IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-61-SB of 2005 (O&M)
Date of Decision: 23rd August, 2022

Umed Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Anil Rathee, Advocate for the appellant.
Mr. Gurmeet Singh, AAG, Haryana.

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AVNEESH JHINGAN , J.(Oral)

This appeal is directed against conviction of Umed Singh (appellant) under Section 7 of the Prevention of Corruption Act, 1988 (for short, 'the Act') in case of FIR No. 41 dated 5.7.2002, under Sections 7 and 13 of the Act, registered at Police Station State Vigilance Bureau, Rohtak.

The facts as per prosecution

Om Parkash complainant stated that he had a telephone connection at his house at Piau Maniyari. There was a STD booth of one Rathee, a Lineman with the Telephone Department, his phone worked properly, whereas telephone of the complainant remained out of order. Lineman in the Telephone Department by the name of Rathee asked the complainant to pay Rs.200/- per month to ensure that his telephone remains in working order. On the complaint made, a trap was laid. Sh. J. P. Thamman, City Magistrate, Sonepat was associated with the raid. SI-Jagphool was made the shadow witness. Four currency notes of denomination of Rs.100/- were initialled and laced with phenolphthalein powder. The complainant was directed to give the money to the appellant, the shadow witness was required to remain present with the complainant, hear the conversation and thereafter give signal to the raiding party. On receiving signal from the shadow witness, the raiding party reached the spot. The tainted money was recovered from the front pocket of the shirt of the appellant and serial numbers of notes were tallied. The hand and shirt of the appellant were washed with sodium solution and the colour turned pink.

After obtaining sanction, challan was presented, copies were supplied to the appellant and charges were framed under Sections 7 and 13(1)(d) of the Act. The appellant pleaded not guilty and claimed trial.

The prosecution to support its case examined PW2- J. P. Thamman, Duty Magistrate who reiterated the facts of the complaint and procedure adopted for laying the trap and for recovery of the tainted amount. PW3-Smt. Suresh Suneja had handed over the posting order of the appellant to the Investigating Officer. PW4-Inder Pal Draftsman deposed that he had prepared the scaled site plan. PW5-Narender Singh, SDE of Telephone Department had handed over the record of phone of the complainant. Complainant-Om Parkash was examined as PW6. He did not support the case of the prosecution and was declared hostile. PW7- ASI Rakesh Kumar and PW8-ASI Dariayao Singh were the formal witnesses. Investigating Officer- Inspector Tara Chand was examined as PW9. He deposed on the lines of the prosecution case, giving details of the complaint, laying of trap and recovery of the laced currency. PW10-Ashok

Kumar proved the orders of sanction to prosecute the appellant.

In statement under Section 313 of the Code of Criminal Procedure, the appellant stated that he was not the owner of the STD booth; he had not demanded money from complainant; that SI-Jagphool (shadow witness) had forcibly put Rs.400/- in his pocket and when he resisted, the police officials nabbed him.

In his defence, the appellant examined DW1-Sanjiv Kumar, Junior Telecom Officer who stated that he knew the appellant and he was not known by the name of Rathee. He further stated that there were six to seven employees and one of them was Jagdish Rathee.

The trial court held that merely acceptance of money, without there being any other evidence would not be sufficient for conviction and acquitted the appellant under Section 13 of the Act.

The complainant turned hostile but the court relied upon the depositions of the Duty Magistrate and the Investigating Officer. It was stated that there was no animosity between the official witnesses and the appellant. Further relying upon the recovery of laced currency notes and by drawing presumption under Section 20 of the Act, the appellant was convicted under Section 7 of the Act. He was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in case of default, further to undergo rigorous imprisonment for three months, hence the present appeal.

<u>Arguments</u>

Learned counsel for the appellant argues that the complainant had not supported the case of prosecution and the shadow witness was not examined, the trial court erred in convicting the appellant under Section 7 of the Act.

Learned counsel for the State argues that the complainant had not disputed the signatures on the complaint and on the recovery memo thereby he supported the case of prosecution.

Heard learned counsel for the parties at length and perused the record with their able assistance.

It would be relevant to reproduce Section 20 of the Act:

> ***20. Presumption where public servant accepts any undue advantage.-*** *Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantge, as motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11."*

<u>Legal position to prove demand and acceptance for conviction under Section 7 and with regard to presumption under Section 20 of the Act</u>

In **<u>K. Shanthamma v. State of Telangana</u>, 2022(2) RCR (Criminal) 195,** the Supreme Court held as under:

> *7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of* ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SC 152,*** *and another, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:*
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> > *23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."*

In **N. Sunkanna v. State of Andhra Pradesh, 2015(4) RCR (Criminal) 797,** the Supreme Court observed as under:

> *"The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination*

turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. <u>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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow</u>. Reference may be made to the two decisions of three-Judge Bench of this Court in ***B. Jayaraj v. State of Andhra Pradesh (2014(2) RCR (Criminal 410; 2014(2) Recent Apex Judgments (R. A. J.) 570; (2014) 13 SCC 55] and P. Satyanarayna Murthy v. The District Inspector of Police and another [2015(4) RCR (Criminal) 350; 2015(4) Recent*** **Apex**

Judgments (R.A. J.) 625: (2015(0) SCALE 724].

In **P. Satyanarayana Murthy v. The Dist. Inspector of Police and another, 2015(4) RCR (Crimial) 350**, the Supreme Court held as under:

> *"20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d) (i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.*
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> *21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the*

proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22.As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

In **<u>B. Jayaraj v. State of A.P., 2014(2)</u> 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. <u>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.</u> 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."

[Emphasis supplied]

From the reading of Section 20 of the Act and the law cited above, it is clear that presumption under Section 20 of the Act is to be drawn after it is proved that public servant had accepted, obtained or attempted to obtain undue advantage from any person. Further that for proving acceptance there has to be proof of demand. The recovery of tainted money in itself cannot be the sole basis for conviction under Section 7 of the Act. The demand and acceptance of the bribe is to be proved.

<u>Conclusion</u>

In the complaint, the complainant stated that there was STD booth of one Rathee, a Lineman with the Telephone Department, his phone was working properly, whereas the telephone of the complainant remained out of order. One Rathee, employee of the Telephone Exchange, demanded Rs.200/- per month from the complainant to ensure that his phone remains in working order. On the basis of the complaint, a trap was laid. SI-Jagphool was the shadow witness. The instruction to the shadow witness was to go along with the complainant, hear the conversation and to give the signal as soon as the bribe money is given to the appellant.

The complainant in his deposition stated that the appellant had not demanded bribe from him. The complainant handed over the laced currency notes to the police officials and indicated the person to whom the currency notes were to be given but the police officials wrongly handed over the same to other person. He further stated that the police officials had obtained his signatures on the blank papers. In his cross-examination, he stated that the appellant was not the person who had demanded money but the police officials forcibly put four currency notes in the pocket of the appellant.

Law is well-settled that for conviction under Section 7 of the Act, the demand and acceptance of the bribe money is sine qua non. Mere recovery of the currency notes itself is not sufficient for conviction. As per the statement made by the appellant under Section 313 Cr.P.C. and the deposition of the complainant, four currency notes were forcibly put in the pocket of the appellant.

There is no evidence that the appellant had demanded and accepted the money . Shadow witness was not examined. The complainant turned hostile. The Duty Magistrate and the Investigating Officer were not witnesses either to the demand or to the acceptance.

The trial court erred in drawing presumption under Section 20 of the Act in the present case. Apart from the fact that demand was not proved, the prosecution failed to bring home its case that money was accepted by the appellant.

The impugned judgment of the trial court convicting the appellant and the order of sentence of the trial court, consequent thereto, are hereby set aside.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

23rd August, 2022.
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Whether reasoned/speaking	Yes
Whether reportable	Yes