

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-734-SB of 2005

Date of Decision: 16th November, 2022

Baldev Singh

Appellant

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocates for the appellant.
Mr. Arun Luthra, Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of the conviction and sentence in FIR No. 52 dated 7.11.2000, under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act'), registered at Police Station Vigilance Bureau, Patiala, the present appeal is preferred by Baldev Singh (appellant).

2. The facts as set up by the prosecution are that at the instance of Dev Raj, Commission Agent, running a concern in the name of M/s Sharma Trading Company, Bhawanigarh the FIR was registered. He stated that from his shop, paddy was to be purchased by Markfed. Surjit Singh farmer had brought 500 bags of paddy which after cleaning was filled in the bardana supplied by Markfed. The allegations were that the appellant posted as Inspector in Markfed demanded bribe of Rs.2/- per bag, for purchasing the paddy. The deal was struck for Rs.1/- per bag. The complainant along with the farmer reported the matter to the Vigilance

Bureau. A raiding party was constituted. Bal Krishan, Inspector Municipal Committee and Balbir Singh (SDO) Irrigation were the official witnesses. Surjit Singh was made the shadow witness. Five currency notes of Rs.100/- each were laced with Phenolphthalein Powder and initialled. The shadow witness and the complainant were instructed to hand over the tainted currency to the appellant on demand. On 7.11.2000, the raiding party proceeded to Mandi, Bhawanigarh. The complainant and the shadow witness were sent to the office of the appellant. On receiving the laced currency by the appellant, the shadow witness gave signal to the raiding party. The appellant was apprehended while he was starting his scooter. The tainted currency was thrown by him on the road. On washing of the hands and pocket of shirt of the appellant, the colour of the solution changed.

3. After receiving of the sanction to prosecute, final report was filed and charges were framed.

4. The prosecution to support its case examined ten witnesses.

5. In his statement under Section 313 Cr.P.C., the appellant claimed that he was innocent. An FIR was registered against the complainant, as he embezzled and misappropriated paddy of Punjab Agro Industrial Corporation. Thereafter, he had installed another rice mill in the Benami name of his son-in-law. The sheller installed was allocated to Markfed for custom milling. The complainant was insisting for stocking the paddy of Markfed in the sheller but due to his antecedents, the request was not accepted and for this reason he falsely implicated the appellant.

6. In defence, the appellant examined six witnesses.

7. The trial court concluding that the Investigating Officer and

shadow witness had supported the case of prosecution; the demand and acceptance was proved and on washing of the hands and pocket of the shirt of the appellant, Sodium Carbonate solution turned pink, convicted the appellant under Section 7 read with Section 13(2) of the Act vide judgment dated 9.4.2005. 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 two years and fine of Rs.2000/-	To further undergo rigorous imprisonment for three months
Section 13(2) of the Act	Undergo rigorous imprisonment for two years and fine of Rs.2000/-	To further undergo rigorous imprisonment for three months

8. Learned counsel for the appellant submits that it is a case of false implication. The complainant was carrying a grudge against the appellant. The FIR No. 22 dated 2.2.2000, under Section 406 IPC, at Police Station Bhiwanigarh was got registered by Punjab Agro Industrial Corporation against the complainant. His relative had started a rice mill for which the complainant was pressurizing the Markfed to store paddy and it was not acceded to. It is further argued that the shadow witness and the official witnesses had not supported the case of the prosecution to prove demand and acceptance. The contention is that the defence taken was duly corroborated by the witnesses and the documents exhibited.

9. Learned counsel for the State defends the impugned judgment. He submits that the complainant has supported the case of the prosecution and proved the demand of bribe from the complainant for purchase of 500 bags of paddy stacked outside the shop of the complainant. He further

submits that the official witnesses have duly supported the procedure adopted for laying the trap and after apprehension of the appellant.

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

11. Before proceeding further, it would be gainful to quote the following decisions, wherein it has been held that for conviction under Sections 7 and 13 of the Act, the prosecution has to prove the demand and acceptance beyond reasonable doubt. Further that the complainant in a way is an interested party, his deposition is to be considered with caution and if need be to be corroborated with other evidence.

12. In **K. Shanthamma v. State of Telangana**, 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:*

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.”

13. 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).

14. There is no dispute on the fact that the complainant was a

Commission Agent in Anaj Mandi, Bhawanigarh. Earlier, he was running a rice mill in which the paddy of procurement agencies was misappropriated, resultantly FIR No. 22 dated 2.2.2000 under Section 406 IPC was registered against him. The appellant at relevant time was posted as Inspector in Markfed at Anaj Mandi, Bhawanigarh.

15. On considering the facts and re-appreciation of the evidence, it is evident that apart from the complainant, there is no other witness to the demand made by the appellant. The complainant is an interested party to the extent that he wants the trap to be successful and caution needs to be exercised for solely relying upon his deposition. There is no corroborative evidence supporting the demand made by the appellant.

16. It would not be out of place to mention that as per the statement made under Section 313 Cr.P.C., the complainant had a grudge against the officials of Markfed for not storing paddy in the rice mill being run by the relative of the complainant.

17. The shadow witness PW1-Surjit Singh did not support the case of the prosecution and was declared hostile. It would not be out of place to mention that as per his statement, the complainant tried to thrust the laced currency in the pocket of the appellant. To similar effect is the statement of the official witness PW2-Bal Krishan, who further stated that hands of the appellant were washed with Sodium Carbonate solution and the colour turned dirty pinkish.

18. Balbir Singh, SDO, the official witness deposed as PW6. In his testimony, he stated that he saw that the scooter of the appellant had fallen. He was caught from his arms by Inspector Kewal Singh and on

washing of the hand of the appellant, the colour of Sodium Carbonate solution turned dusty. In the cross-examination, he stated that mob had collected at the spot and people were shouting that the complainant was getting the appellant falsely implicated. It would be relevant to quote the relevant portion of his statement:

“After some time, Surjit Singh, Des Raj and Baldev Singh, then said after some time myself and DSP noted that some scooter had fallen on the ground. We went near the scooter and I saw that Inspector Baldev Singh now present in the court was there and his arms were caught from behind by Inspector Kewal Singh i.e. Sub Inspector of Vigilance Police. The hands of accused present in the court were put in a glass which was having solution of some powder. After dipping the hands of accused in the glass, the water converted into dusty colour.”

19. No doubt, the Investigating Officer had supported the case of the prosecution by reiterating in details the procedure adopted prior to laying of the trap and after apprehension of the appellant but he was not the witness to the demand or the alleged acceptance. In his cross-examination, he stated that he had not made any enquiry about the agencies involved in procuring the foodgrains at the relevant time. He further stated that he was intimated by District Manager that verbal instructions were given that after 25th October, 2000 no purchases were to be made by Markfed.

20. The complainant appearing as PW5 reiterated his allegation against the appellant but in his cross-examination admitted that Markfed

had stopped purchase of paddy from 20th October, 2000 and any other procurement agency could have purchased the paddy. Further, after 20th October, 2000 the paddy was to be purchased by Food and Supplies Department and not Markfed.

21. Defence witnesses DW1- Jugal Kishore and DW3-Gobind Ram Commission Agents in Anaj Mandi, Bhawanigarh deposed that the complainant forcibly tried to put the notes in the pocket of the appellant. They further stated that no paddy was lying in front of the shop of the complainant.

22. DW2-Ashwani Kumar Constable proved the fact that FIR No. 22 dated 2.2.2000 was registered against the appellant. DW4-Kahan Singh Clerk, Market Committee brought the register to show that no paddy was lying in the Mandi from 3.11.2000 to 15.11.2000. DW5-Hardeep Singh, Senior Branch official Markfed proved Exs. D9 and D10. The exhibits showed that till 20.10.2000, the shop of the complainant was earmarked to Markfed and from 20.10.2000, the Food and Supplies Department was the procurement agency for the shop of the complainant.

23. The prosecution failed to prove the acceptance of illegal gratification by the appellant. The shadow witness, official witnesses and the defence witnesses (DW1 and DW3) consistently deposed that currency was being thrust in the pocket of the appellant. In the facts of the present case, no presumption can be drawn against the appellant under Section 20 of the Act. The shadow witness-Surjit Singh, as per the complainant who had brought the paddy for sale, specifically stated that no demand was made by the appellant in his presence.

24. The matter needs to be considered from another angle. The defence taken was that prior to the day of raid, Markfed had stopped procuring paddy from Mandi and shop of the complainant was not earmarked with Markfed after 20.10.2000. The defence was substantiated by Ex.D9 and D10. The complainant admitted this fact in the cross-examination. In such circumstances, it can safely be concluded that the appellant had no occasion to demand illegal gratification for purchase of paddy.

25. It would not be out of place to mention that from the perusal of the testimony of DW6, it is forthcoming that during an enquiry by the higher police official, the conclusion arrived at was that it is a case of false implication. Resultantly, earlier an untraced report was presented in the court.

26. On failure of the prosecution to prove the demand and acceptance, the conviction under Sections 7 and 13(2) of the Act cannot be sustained. The impugned judgment of conviction and order of sentence are set aside.

27. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

16th November, 2022
mk

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