

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1322-MA of 2018

Date of Decision: 12th December, 2022

State of Haryana

Applicant

Versus

Ashok Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This is an application for grant of leave to appeal against the judgement acquitting Ashok Kumar, Rajesh and Jaipal Singh (respondents) in FIR No. 11 dated 3.2.2015, under Sections 7, 8 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act'), registered at Police Station Vigilance Bureau, Hisar.

2. As per the case set up by the prosecution, on 3.2.2015 a complaint was received from Rajesh Kumar. As per his narration, he along with Ram Kumar contractor were carrying on business of liquor in Haryana and Uadipur (Rajasthan). About one month back, a contractor of Yamuna Nagar had sent truck of liquor to Bhopal which was looted on the way. The police party on the basis of suspicion came to his house at Tosham. A telephonic call was received from Ashok Kumar, CIA(2) Jagadhri demanding Rs.30,00,000/- for settlement of the case and to avoid implication in case of dacoity. Ashok Kumar informed that he would be coming to Hisar after one week for taking the amount. On the basis of complaint, trap was laid in which Dilbag Singh was made the shadow

witness. The currency was laced with Phenolphthalein powder. As per the instructions from ASI-Ashok Kumar (respondent), the tainted currency was handed over to respondent-Rajesh who was apprehended red handed. ASI Ashok Kumar and other officials were arrested from Satlok Asharam. Respondent-Jaipal Singh was nominated on the basis of disclosure statement made by respondent-ASI Ashok Kumar. The allegations of the complainant were supported by an audio recording. On receipt of sanction to prosecute, charges were framed.

3. The prosecution to support its case examined eighteen witnesses.

4. In statement under Section 313 Cr.P.C., the respondents denied allegations and pleaded false implication.

5. One witness was examined in defence.

6. During trial, the complainant turned hostile and did not support the case of prosecution. The shadow witness had not heard the conversation between the complainant and respondent-Rajesh. Further considering that respondent-Jaipal Singh was nominated on the basis of disclosure statement, the respondents were acquitted vide judgment dated 1.9.2017.

7. Learned counsel for the State submits that the trial court erred in acquitting the respondents. The contention is that laced currency was recovered from respondent-Rajesh and in view of the allegations made in the complaint it proves acceptance of bribe.

8. Heard learned counsel for the State.

9. The scope of interference in judgment of acquittal is well settled. Reference can be made to the judgment of Supreme Court in **Mrinal Das and others v. The State of Tripura**, 2011 (9) SCC 479 and judgment of Division Bench of this Court in **State of Punjab v. Hansa Singh**, 2001(1) RCR (Criminal) 775.

10. The complainant turned hostile. He had not supported the case of the prosecution that demand was made by the respondent-ASI Ashok Kumar. He further denied that illegal gratification was paid to respondent-Rajesh. He even denied to have produced the audio recording.

11. PW15-Dilbag Singh (shadow witness) specifically deposed that he had not heard the conversation between the complainant and

respondent-Rajesh as he was at some distance from the complainant. As per the case set up by the prosecution, only the complainant and the shadow witness were privy to the conversation between the complainant and respondent-Rajesh. The prosecution failed to prove demand of bribe.

12. As per prosecution, illegal gratification was demanded by respondent-ASI Ashok Kumar and Rajesh had accepted the money on behalf of the co-accused. On the basis of disclosure statement of respondent-ASI Ashok Kumar, respondent-Jaipal Singh was nominated and recovery of Rs.20,000/- was effected from him. It would not be out of place to mention that the prosecution failed to connect that Rs.20,000/- recovered at the instance of respondent-Jaipal Singh with illegal gratification.

13. It is settled that for conviction under Section 7 of the Act for proving demand and acceptance is *sine qua non*. There is no dispute on the proposition that mere recovery of the tainted currency from the accused will not prove the acceptance of demand.

14. The compact disc given by the complainant containing recording of conversation between the complainant and respondent-ASI Ashok Kumar was not found to be legal evidence in the absence of original source of recording or certification under Section 65-B of the Indian Evidence Act and the fact that the complainant denied to have made recording of the conversation.

15. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial court is plausible one. No case is made out for interference in the judgment of acquittal.

16. The application for grant of leave to appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

12th December, 2022

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