

CRA-S-1573-SB of 2005

[1]

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

CRA-S-1573-SB of 2005

Date of Decision: 22nd November, 2022

Satbir Singh

Appellant

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Hundal, Senior Advocate with
Mr. Vikramjit Singh, Advocate for the appellant.

Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act') in FIR No. 28 dated 30.6.2003, under Sections 7, 13(1)(d) and 13(2) of the Act, registered at Police Station State Vigilance Bureau, Satbir Singh (appellant) is in appeal.

2. The relevant facts as per the prosecution are that Raj Pal made a complaint on 30.6.2003 to Inspector Vigilance, Kaithal. He narrated that he is engaged in selling milk and had applied loan under Prime Minister Employment Scheme (Pradhan Mantri Rojgar Yojna). The papers were filed in the office of District Industries Centre, Kaithal. The appellant posted as a

Clerk informed that only on his clearing the interview the loan would be sanctioned and for this purpose, Rs. 2,000/- bribe was demanded. The deal was struck for Rs. 1,000/- and Rs. 700/- were paid. On complaint, a trap was laid. Rajbir Singh, Tehsildar was the Gazetted officer for the trap and Abhey Ram Constable was appointed as a shadow witness. Three currency notes of the denomination of Rs.100/- were laced with Phenolphthalein Powder and initialled. After giving instructions to the shadow witness and the complainant, the raiding party proceeded towards the office of the appellant. On receiving signal from the shadow witness, the appellant was apprehended and laced currency notes were recovered from the right pocket of his pant. On washing of the hands of the appellant and pocket of his pant with Sodium Carbonate solution, the colour turned light pink. On receiving the sanction to prosecute, charges were framed.

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

4. In his statement under Section 313 Cr.P.C., the appellant pleaded innocence and stated that he had not made demand of illegal gratification and denied that recovery was made from him.

5. In his defence he examined two witnesses.

6. The trial court considering that PW9 to PW11 had supported the case of the prosecution; the recovery was made from the appellant; on washing of the hands and pocket of the pant of the appellant, the colour of solution turned pink and drawing presumption under Section 20 of the Act against the appellant, convicted him vide judgment dated 24.8.2005 and vide order of even date, sentenced him as under:

Under Section	Punishment	Fine	In default of payment of fine
7 of the Act	Rigorous imprisonment for three years	Rs.5,000/-	Rigorous imprisonment for one year
13(1)(d) punishable under with Section 13(2) of the Act	Rigorous imprisonment for five years	Rs.5,000/-	Rigorous imprisonment for one year

7. Learned counsel for the appellant submits that the prosecution failed to prove demand of illegal gratification by the appellant. He further submits that the complainant was declared hostile. Reliances is placed upon the decision of the Supreme Court in **Krishan Chander v. State of Delhi**, 2016(1) R.C.R. (Criminal) 806.

8. Learned counsel for the State defends the impugned judgment. He submits that the official witnesses supported the case of prosecution. He further submits that the appellant has given no explanation with regard to the possession of tainted currency.

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 demand and acceptance are *sine qua non*. Reference is made to the decisions of Supreme Court in **K. Shanthamma v. State of Telangana**, 2022(2) RCR (Criminal) 195 and **Krishan Chander's case** (Supra).

11. In **N. Sunkanna v. State of Andhra Pradesh**, 2015 (4) RCR (Criminal) 797, the Supreme Court held that presumption under Section 20 of the Act is not available under Section 13(1)(d) of the Act.

12. In **B. Jayaraj v. State of A.P.**, 2014(2) RCR (Criminal) 410, the Supreme Court held that for drawing presumption under Section 20 of

the Act, acceptance of the bribe has to be proved by the prosecution and for acceptance there has to be demand.

13. The complainant turned hostile and did not support the case of the prosecution. He stated that he had not paid illegal gratification to the accused. In his cross-examination, he stated that his signatures were taken on blank papers by the police officials. The shadow witness PW-9 Abhey Ram Constable had also not supported the case of prosecution to prove the demand made by the appellant. Relevant portion of his testimony is reproduced below:

“The raiding party reached near ITI, Kaithal. I and the complainant were directed to go to the accused. The remaining raiding party remained standing near the main gate of ITI. The complainant went to the office of the accused. I was standing at some distance near the office of the accused under a tree. I was seeing the activities of the complainant and accused. On getting signal from the accused, I further gave signal to the raiding party, who came at the spot and on my instructions and of the complainant, the accused was apprehended.”

14. It is not the case of the prosecution that apart from the complainant or shadow witness, any other member of the raiding party was witness to the demand made by the appellant. From the perusal of the testimony of the shadow witness, it is forthcoming that he was watching the activities between the complainant and the appellant. He on receiving signal from the complainant had signalled the raiding party. Thereafter, the appellant was apprehended and tainted notes were recovered.

15. In the absence of specific statement of the shadow witness that he had heard the conversation between the complainant and the appellant

and further considering that he was not inside the office but was standing outside, it is obvious to conclude that the prosecution failed to prove the demand of bribe.

16. In the facts of present case prerequisite for invoking presumption under Section 20 of the Act is not fulfilled.

17. The judgment of conviction and order of sentence cannot be sustained and are set aside. The appellant is acquitted of the charges framed against him.

18. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

22nd November, 2022
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |