

CRA-S-454-SB-2005

[1]

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

CRA-S-454-SB-2005

Date of Decision: 24th November, 2022

Surinder Kumar

Appellant

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Ahluwalia and Ms. Bhavi Kapur, Advocates
for the appellant.

Mr. Arun Luthra, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction in FIR No. 40 dated 17.7.2000 under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, (for short the Act) registered at Police Station Vigilance Bureau, Jalandhar, Surinder Kumar (appellant) is in appeal.
2. The facts as set up by the prosecution are that on 17.7.2001, a complaint was made by Sarvesh Bharti. He stated that he was dealing with the advertisement concerning Punjab Technical University (for short' the University') in the newspapers 'Punjab Kesri' and 'Jagbani' and rest of the newspapers were being dealt with by other advertising agencies. On 13.7.2001, the complainant met the appellant posted as PA to Vice Chancellor of the University (for short, 'VC') and requested for release of advertisement for 'Daily Ajit' and 'Tribune Group' newspapers. The appellant demanded Rs.10,000/- as illegal gratification and the deal was

struck for Rs.5,000/-. On the complaint, trap was laid. Ten notes of the denomination of Rs.500/- were laced with Phenolphthalein Powder. Ganga Baksh who went along with the complainant to the Vigilance Bureau office was made the shadow witness. Samittar Singh and Gobind Singh were the official witnesses. After instructing the complainant and the shadow witness, the raiding party reached the University. On receiving signal from the shadow witness, the raiding party went to the spot and secured the appellant from both hands. The laced currency was recovered from the left side pocket of the shirt of the appellant. On washing of his hands and pocket of the shirt with Sodium Carbonate solution, the colour turned pink. On receiving sanction, charges under Sections 7 and 13(1)(d) of the Act were framed.

3. The prosecution to support its case examined nine witnesses. (From the perusal of record, it is forthcoming that two prosecution witnesses were numbered as PW7).

4. In statement under Section 313 Cr.P.C., the appellant pleaded false implication. Further that he was working as a Stenographer with the VC, the complainant had approached him for clearing his bills but he was informed that appellant had no concern with Accounts Branch and the complainant got annoyed. Further that the tainted currency was being forcibly put in his pocket and when he resisted, the complainant caught hold of him from his hands. It was further stated that he was not authorised to release advertisement in any newspaper.

5. The trial court considered that though Samittar Singh, official witness was declared hostile but the complainant and the other prosecution

witness supported the case of prosecution and rejecting the defence of the appellant, convicted him under Sections 7 and 13(2) of the Act vide judgment dated 25.2.2005 and vide order of even date was sentenced as under:

Under Section	Punishment	Fine	In default of payment of fine
7 of the Act	Rigorous imprisonment for one and a half year	Rs.1,500/-	Rigorous imprisonment for one and a half month
13(2) of the Act	Rigorous imprisonment for one and a half year	Rs.1,500/-	Rigorous imprisonment for one and a half month

6. Learned counsel for the appellant argues that the prosecution failed to prove demand and acceptance of bribe by the appellant. The shadow witness PW7-Ganga Baksh had not supported the case of prosecution and the official witness PW4-Samittar Singh was declared hostile. It is further argued that from the deposition of PW7- J. S. Nagra, it was evident that the appellant had no authority to release advertisement and that the complainant was not having the authorised agency to book advertisement for 'Tribune Group' and 'Daily Ajit'. It is a case of false implication as payment of Rs. 1,50,000/- of the complainant was stuck with the University. It is further argued that there are variations in the depositions of the prosecution witnesses.

7. Learned counsel for the State defends the impugned judgment. It is argued that the complainant and the Investigating Officer have fully supported the case of prosecution. The variations in the depositions of the

prosecution witnesses were minor. On washing of hands and pocket of the shirt of the appellant, the colour of Sodium Carbonate solution turned pink.

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

9. The undisputed facts are that the appellant was working as PA to VC of the University. The complainant was engaged in the business of advertisement. He was having authorisation to book advertisement for 'Punjab Kesri' and 'Jagbani'. On the complaint made by the complainant, the trap was laid.

10. As per the case set up illegal gratification was demanded by the appellant for releasing advertisement for 'Daily Ajit' and 'Tribune' newspapers. The evidence produced by the prosecution is required to be analysed for the demand, acceptance of bribe and the occasion for the appellant to ask for illegal gratification.

11. The prosecution examined nine witnesses. The official witness-PW4 Samittar Singh and the shadow witness PW7-Ganga Baksh were declared hostile. The shadow witness-Ganga Baksh stated that he was not privy to the demand and acceptance of the bribe and thereafter he was declared hostile. Apart from the complainant, there is no witness to the demand and acceptance. In the cross-examination, the complainant faltered and denied that he on 13.7.2001 had approached the appellant. Resultantly, the demand of bribe made by the appellant is doubtful. Moreso, when it is settled law that a caution needs to be exercised while solely relying on the testimony of the complainant. The Supreme Court in **Mukut Bihari and another v. State of Rajasthan, 2012(3) R.C.R. (Criminal) 980**, held as under:

“The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”

(Emphasis supplied).

12. In the present case, there is another aspect to be considered. In his statement under Section 313 Cr.P.C., the appellant stated that the complainant was annoyed with him as he had not obliged him for clearance of his dues of Rs. 1,50,000/- from the University. The complainant in his cross-examination admitted that payment of Rs.1,50,000/- was due from the

University. Further that he was not authorised to book advertisement for 'Daily Ajit' and 'Tribune' and other agents were booking advertisements for these newspapers. He stated that the orders for release of advertisement were issued by VC and he had not made application for obtaining the orders for advertisement for 'Daily Ajit' and 'Tribune'. The relevant part of his testimony is reproduced below:

“Before this occurrence I had been working in this University for about 2-1/2 hours. During this period I had been getting the cases for Pb. Kesri and Jagwani. Some other correspondent had been working for Daily Tribune and Ajit newspapers. I was not authorised agent of Ajit newspaper and the Tribune, Chandigarh. The orders for advertisement used to be ordered by the V.C. Volunteered these were the orders to be executed by the Personal Asstt. I did not make any application to the V. C. for obtaining the orders for advertisements for Ajit and the Tribune. It is correct that on 17.7.01 about 1-1/2 lacs rupees was due toward the University. On 13.7.01 I approached the accused. Again said never approached the accused on that day and asked him to arrange orders for Ajit and Tribune for advertisement for me.”

13. The Registrar of the University J. S. Nagra deposing as PW7 stated that advertisements were to be released by VC. He further stated that the appellant who was posted as PA to VC had no power to release advertisement in the newspapers. The relevant portion of his testimony is reproduced below:

“It is correct that the accused was posted as Stenographer in Agricultural University, Ludhina and was on deputation in Punjab Technical University, Jalandhar. Only Vice Chancellor had the power to give advertisement in the newspaper. The accused had no power to give any

advertisement in the newspaper.”

14. The Investigating Officer-PW8 in his cross-examination stated that he had not made any enquiry as to who was authorised to issue advertisement.

15. On appreciation of evidence discussed above, the occasion for the appellant to demand illegal gratification is not established.

16. The stand of the appellant in his statement under Section 313 Cr.P.C. was that laced currency was being forcibly thrust upon him and when he resisted, the complainant caught hold of his hands. The Investigating Officer stated that he along with other members of the raiding party proceeded on signal from the shadow witness and secured the appellant from his both hands. The official witness-PW5 Gobind Singh in his cross-examination stated that when the raiding party went inside, the complainant was holding the appellant by his hands and he was told by DSP that currency notes had been recovered from the appellant. PW4-Samittar Singh official witness and PW-7 Ganga Baksh shadow witness were declared hostile. They had not supported the version put forth by the Investigating Officer so far as apprehending the appellant is concerned. The variation in the statements of the witnesses creates a dent on the case of prosecution so far as the acceptance of bribe by the appellant is concerned.

17. Considering that when acceptance itself is doubtful, no presumption under Section 20 of the Act can be drawn against the appellant.

18. On re-appreciating the evidence the story put forth by the prosecution is doubtful, the judgment of conviction and order of sentence

cannot be sustained and the appellant is acquitted.

19. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

24th November, 2022
mk

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