

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

CRA-S-1799-SB of 2005

Date of Decision: 7th December, 2022

Balwant Bajaj

Appellant

Versus

The State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nikhil Ghai, Advocate for the appellant.

Mr. Arun Luthra, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') in FIR No.16 dated 16.3.2000, registered at Police Station Vigilance Bureau, Jalandhar, Balwant Bajaj (appellant) is in appeal.

2. The facts as per prosecution are that on 16.3.2000 Puneet Sehgal gave a statement that he submitted a site plan with Municipal Corporation, Jalandhar for raising construction on his plot. The objections were raised on the site plan and even after removing the objections the site plan was not sanctioned. The appellant posted as Head Draftsman in Municipal Corporation, Jalandhar demanded bribe of Rs.3500/- for getting the site plan approved. The deal was struck for Rs.2500/-. On complaint, trap was laid, five currency notes of the denomination of Rs.500/- each were laced with Phenolphthalein Powder. Baljit Sharma was appointed as a shadow witness. Varinder Kumar Bhatia, Naib Tehsildar and Kuldeep

Singh Patwari were joined in the raiding party. After giving instructions to the shadow witness and the complainant, the raiding party reached the office of Municipal Corporation. On signal from the shadow witness the raiding party apprehended the appellant and tainted currency was recovered from the right pocket of his pant. On washing of the hands and pocket of the pant of the appellant with Sodium Carbonate solution, the colour turned pink.

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

4. In statement under Section 313 Cr.P.C., the appellant stated it to be a case of false implication and claimed that he is innocent. It was further stated that amount of Rs.2,500/- was given to him for depositing the reconsideration fee and when out of courtesy he accompanied the complainant for depositing the fee he was apprehended.

5. In defence, the appellant examined three witnesses.

6. The trial court determined two issues. First as to whether tainted money recovered from the appellant was for reconsideration fee and secondly whether the complainant was nursing a grudge against the appellant as he had insisted for payment of fee for reconsideration of the site plan? It was noted that the appellant failed to give explanation of possession of the tainted currency. The depositions of the defence witnesses were not found worth reliance. The appellant was convicted under Sections 7 and 13(2) of the Act vide judgment dated 3.10.2005. Vide order dated 4.10.2005, the appellant was sentenced as under:

Under Section	Punishment	Fine	In default of payment of fine
7 of the Act	Rigorous imprisonment for three years	Rs.2,000/-	Rigorous imprisonment for three months
13(2) of the Act	Rigorous imprisonment for five years	Rs.2,000/-	Rigorous imprisonment for three months

7. Learned counsel for the appellant submits that demand of bribe was not proved by the prosecution. He further submits that the amount accepted was for the fee to be deposited for reconsideration of the site plan. The contention is that the appellant had no occasion to demand the illegal gratification as without deposit of fee the site plan could not have been reconsidered.

8. Learned counsel for the State defends the impugned judgment. He submits that the defence taken by the appellant that the amount received was for depositing the fee cannot be accepted as no fee was deposited . He further submits that recovery of the tainted currency from the appellant proves acceptance. The contention is that the shadow witness supported the case of the prosecution.

9. The case set up is that the appellant demanded illegal gratification for getting the site plan approved. Puneet Sehgal (PW4-complainant) in his deposition reiterated the allegations made in the complaint and the procedure for laying the trap and apprehending the appellant. He stated that on the day of raid, he had a talk with the appellant for sanctioning of site plan and told him that he had brought the money. The appellant asked him to hand over the money and then laced currency was given which the appellant put in right pocket of his pant. In his cross-

examination, he stated that he was not aware that fee @ Rs.2.50 per square feet was to be deposited. He admitted that his site plan was rejected due to objection and on 16.3.2000 he had given an application for reconsideration of the site plan.

