

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

CRA-S-750-SB of 2005

Date of Decision: 15th November, 2022

State of Haryana

Appellant

Versus

Rajinder Parshad

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gurmeet Singh, AAG, Haryana.
Mr. Jitender Nara, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. The State has filed the appeal against acquittal of Rajinder Parshad (respondent) in FIR No. 15 dated 13.5.2002, under Sections 7 and 13 of the Prevention of Corruption Act, 1988, registered at Police Station State Vigilance Bureau, Gurgaon.

2. As per the case set up by the prosecution, complainant- Ganesh Sharma made a complaint on 13.5.2002 to the Vigilance Department. It was alleged that he visited the office of SDO-I of Electricity Department with regard to release of 20 KV electric connection for his plot situated in Kadipur Industrial Area, Gurgaon. He was asked to submit fresh test report though he had already submitted the test report. He met the respondent posted as Junior Engineer, who demanded Rs.20,000/- as illegal gratification for releasing the electric connection. He told the complainant to pay Rs.9,000/- immediately and remaining Rs.11,000/- after one or two days. Acting on the complaint, raiding team was constituted. PW2- Naib Tehsildar Man Mohan was appointed for the purpose. PW7-Aman Kumar,

Head Constable was the shadow witness. Eighteen currency notes of Rs.500/- each were laced with Phenolphthalein Powder and initialled. The shadow witness was directed to give signal to the raiding party on acceptance of the illegal gratification. On receiving the signal, the raiding party recovered the tainted currency from the drawer of the table of the respondent. One receipt No. 16, book No. 2503 dated 3.3.2002 pertaining to Roop Chand was also seized. On the said receipt book, the tainted currency was put. On washing the receipt with Sodium Carbonate solution, the colour turned pink.

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

4. The respondent in his statement under Section 313 Cr.P.C. pleaded false implication and stated that the SDO had marked the application of the complainant to him and he had submitted his report raising objections. It was further stated that he was lifted from his office and later was implicated in the false case.

5. In his defence, the respondent examined four witnesses.

6. It was considered by trial Court that the laced currency was recovered from the drawer of the table of the respondent. He had not touched the tainted money. PW1-Ganesh Sharma deposed that hands of the respondent were also washed, whereas the statements of PW2-Man Mohan Naib Tehsildar, PW7-Aman Kumar (shadow witness) and PW9-Dhan Singh DSP (Investigating Officer) were to the contrary. DW4-Daljit Singh, SDO, Electricity Department deposed that the drawer of the table from which the laced currency notes were recovered was accessible to every one. Further that the complainant had not approached DW4 (SDO) with a complaint of

demand of illegal gratification made by the respondent. It was also noted that statements of PW1 and PW7 that the complainant had put the money in the drawer of the table of the respondent on his asking was an improvement from the previous statements (Ex. DA and Ex. DF). Reliance was placed by the trial court on the decision of the Supreme Court that recovery of the tainted currency in itself does not prove the acceptance of illegal gratification.

7. The trial court also considered the discrepancies in the testimonies of the prosecution witnesses. PW1-complainant stated that tainted money was lifted from the drawer of the table of the respondent by Naib Tehsildar. To the same effect was the statement of PW2-Naib Tehsildar but the shadow witness deposed that the laced currency was taken out by DSP-Dhan Singh from the drawer. The complainant stated that the raiding party reached the office of Complaint Centre at 3.00 pm and stayed there for fifteen minutes. His signatures on the documents were obtained in the office of Vigilance Department, Gurgaon, whereas PW7 and PW9 stated that all proceedings were conducted at the spot and raiding party stayed there for two hours approximately.

8. As per PW2, two persons were present in the Complaint Centre whereas as per the shadow witness, the respondent was alone. DW2-Surender Singh, LDC, deposed that duty of the respondent was to submit the report and he could not sanction or decline release of the electric connection. To the similar effect was the statement of DW4-Daljit Singh SDO. It was noted that as per prosecution bribe was demanded for release of electric connection, the respondent was not having authority to release

the connection. The respondent was acquitted vide judgment dated 16.7.2004.

9. Learned counsel for the State argues that the trial court erred in acquitting the respondent in spite of the fact that laced currency notes were recovered from the drawer of his table and the complainant and shadow witness supported the case of prosecution. They deposed that on asking of the respondent, the money was put in the drawer. It is argued that submission of the report by the respondent was prerequisite for the release of the connection.

10. Learned counsel for the respondent defends the impugned judgment. He submits that the respondent prior to the raid had raised an objection on 5.5.2002 with regard to the test report submitted by the complainant. In pursuance to the objection raised by the respondent, notice (Ex. DD) was issued by S.D.O. The contention is that it was a case of false implication as the respondent had raised objection on the test report submitted by the complainant.

11. The scope of interference in judgment of acquittal is well settled.

11.1 In **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court after considering various judgments laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate

court, being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

11.2 A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble

Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

12. The trial court considered the facts and examined the evidence threadbare. The reasons recorded are in consonance with the depositions made by the prosecution witnesses. It is not the case of prosecution that money was recovered from the respondent. DW4 deposed that everyone had accessibility to the drawer of the table from which the tainted currency was recovered. No hand wash test of the respondent was conducted. The respondent was not having the capacity to sanction or deny the electric connection. He was Junior Engineer and his duty was only to submit the report. It is not the case of prosecution that he demanded illegal gratification for submitting his report or for deleting the objection already raised by him on the earlier report submitted by the complainant. The acceptance of bribe cannot be proved when recovery itself is doubtful.

13. No case of legal or factual error much less perversity is made out for interference by this court in the judgment of acquittal.

14. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

15th November, 2022

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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes