IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-466-SB of 2003
Date of Decision: 27th September, 2022

Subhash Chander

... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Harpreet Singh Sandhu, Advocate for the appellant.
Mr. M. S. Bajwa, Deputy Advocate General, Punjab.

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AVNEESH JHINGAN , J.

This appeal is directed against conviction of Subhash Chander (appellant) under Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') in case of FIR No. 1 dated 3.1.1995, under Sections 7 and 13(2) of the Act, registered at Police Station Vigilance Bureau Ferozepur.

The case set up as per the prosecution is that DSP-Babu Singh received an information that for release of temporary electric connections, applicants were being made to deposit amount of Rs.100/- to Rs.200/- over and above the prescribed fee. On 10.5.1994, the DSP constituted raiding team, Swaran Singh Clerk in the office of Deputy Commissioner was joined as official witness. Raid was conducted at office of Punjab State Electricity Board (for short, 'the Board'), 100-150 applicants were found present in the office. Twenty applicants disclosed that the appellant in addition to the prescribed fee of Rs.10/- had received Rs.200/- per application extra. From some of them Rs.100/- to Rs.150/- extra were taken and no receipt was issued. Statements of the applicants were recorded. The Revenue Accountant, slipped from the office and it was informed that Pritam Singh S.D.O. had gone for field duty. There was a bag lying on the table of the appellant in which he was keeping money received from the applicants. He was noting down the amount received from the applicants in the note book. From the bag Rs.41,410/- were recovered, in addition to currency worth Rs.18,270/- on which names of the applicants were written. Receipt Nos. 124 to 364 from receipt book No. 13228 having handwriting of the appellant were recovered. The cash book and receipts were taken into possession. The appellant was a Consumer Clerk, his duty was to check the application for marking it to Revenue Accountant. The Cashier had to receive the requisite fee. The appellant was deputed by the S.D.O. to collect fee from the applicants and to issue receipts, as the Cashier was on leave. On the basis of the raid conducted, ruqa was sent on 3.1.1995 and thereafter FIR was registered. Sanction to prosecute the appellant was granted by the Chief Engineer. Challan was presented, charges were framed, the appellant pleaded not guilty and claimed trial.

The prosecution to prove its case examined PW1-Prabh Dayal Cashier, applicants-Sher Singh, Bhagwan Dass, Darshan Ram, Jimidar Ram, Kashmir Singh, Sukhdev Singh and Amrit Singh as PW2 to PW8, respectively. Total seventeen witnesses were produced by the prosecution.

In statement under Section 313 Cr.P.C., the appellant pleaded innocence. He stated that it is a case of false implication, at the instance of Ashwani Kumar who had good relationship with the police officials and who was not obliged by the appellant by doing his work. He further stated that the appellant, his brother and father had a joint estate of thirty acres of land. M/s Diwan Chand, Vijay Kumar, Commission Agent at Fazilka used to sell their agriculture produce. On 10.5.1994, he had obtained Rs.32,000/- from the Commission Agent and Rs.15,500/- were borrowed from M/s Jattu Ram Parshotam Dass for domestic need. The amount was kept in almirah which was forcibly taken away by the police. His signatures were obtained by the police under duress.

In his defence, the appellant examined DW1-Parshotam Lal, of M/s Diwan Chand Vijay Kumar, DW2-Vijay Kumar of M/s Jattu Ram Parshotam Dass. Jamabandi for the year 1998-99 was exhibited as D3.

The trial court considering that:

(i) on the relevant date, the appellant being a public servant was performing the duty of Cashier;

(ii) delay in lodging the FIR was not fatal to the case of the prosecution;

(iii) receipts recovered were of Rs.5,630/- whereas the actual collection was of 59,680/-;

(iv) the defence put forth by the appellant was rejected on the ground that even if the amount of Rs.32,000/- and Rs.15,500/- were taken from the Commission Agents, still there was recovery of excess amount;

(v) reliance was placed upon the depositions of PW2 to PW4 and PW-6 to PW-8, who stated that about four years ago, they had gone to take the temporary electric connection for irrigating paddy crop and the appellant charged Rs.200/- or Rs.300/- extra than the prescribed fee; and

(vi) there was a valid sanction to prosecute the appellant

convicted the appellant under Section 13(2) of the Act on 21.2.2003. Vide order of even date, the appellant was sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.8,000/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for six months.

Learned counsel for the appellant assailed the impugned judgment. He submitted that there was gap of seven months between conducting the raid and registering the FIR and no explanation had come forth for the same. The argument is that it is a case of false implication. He submitted that the story put forth by the prosecution is doubtful. PW1-Prabh Dayal Cashier stated that on 3.1.1995 the Cashier was on leave and on that day the appellant was working as Cashier, whereas the raid was conducted on 10.5.1994. He further contended that independent official witness PW12-Swaran Singh had not supported the case of prosecution, he was declared hostile. The attesting witness to the recovery memo-Jagtar Chand was not examined by the prosecution. The emphasis is that as per the report of DSP, money was recovered from the bag lying on the table of the appellant but PW12-Swaran Singh deposed that the bag was recovered from the almirah and this too was stated by D.S.P. in cross-examination. He submitted that the trial court erred in ignoring the defence evidence whereby the source of money was duly explained.

Learned counsel for the State defends the impugned judgment. He submits that the appellant was discharging the duty of Cashier on the date when the raid was conducted and he was collecting amount in excess of the prescribed fee. The contention is that writing of the appellant was identified by PW1- Prabh Dayal. He further submits that PW2-Sher Singh, PW3- Bhagwan Dass, PW4-Darshan Ram, PW6-Kashmir Singh, PW7-Sukhdev Sigh and PW8-Amrik Singh supported the case of the prosecution that Rs.200/- to Rs.300/- extra were charged from them. The submission is that even if the defence of the appellant is accepted that money was borrowed from the Commission Agents, there was recovery of excess amount from the appellant.

Heard learned counsel for the parties and perused the record.

As per the case of the prosecution, on receiving the information DSP-Babu Singh raided the office of the Board. Twenty applicants disclosed that Rs.200/- to Rs.300/- extra was being charged for accepting the applications for release of temporary electric connection. There was recovery of Rs.59,680/- from a bag. The depositions of PW2-Sher Singh, PW3- Bhagwan Dass, PW4-Darshan Ram, PW7-Sukhdev Singh and PW8-Amrik Singh were similar. They stated that about four years back, they had gone to the office of the Board at Guruharsahai for taking temporary electric connection for irrigating paddy crop and amount of Rs.200/- to Rs.300/- extra was charged for accepting the applications. It would not be out of place to mention that the statements recorded of twenty applicants at the time of raid were not exhibited in trial. There is nothing on record to show that PW-2 to PW-8 had filed application on 10.05.1994. The affidavits of Bagicha Singh, Kishore Singh, Ashwani Kumar and Gulzar Singh dated 29.6.1995, 29.6.1995, 30.6.1995 and 29.6.1995 respectively were exhibited by the prosecution to support its case but the deponents were not examined.

The raid was conducted on 10.5.1994, whereas FIR was registered on 3.1.1995. No reason for whatsoever worth was put forth by the prosecution to explain the delay.

The Supreme Court in **Satpal Singh v. State of Haryana, 2010(3) RCR (Criminal) 777** held as under:

> *"14. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.* ***(Vide State of Andhra Pradesh v. M. Madhusudhan Rao, 2008(4) RCR (Criminal) 931.***

The official witness PW12-Swarn Singh stated that money was recovered from a bag lying in an Almirah behind the appellant. He in his cross-examination stated that bundles of notes recovered from the bag had bank seals. Though he was declared hostile but his statement cannot be ignored in totality especially when PW15-DSP Babu Singh in his cross-examination stated that the bag was recovered from the Almirah, whereas as per the report prepared, the money was recovered from the bag lying on the table of the appellant. There is a major discrepancy with regard to the recovery of the amount. It would be appropriate to mention that Jagtar Chand, who was member of the raiding party and an attesting witness to the recovery memo was not examined by the prosecution.

There is another aspect of the matter. The appellant examined DW1- Parshotam Lal and DW2- Vijay Kumar to support his defence that amounts of Rs.32,000/- and Rs.15,500/- were borrowed by him on 10.5.1994. The defence witnesses produced account books maintained in due course of business, having entries of amount borrowed by appellant. The entries had signatures of the appellant. He produced a jamabandi to show that he along with his father and brother owned agricultural land. As per the case set up, the currency was found in the shape of bundle. The defence evidence along with the discrepancies in the statements with regard to the recovery of the bag creates a dent in the prosecution story.

The prosecution relied on the affidavits furnished by applicants regarding charging of Rs.200/- to Rs.300/- extra for accepting the applications for temporary release of electric connection. To similar effect were the depositions of PW2-Sher Singh, PW3- Bhagwan Dass, PW4-Darshan Ram, PW6-Kashmir Singh, PW7-Sukhdev Sigh and PW8-Amrik Singh. It would not be out of place to mention that the applications available in the office allegedly accepted by the appellant after charging extra amount were not seized at the time of raid. The deponents who had furnished the affidavits were not examined as witnesses. The depositions of PW2 to PW-4 and PW-6 to PW-8 looses reliability as no evidence was produced to show that they had submitted applications on 10.5.1994.

The recovery of excess amount than the amount borrowed from the Commission Agents in itself would not be sufficient for conviction of the appellant.

It was not disputed that the appellant was a Consumer Clerk., it was not within the ambit of his duty to accept the application and the fee. He had to check the application, forward it to the Revenue Accountant for marking it to the Cashier. The case set up was that on 10.5.1994, on the oral orders of S.D.O., the appellant was discharging the duties of Cashier. To prove the case, the prosecution examined PW1-Prabh Dayal Cashier. He stated that on 3.1.1995, the Cashier was on leave and cash was handled by the appellant. As per the case of the prosecution, the appellant was discharging the duty as a Cashier on 10.5.1994. The sole witness (PW1-Prabh Dayal) relied upon by the prosecution failed to substantiate the allegation that on 10.5.1994, the appellant was discharging the duties of the Cashier.

Considering the facts and on re-appreciating the evidence, it is clear that the prosecution has failed to prove its case beyond reasonable doubt. It is not proved that on 10.5.1994, the appellant was discharging the duties of the Cashier. In the absence of seizure of the applications, the prosecution failed to prove that PW2 to PW8 filed applications and had paid extra amount. There is no explanation forthcoming for delay of more than six months between the raid and registering of the FIR. The recovery of amount more than the amount borrowed by the appellant from the Commission Agents intself cannot form the basis of conviction under

Section 13 of the Act.

The impugned judgment of conviction and the order of sentence consequent thereto, are hereby set aside.

The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

27th September, 2022
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Whether reasoned/speaking	Yes
Whether reportable	Yes