10. As per testimony of Shadow witness-Baljit Sharma (PW-5) deposed that the complainant along with the appellant came down stairs in a small room near the staircase and the complainant took out the laced currency from the pocket of his shirt and handed over to the appellant. The laced currency was recovered from the right side pocket of trouser of appellant. The relevant portion of his deposition is reproduced below:

“I myself, Puneet Sehgal and both the official witnesses went to the accused present in the court today. I myself and Puneet Sehgal were asked by the accused to come down stairs. Then both of us came down with the accused. There was a small room in near the stair case. Puneet Sehgal removed the currency notes from the pocket of his shirt and handed over the same to the accused. The accused put those currency notes in the right side pocket of his trouser. I gave a signal to the raiding party by placing both my hands on my head. The raiding party was standing nearby in the office itself. It entered the room and accused was caught hold of by his arms.”

11. It would be relevant to note that the complainant and shadow witness nowhere stated that on demand made by the appellant the money was handed over by the complainant to him.

12. The official witnesses reiterated the procedure adopted for laying the trap and supported the case of the prosecution. It is not the case of the prosecution that PW6-Kuldeep Singh Patwari and PW7-Varinder

Bhatia, Naib Tehsildar were privy to the conversation between the complainant and the appellant. PW7-Varinder Bhatia, Naib Tehsildar stated that when apprehended, the appellant was saying fee for the site plan was deposited with him. He further stated that Jugal Kishore, official of the Municipal Corporation was present in the room but he refused to join the investigation. The relevant portion of statement of PW7 is reproduced below:

“I had no knowledge if this site plan had already been rejected. The accused was saying that the fee of the site plan had been deposited with him. One official of the Municipal Corporation named Jugal Kishore was present in the room in which the accused was apprehended. He was asked by the DSP to join the investigation but he refused. The other officials had also refused to join the investigation.”

13. DW1-Jugal Kishore, who was posted as Establishment Clerk in B&R Branch deposed that on 16.3.2000 at about 4.45 PM, he saw the appellant along with two persons coming down from the stairs and appellant was having currency notes in his hand. He asked the appellant to check the bill prepared by him but he was told by the appellant that he was going to deposit the reconsideration fee. It would be appropriate to note at this stage that as per the cross-examination of the shadow witness, Jugal Kishore was present at the spot.

14. DW2- Harvinder Kaur, Record Keeper in her deposition proved that the site plan was submitted by the complainant for reconsideration. Further that the complainant had to deposit fee for reconsideration of the site plan.

15. DW3-Matul Verma, Architect hired by the complainant stated

that the complainant got annoyed when the appellant insisted that site plan cannot be reconsidered without payment of fee and he left the office of the Corporation in anger.

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

17. The trial court erred in not considering the case of the prosecution from the angle of demand and acceptance of bribe. The complainant in his deposition reiterated the allegations made in the complaint but specifically had not stated that on the day of trap he handed over the laced currency to the appellant on his demand.

18. As per the testimony of the shadow witness, the complainant removed the currency notes from the pocket of his shirt and handed it over to the appellant. The deposition of the complainant when read along with the testimony of the shadow witness creates dent on the prosecution story so far as demand of bribe is concerned. No other witness was examined to prove the demand and acceptance.

19. When demand and acceptance of illegal gratification itself is in doubt, presumption under Section 20 of the Act cannot be invoked.

20. There is no quarrel on the proposition that presumption under Section 20 of the Act cannot be drawn for the purposes of Section 13(1)(d) of the Act and that the defence taken by the accused has to be probable. 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.”

21. The defence taken was that the amount given to the appellant was for deposit of the fee for reconsideration. The defence was corroborated by the deposition of DW1-Jugal Kishore. The testimony of DW2-Harvinder Kaur proved that for reconsideration of the site plan fee had to be deposited again which was not deposited by the complainant.

22. The statement of DW3-Matul Verma Architect lends support to the defence taken that the complainant was having grudge against the appellant.

23. The prosecution failed to prove the case beyond reasonable doubt and the defence was taken by the appellant was corroborated by the defence witnesses. The conviction and sentence of the appellant cannot be sustained, the impugned judgment and order are set aside.

24. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

7th December, 2022/mk

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