IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-512-SB of 2005

Date of Decision: 15th November, 2022

Yogender Parkash Johri

Appellant

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Dhirender Chopra, Advocate for the appellant.
Mr. Gurmeet Singh, AAG, Haryana.

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AVNEESH JHINGAN, J (Oral):

1. Aggrieved of the conviction in FIR No. 3 dated 2.4.1999, under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act'), registered at Police Station, State Vigilance Bureau, Gurgaon, the present appeal is preferred by Yashpal Johri (appellant).

2. The case set up as per the prosecution is that the appellant posted as Judgement Writer in the court of Mr. S. K. Garg, Civil Judge-cum- Judicial Magistrate 1st Class (for short, 'the Civil Judge'), Nuh in the presence of Hasim demanded bribe of Rs.500/- from the complainant Abdul Gani. Brother of the complainant was a defendant in the civil suit pending in the court of Civil Judge. The complainant wanted copy of order dated 26.3.1999 and made an application. The complainant approached the appellant who asked him to bring the amount in the afternoon of 2.4.1999 and take the copy. The complainant was told that in case the amount is not paid, the file would be concealed in the record. On the complaint, raiding party was constituted and Inspector-Dhan Singh was the shadow witness.

Five currency notes of Rs.100/- each were laced with Phenolphthalein Powder and initialled. On a signal from the shadow witness the raiding party entered the room, recovered the tainted currency from the left pocket of the pant of the appellant. Hands of the appellant and the pocket of his pant were washed with Sodium Carbonate solution and the colour turned pink.

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

4. The appellant in his statement under Section 313 Cr.P.C. stated that he was posted as Judgment Writer in the Civil Court, Nuh. He was falsely implicated at the instance of Mr. M. M. Dhonchak, Additional Civil Judge (hereinafter referred to as 'Additional Civil Judge'), the Civil Judge and in collusion with Arshad Hussain who had given beatings to Jai Kishan Ahlmad at the instance of Additional Civil Judge. Appellant examined one witness in his defence.

5. The trial court considering that:

(i) the complainant had gone to the appellant for supply of copy of order, he demanded illegal gratification;

(ii) the deposition of the shadow witness,complainant and recovery of tainted amount were taken into account to conclude that demand and acceptance was proved; and

(iii) disbelieving the defence taken by the appellant of false implication

convicted the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. Vide order of even date, the appellant was sentenced as under:

Section	Sentence	Sentence in default of payment of fine
Section 7 of the Act	Undergo rigorous imprisonment for one year and fine of Rs.500/-	To further undergo rigorous imprisonment for two months
Section 13(1)(d) read with Section 13(2) of the Act	Undergo rigorous imprisonment for one year and fine of Rs.500/-.	To further undergo rigorous imprisonment for two months

6. Learned counsel for the appellant submits that it is a case of false implication. He further submits that there was a Copying Branch for issuance of the copy of the order and the appellant was not the dealing official for issuing the copy. The contention is that the raiding party from Gurgaon had reached Nuh on receiving a secret information and not on basis of complaint and this is evident from the time recorded on the ruqa. He further submits that variations in the depositions of the prosecution witnesses make the story of the prosecution doubtful.

7. Learned counsel for the State defends the impugned judgment. He submits that the complainant and witnesses supported the case of the prosecution. He further submits that the tainted currency was recovered from the appellant and in statement under Section 313 Cr.P.C., the recovery was not disputed.

8. The case set up by the prosecution was that the complainant wanted copy of order dated 26.3.1999 in the suit titled as "Budhi v. Rehmat and others". The demand of illegal gratification of Rs.500/- was made by the appellant for supplying copy of the order.

9. PW7-Abdul Ganni (complainant) deposed that on 1.4.1999 in the presence of Hasim, the appellant made demand from him. He came across a stranger who told him to come to the Rest House on 2.4.1999. He

along with Hasim went to the Rest House, five to six persons were sitting in plain clothes. The incident was narrated to them. On five currency notes of the denomination of Rs.100/- each handed over by him, Phenolphthalein Powder was applied. After acceptance of amount by appellant, on his signal the persons in plain clothes came and recovered the currency from the left pocket of pant of the appellant. On washing of the hands of the appellant and pocket of his pant with Sodium Carbonate solution, the colour turned pink. In cross-examination, he stated that he made an application for getting copy of order on 26.3.1999 and had put the same in a box. He denied to have made a statement before the police that on 1.4.1999 he gave an application to Amar Chand for supply of copy which was returned on 6.4.1999 with objection. He was confronted with his earlier statement Ex. DA. In cross-examination, he further stated that he was not aware where the application had gone.

10. Dhan Singh- Inspector was the shadow witness. He was a member of the raiding party that had come from Gurgaon for conducting raid. He deposed that the complainant along with the appellant went inside the copying agency but he stood outside the room. On his signal, the raiding party came and apprehended the appellant. At the cost of repetition it would not be out of place to mention that the shadow witness was one of the officials of the raiding party present at Rest House when the complaint was made. In his cross-examination he stated that the raiding party reached the Rest House at 1.45 PM or 2.00 PM and he was not aware of the purpose they had come for. Later he stated that they had come for raid.

11. Maharaj Singh-Investigating Officer received the secret

information at 10.30 AM. He stated that before starting from Gurgaon for Nuh, he had informed the Civil Judge that the appellant was demanding illegal gratification. It would be relevant to note that ruqa Ex.PJ was signed at 3.05 PM. In his cross-examination, he stated that the complainant was not previously known to him, he had met him for the first time in the Rest House at 1.45 or 2.00 PM and only then he came to know the name of the appellant. It was further stated that he had not seen the application filed by the complainant for getting the copy of the order. The contradiction is apparent, on one hand it is stated that before starting from Gurgaon the Investigating Officer had informed the Civil Judge that the appellant was demanding illegal gratification. On the other hand in his cross-examination, it is stated that he came to know about the name of the appellant only after meeting the complainant.

12. Rakesh Sharma, Naib Tehsildar deposed as PW8. He was member of the raiding party. He in his cross-examination stated that after the raid he along with Maharaj Singh had met the Additional Civil Judge in his chamber and stayed there for ten minutes, thereafter started for Nuh at around 6.00 PM.

13. Amar Chand, Copying Clerk appeared as PW5. He deposed that Vikram Singh, Constable made an application seeking copy of application form vide which copy of order was applied by someone. The application made by Constable was returned with the endorsement that application form in question was returned to the applicant with objection and while returning the signatures of the applicant were obtained in the register. In his cross-examination he stated that application filed on

2.4.1999 was returned on 6.4.1999 as suit was not properly described and the address did not match. He further stated that the appellant present in court had no connection with preparation and delivery of the copy of order.

14. Having over-all view of the fact, Haasim was a relevant witness who was privy to the demand and the complaint made but he was given up as unnecessary witness.

15. There can be no quarrel on the proposition that the prosecution has to prove its case beyond reasonable doubt. The presence of the raiding party at Nuh prior in time along with the fact that on 1.4.1999, a stranger informs the complainant to reach Rest House on 2.4.1999 with his complaint, raises a doubt on story of prosecution. Moreso when as per the testimony of Investigating Officer on 2.4.1999 he had a secret information at 10.00/10.30 AM that the appellant was demanding illegal gratification. He had shared the information with Civil Judge, Nuh. In his cross-examination, he stated that he came to know about the name of the appellant when he met the complainant.

16. The application for supply of copy of order which would have from the basis for the allegation made by the complainant i.e. that bribe was demanded by the appellant for supplying copy of the order was not produced during trial. The complainant had not stated that he had made an application to the appellant for supply of copy of order. In his cross-examination, the complainant stated that he made the application on 26.3.1999 by putting it in a box. In such circumstances, the story put forth by the prosecution is doubtful.

17. There is another aspect of the matter. The statement of the

complainant is to be relied upon with some caution. He was the only witness to support the demand made by the appellant. The shadow witness had not stated specifically that he heard the conversation between the appellant and the complainant with regard to demand of illegal gratification. Hasim who was accompanying the complainant on 1.4.1999 as well as on 2.4.1999 was not examined. 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. <u>The complainant is an interested and partisan witness concerned with the success of the trap and his</u>*

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).

18. The recovery of the tainted currency in itself cannot be the sole basis for proving acceptance of the bribe, more so, when the demand in itself is in doubt. The prosecution failed to prove the demand and resultantly acceptance is not proved, the presumption under Section 20 of the Act cannot be drawn against the appellant.

19. As per the deposition of Amar Chand PW5, the appellant was not the official concerned for preparation and delivery of copy of order, therefore the reason for the appellant to demand illegal gratification is doubtful.

20. The prosecution having failed to prove its case to the hilt, giving 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

15th November, 2022
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No