered at Police Station City Bhiwani, Wazir Singh (appellant) is in appeal.

2. As per the case set up by the prosecution, complainant-Satbir Singh narrated that the appellant demanded illegal gratification for issuing Railway Concession Certificate. As per the complainant, Rs.200/- and Rs.500/- were paid to the appellant, thereafter on 14.10.2002 he again demanded Rs.400/- to Rs.500/-. On complaint trap was laid. Dharampal and SI Dalip Singh were the official and shadow witness respectively. Four notes of the denomination of Rs.100/- each were laced with Phenolphthalein Powder. After instructing the complainant and the shadow witness, the raiding party reached the office of the appellant. On receiving signal from the shadow witness the appellant was apprehended and laced currency recovered from the pocket of his shirt. On washing hands, pocket

of the shirt of the appellant and currency notes with Sodium Carbonate solution, the colour turned pink.

3. The prosecution to prove its case examined twelve witnesses.
4. In statement under Section 313 Cr.P.C., the appellant pleaded innocence. It was stated that the complainant was nursing grudge against him. While the appellant was posted Senior Medical Officer at PHC Badhra, an FIR was registered against the complainant on the basis of letters written by him. He further stated that the complainant was having handicapped certificate on the basis of which he could get Railway Concession certificate. The appellant was not the member of the Board and could not have issued the certificate.
5. The appellant examined one witness in defence.
6. The trial court concluded that the prosecution proved the case against the appellant. The variations pointed out in the depositions of the prosecution witnesses were minor and drawing presumption under Section 20 of the Act, the appellant was convicted under Sections 7 and 13 of the Act vide judgment dated 7.12.2005. Vide order of even date, the appellant was sentenced as under:

Section	Sentence	Sentence in default of payment of fine
Sections 7 & 13 of the Act	Undergo rigorous imprisonment for four years and fine of Rs.20,000/-	To further undergo rigorous imprisonment for nine months

7. Learned counsel for the appellant submits that it is a case of false implication, the complainant was having grudge against the appellant. He further submits that demand of bribe was not proved. The contention is

that the appellant had no occasion to demand illegal gratification as he could not have issued the certificate.

8. Learned counsel for the State defends the impugned judgment. He submits that the prosecution witnesses supported the case of the prosecution.

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

10. As per the case set up by the prosecution, the appellant demanded and accepted illegal gratification for making Railway Concession Certificate. For proof of demand and acceptance, the deposition of the complainant PW4-Satbir Singh and shadow witness PW9-Dalip Singh need to be analysed. The complainant reiterated the allegations made in the complaint, procedure followed for laying the trap, apprehending the appellant and supported demand and acceptance of illegal gratification by the appellant. It was stated that he gave signal to the raiding party. In his cross-examination, he stated that hand wash test and the formalities were completed in the police station, which was at variance with the depositions of other prosecution witnesses that the formalities were completed on the spot.

11. Caution is to be exercised while relying upon the deposition of the complainant as he has interest in the success of the trap. Reliance in this regard is placed upon the decision of the Supreme Court in **Mukut Bihari and another v. State of Rajasthan, 2012(3) RCR (Criminal) 980.**

12. The defence of the appellant is that the complainant was nursing grudge against him and this was substantiated by the deposition of DW1- Dr. Vijay Malik. He stated that the appellant had written two letters

for registering FIR against the complainant as he was practising without a valid degree. The defence was also supported by Ex. D4 i.e. letter accompanied by a proforma, for writing to the concerned police station for registering the FIR against the persons running un-authorised clinics and name of the complainant was mentioned in it. In such circumstances, a greater caution needs to be exercised for solely relying on the deposition of the complainant for proving the demand and acceptance of illegal gratification.

13. As per testimony of PW2-Amir Chand Juneja, Draftsman who prepared the site plan, there was a distance of sixty feet between the complainant and the shadow witness. The shadow witness in his testimony stated that on receiving signal from the complainant, he relayed it to the raiding party. He had not specifically stated that he heard the conversation between the complainant and the shadow witness. Relevant portion of his statement is reproduced below:

“I acted as a shadow witness. The complainant Satbir Singh gave a signal to me. I in turn gave the signal to Surender Pal, Deputy Superintendent of Police and the accused present in the court was caught at Emergency gate of the above hospital and Rs.400/- from the pocket of his shirt were recovered on the spot which were washed with sodium carbonate which gave pinkish colour, the said pinkish colour was put in a small bottle and sealed with monogram SPS and DP on the spot.”

14. It is not the case of the prosecution that apart from the shadow witness and the complainant, any of the member of the raiding party was

privity to the conversation between the complainant and the appellant. The official witnesses reiterated the procedure followed for laying the trap, apprehending the appellant and recovery of laced currency from him.

15. Another angle that needs consideration is, whether there was an occasion for the appellant to demand illegal gratification? PW11-Raj Kumar posted as Steno in the office of Civil Surgeon produced the register and stated that there was no entry of application made by the complainant on 14.10.2002. The only application entered by his name was dated 27.6.2001 for which handicapped certificate had already been issued. In other words, the complainant was having certificate required for applying concessional railway travel.

16. Dr. K.D. Sharma was examined as PW6. He revealed the procedure followed for issuing handicapped certificate. He stated that the requisite documents are to be handed over to Clerk concerned and after making an entry in the register, the matter is put before the Board of Doctors constituted. The appellant was not the member of the regular Board for issuing handicap certificate. The relevant portion of his statement is reproduced below:

“It is correct that the accused was not a member of the regular handicap board. It is correct that regular members of the board are ortho surgeon, eye-surgeon, ENT surgeon and psychiatrist. I have seen certificate Ex. D3 which pertains to Satbir Singh son of Sheo Narain, a post polio weakness handicap. Accused Dr. Wazir Singh is not a ortho surgeon. Whereas post polio weakness subject is of ortho surgeon and

it is the duty of the ortho surgeon whosoever may be has to issue the certificate. The procedure for getting handicap certificate is that first of all the concerned person has to bring his photograph, a original copy of ration card, a handicap form along with OPD slip and to hand over the same to concerned clerk in the office of Civil Surgeon. That concerned Clerk enters the details in the register concerned and then it is being produced before the Board of Handicap.”

17. As per the case of the prosecution, the appellant wanted Railway Concession Certificate and it is not the case that Government Hospital was authorised to issue Railway Concession Certificate. The complainant admitted that he had not approached Railways for issuance of certificate. The Investigating Officer stated that he had not investigated whether the complainant was possessing handicap certificate and that there was a requirement to have another certificate for availing concession of Railway travel.

18. In the absence of a specific deposition of the shadow witness, the acceptance of amount as bribe is doubtful in such circumstances presumption under Section 20 of the Act cannot be drawn against the appellant.

19. It is settled law that mere recovery of the tainted currency from the accused in itself cannot be basis for conviction under Sections 7 and 13 of the Act. Reference in this regard can be made to the decision of the Supreme Court in N. Sunkanna v. State of Andhra Pradesh, 2015(4) RCR (Criminal) 797.

20. The prosecution failed to prove beyond reasonable doubt the demand and acceptance of the bribe. The occasion to demand illegal gratification is doubtful. The defence taken by the appellant that the complainant carried grudge against him was substantiated. Giving the benefit of doubt, the appellant is acquitted. The judgment of conviction and order of sentence are set aside.

21. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

20th December, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |