IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-428-SB of 2005
Date of Decision: 19th December, 2022

Naresh Kumar (since deceased) through his son Lalit Kumar

Appellant

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. C. P. Tiwana, Advocate for the appellant.
Mr. Arun Luthra, DAG, Punjab.

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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. 85 dated 28.12.1998, registered at Police Station Vigilance Bureau, Ferozepur Range, Ferozepur, Naresh Kumar (since deceased) through his son (appellant) is in appeal.

2. The facts as per the case of the prosecution are that the appellant posted as Cashier in the office of Employees State Insurance Corporation (for short, 'the Corporation') demanded illegal gratification of Rs.500/- from the complainant-Renu Devi for releasing the benefits of maternity leave. The deal was struck for Rs.300/-. On complaint trap was laid on 28.12.1998, three notes of the denomination of Rs.100/- each were laced with Phenolphthalein Powder. Basakha Singh and Mohinder Pal were the official witness and shadow witness respectively. 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 raiding

party apprehended the appellant and recovered the tainted currency from the pocket of his coat. On washing the hands and pocket of the coat of the appellant, the colour of Sodium Carbonate solution turned pink.

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

4. In statement under Section 313 Cr.P.C., the appellant pleaded false implication. He denied demand and acceptance of the bribe. It was stated that the complainant in greed of reward got him implicated. Further that the Record Setter had to deal with the case of the complainant. He stated that he was apprehended when the currency forcibly put in his pocket was thrown by him.

5. The appellant examined three witnesses in defence.

6. The trial court concluded that the prosecution proved demand and acceptance of bribe and by drawing presumption under Section 20 of the Act , convicted the appellant under Section 7 read with Section 13(2) of the Act vide judgment dated 9.2.2005. Vide order of even date, the appellant was sentenced as under:

Section	Sentence	Sentence in default of payment of fine
Section 7 read with Section 13(2) of the Act	Undergo rigorous imprisonment for one year and fine of Rs. 1000/-	To further undergo rigorous imprisonment for one month

7. Learned counsel for the appellant submits that the prosecution failed to prove demand. He further submits that mere recovery of laced currency is not sufficient for conviction.

8. Learned counsel for the State defends the impugned judgment.

He submits that the prosecution witnesses had supported the case of prosecution. The contention is that the shadow witness was not examined as he expired during the pendency of trial.

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

10. As per the case set up, illegal gratification was demanded for releasing maternity benefits to the complainant. While laying the trap, the shadow witness and the official witness were associated. PW4-Renu Devi (complainant) fully supported the case of the prosecution. She narrated the procedure adopted for laying the trap, apprehending the appellant and recovery of tainted currency. She deposed that when she along with the shadow witness reached the office of the appellant, he enquired about the bribe and thereafter the amount was handed over. The relevant portion of her statement is quoted below:

> *"When I Mohinder Pal reached in the office of accused, the accused was present there. Naresh Kumar accused inquired from me about the arrangement of an amount of bribe and thereafter, I handed over the tainted currency notes to Naresh Kumar accused who put the same in the pocket of his coat. When the amount was accepted by the accused, Mohinder Pal went outside the office and called the DSP and other members who reached at the spot. DSP directed to the accused and other persons present there that they should not go. The DSP checked the coat of the accused and the amount was recovered."*

11. The official witness and the Investigating Officer proved the procedure followed for laying the trap, apprehending the appellant and recovery of the tainted currency from the pocket of the coat. They deposed that on washing hands and pocket of the coat with Sodium Carbonate solution, the colour turned pink.

12. The shadow witness expired during the pendency of trial. The contention of learned counsel for the appellant is that due to non-examination of shadow witness, the demand was not proved. The deposition of the complainant has to be considered cautiously but cannot be ignored in total. She fully supported the case of the prosecution, her statement was duly corroborated by the evidence and deposition of other prosecution witnesses.

13. There is another aspect to be considered that once the acceptance of bribe is proved, presumption under Section 20 of the Act is to be drawn against the accused. In the case in hand, no explanation whatsoever worth was put forth by the appellant for possessing the tainted currency.

14. A defence that the laced notes were forcibly put in the pocket and he was apprehended when he threw them stands falsified. It was proved by the testimonies of the prosecution witnesses and the evidence adduced that laced currency was recovered from the pocket of the coat of the appellant.

15. Learned counsel for the appellant contends that it is case of false implication. The submission is that the trap was laid on 28.12.1998 and as per the complainant she had met the accused two days prior thereto which is factually wrong as there were three days gazetted holidays prior to 28.12.1998. The contention lacks merit. The demand and acceptance of bribe by the appellant on the day of trap is duly proved. It would not be necessary for prosecution to prove the earlier demand made and in any

case, failure to prove the earlier demand would not prove fatal.

16. Reliance was placed by learned counsel for the appellant upon the procedure laid down for releasing the maternity benefits to argue that the appellant was not the official concerned. The contention does not enhance the case of the appellant. From the recovery memo Ex. PM, it is forthcoming that the appellant got recovered the record pertaining to release of maternity benefits to the complainant. Moreover, Tarsem Babu, Upper Division Clerk in the Corporation deposed as DW2. He stated that on the day of trap, the Claim Clerk was on leave, the appellant was working as Cashier and after approval of the case from the Manager, the case is sent to the Cashier.

17. Non-joining of independent witness in itself is not a ground for acquittal of the appellant, more-so when there was an official witness in the raiding party. No contention of animosity of the appellant with the member of the raiding party or official witness is raised. The depositions of the official witness and the Investigating Officer support the case of the prosecution and have to be taken into consideration.

18. It would not be out of place to mention that death of the shadow witness during pendency of the trial *per se* would not be a ground for disbelieving the testimonies of the prosecution witnesses. The Supreme Court in **<u>Neeraj Dutta v. State (Govt. of NCT of Delhi)</u>, Criminal Appeal No. 1669 of 2009 decided on 15th December, 2022** while dealing with the referred question held as under:

> *"**Question for consideration:***
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> ***"1)** Whether, in the absence of evidence of complainant/direct*

or primary evidence of demand of illegal gratification, is not permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?"

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68. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the

demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial,

demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

19. In the present case, the complainant specifically supported the demand and acceptance of bribe, the official witness and Investigating Officer proved the recovery and there is no rebuttal by the appellant of the presumption drawn against him under Section 20 of the Act.

20. In view of the above, no interference is called for in the impugned judgment of conviction and order of sentence and the same are upheld.

21. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

19th December, 2022
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1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes