IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-394-SB of 2015 (O&M)
Reserved on 10.08.2022
Pronounced on: 18th August, 2022

Chiman Lal

.....Appellant

VERSUS

Bhupinder Singh, Revenue Patwari and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Rajinder Kumar, Advocate for appellant.

Mr. Sandeep Kumar, DAG Punjab.

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AVNEESH JHINGAN, J

1. Aggrieved of acquittal of Bhupinder Singh (respondent), in case of FIR No. 1 dated 21.1.2010 under Sections 7, 13(2) of Prevention of Corruption Act, registered at Police Station Vigilance Bureau, Ludhiana, the present appeal is filed.

2. The facts in brief are that Chiman Lal (appellant) made a statement before the police that he was possessing and cultivating Central Government land, measuring five kanals eleven marlas and similarly Joginder Singh of his village was possessing and cultivating thirty-six kanals. The land was to be allotted as per government policy, appellant along with Joginder Singh went to the office of SDM Raikot and presented the documents of the land. The case was marked to Naib Tehsildar, who forwarded it to respondent for report. On 19.1.2010, the respondent demanded bribe for taking necessary action, the deal was struck for Rs.4000/-. On 21.1.2010, complainant and Joginder Singh reported the matter to the Vigilance Bureau and a trap was set up. Jatinder Pal, ETO and

Major Singh, Clerk of Excise and Taxation Department were made official witnesses. Currency notes worth Rs.4000/- were laced with *Phenolphthalein* powder and were given to the appellant to be handed over to respondent on demand. The shadow witness was directed to see and hear the conversation between the appellant and respondent. On reaching the Patwar-Khana, the appellant was sent to the office of respondent. Receiving the signal from the shadow witness, the team entered the office and currency notes were recovered from the table lying in front of respondent. The prosecution in order to prove its case examined nine witnesses.

3. In statement under Section 313 Cr.P.C., respondent pleaded that he is innocent. A plea was taken that the appellant was carrying a grudge against him as his predecessor wrongly mutated Kartar Singh, Mota Singh, Gurnam Singh (brother of the appellant) as cultivators of the land belonging to Central Government. A similar request was made to respondent but on verifying the record, the Fard Girdawari was denied. A complaint was made by Kartar Singh, Mota Singh and Gurnam Singh to Naib Tehsildar and SDM for non issuance of Fard-Girdawari. The SDM on verification of the record filed the complaint. Further that on 13.1.2010, the appellant obtained sixteen copies of Jamabandi and Fard-Girdawari, in total 200 pages and Rs.4000/- were due for copying fee.

4. The star witnesses of the prosecution were the appellant and the shadow witness. PW1-HC Ashwani Kumar, PW8-ASI Gurmit Singh were the formal witnesses. PW2-Shingara Singh proved sanction to prosecute. PW3-Madan Lal, Clerk, brought the file belonging to Chiman Lal and Joginder Singh, as per his deposition the land in question was to be transferred in the name of the appellant and Joginder Singh. PW4-Inderjit was examined to prove the posting of respondent as Patwari. PW9-SP Shinder Singh the

Investigating Officer stated the facts of receiving the complaint from the appellant, thereafter laying of the trap and recovery of the laced currency notes from the respondent.

5. The trial Court considering the evidence produced and the facts of the case concluded that the prosecution has failed to prove demand and acceptance of the illegal gratification by respondent. By giving the benefit of doubt, passed the judgment of acquittal.

6. Learned counsel for the appellant argued that the trial Court erred in acquitting respondent *inspite of* the fact that laced currency notes were recovered from him. The contention was that the appellant and the shadow witness supported the case of the prosecution.

7. Heard learned counsel for appellant and State counsel at length and perused the record.

8. On 19.1.2010, a deal was struck between the appellant and respondent to give bribe of Rs.4000/- for preparing the report. On complaint made to Vigilance Bureau on 21.1.2010 a trap was laid. Jatinder Pal Singh, ETO and Major Singh, clerk of Excise and Taxation Department were made official witnesses. The currency notes were laced and given to the appellant. He was directed to give the notes to the respondent on his demand. The shadow witness was directed to see and hear the conversation between the appellant and respondent and to give the signal to the raiding team for reaching at the spot. On receiving signal from the shadow witness the raiding team entered the office of respondent, he was sitting there and was made to realize that he had received the bribe. His hands were washed with Sodium carbonate and the colour of the solution turned pink. The currency notes were recovered from the table lying in front of respondent. The number of the currency notes were tallied from the official witnesses. File No.200/SDSM

dated 27.12.2007 was recovered from the table, the photostat of the file was taken into possession.

9. For proving the demand and acceptance, the prosecution relied upon the deposition of the appellant and the shadow witness-Joginder Singh. From the perusal of the statement made by the appellant, it is forth coming that he never stated that he handed over the laced currency on 21.1.2010 to respondent on his demand and the amount was accepted as a bribe. The appellant had reiterated the contents of the complaint, instructions were given to him by the Vigilance Department and the procedure adopted for recovery of the laced amount.

10. The shadow witness-Joginder Singh made similar deposition as made by the appellant. There was no mention of the appellant giving the bribe money on demand by respondent and it's acceptance by him.

11. It would not be out of place to mention that as per the instructions given to the shadow witness he had to see and hear the conversation between the appellant and the respondent. In his cross-examination the shadow witness stated that the appellant went inside the office of accused, he stood outside the door and the raiding party was standing at a distance of ten feet from him. The statement of shadow witness and his cross-examination shows that the he was standing outside the room. He did not state that he heard the conversation between the appellant and respondent. It is an admitted fact that the laced currency was recovered from the table lying in front of the respondent. Apart from the two depositions of the appellant and the shadow witness, there is no evidence to substantiate demand and acceptance of illegal gratification by respondent.

12. The contention that the trial court erred in acquitting respondent, *inspite of* the recovery of the laced currency from him, lacks merits. The

recovery of the currency notes from respondent in itself is not enough for the conviction. The prosecution has to prove demand and acceptance of illegal gratification by the accused. The Supreme Court in ***K. Shanthamma v. The State of Telangana, 2022 (2) RCR (Criminal)195*** held that proving of the demand and acceptance of illegal gratification is sine qua non, mere recovery of currency notes is not enough.

The relevant para is reproduced:-

> "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, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. <u>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."</u>

...(Emphasis supplied)

13. The contention of the learned counsel for the appellant, that the complainant and the shadow witness supported the case of prosecution is noted to be rejected. Both the witnesses reiterated the contents of the complaint, the procedure adopted for laying the trap and for the recovery of the laced currency notes. There is no specific statement to substantiate the acceptance of illegal gratification by respondent. In other words, that on 21.1.2010, the appellant handed over the laced currency notes to respondent on his demand and he accepted the bribe. It cannot be lost sight that as per respondent, fee of Rs.4000/- was due for the copies of Fard obtained by the appellant.

14. It would be relevant to quote following decisions with regard to scope of interference in appeal against acquittal.

Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479, held :-

> "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 re- appreciate, 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."

In ***State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775***, Division Bench of this Court held:-

> "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."

15. No case is made out for interference in the judgement of acquittal.

16. The appeal is dismissed.

17. Since the main case has been dismissed, the pending application, if any is rendered infructuous.

18th August, 2022 **(AVNEESH JHINGAN)**
JUDGE

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Whether speaking/reasoned *Yes*
Whether reportable *Yes*