

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1008-MA of 2015

Date of Decision: 24th August, 2022

State of Haryana

... Applicant

Versus

Bodh Raj Patwari

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gurmeet Singh, Assistant Advocate General, Haryana.

AVNEESH JHINGAN , J.(Oral)

This application seeking leave to appeal is filed aggrieved of the acquittal of Bodh Raj (respondent) in case of FIR No. 46 dated 3.10.2013, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act'), registered at Police Station SVB, Hisar.

The brief facts as set up by the prosecution are that a complaint was moved by Baljinder Singh. He stated that he had advanced loan of Rs.1,50,000/- and Rs.70,000/- to Jagsir Singh and Sham Lal, respectively. To secure the loan, they had mortgaged the land and handed over the possession. On repayment of the loan, the complainant executed affidavit giving no objection for redemption of the mortgaged land. The complainant contacted the respondent for redeeming the mortgaged land. A demand of Rs.2,000/- was made by the respondent for doing the needful. On the application of the complainant, trap was laid, Block Development and Panchayat Officer, Bhuna was appointed as Duty Magistrate and Lovepreet Singh was made the shadow witness. The complainant was given four

initialed and laced currency notes worth Rs.2,000/-. The shadow witness and the complainant were sent to the office of the respondent for handing over the laced currency notes to the respondent on his demand. On receiving a signal from the shadow witness, the raiding party apprehended the respondent, recovered the tainted currency from the pocket of his shirt. His hands and shirt were washed with sodium carbonate, the colour turned pink.

After grant of sanction to prosecute, challan was presented.

To prove its case, the prosecution examined twelve witnesses. PW5-Ravinder Kumar, BDPO, Bhuna deposed on the lines of the case of prosecution, gave the details of procedure followed for laying the trap and for recovery of the tainted currency. PW4-Lovepreet Singh (shadow witness) deposed on the same lines. The complainant supported the prosecution case. Sanction order (Ex.P19) was proved by PW9-Ram Dhari, Reader to District Magistrate. PW8-Raj Kumar Field Kanungo stated that Inspector Bhupender Sharma handed over him original mortgage deeds and affidavits of the complainant. Inspector Vigilance got attested the photo copies of documents, these were taken in possession by the police. Girdhari Lal, Clerk, SK Branch, DC Office, Fatehabad proved the posting order of the respondent. Investigating Officer, Bhupender Sharma appeared as PW-12. He stated the facts regarding registration of FIR, permission granted by the Deputy Commissioner and procedure adopted for conducting the raid.

In his statement recorded under Section 313 Cr.P.C., the respondent pleaded false implication and denied the allegations against him.

In defence, the respondent examined DW1-Sadhu Ram Patwari, who proved the summoned record. As per the record, the respondent was posted as Patwari of village Meond Bogawali. According to rapat roznamcha, on 3.10.2013, copies of mutation were got prepared by complainant and government fee of Rs.2070/- was due. He stated that the fee could not be deposited by the respondent due to registration of the present case.

The trial court acquitted the respondent vide judgment dated 29.1.2015. It was considered that it was not the duty of the complainant to get the mortgaged land redeemed as he was the lender. He failed to produce evidence that he was authorised by Jagsir Singh and Sham Lal to get the land redeemed. The court noted that it was not the duty of the respondent being Patwari to redeem the land. No document or No Objection Certificate were forwarded by any authority to the respondent for entering the mutation. The respondent was not having the official capacity of doing the work for which illegal gratification was demanded. This coupled with the fact that the shadow witness stated that he had not heard the conversation between the complainant and the respondent, as he was standing outside the room made story of prosecution doubtful. The trial court had taken note of the discrepancies among the depositions of the prosecution witnesses. It was also noted that the lendee never approached for redeeming of the land. Trial Court examined the sanction order and concluded that it was passed without application of mind. It was stated in the sanction order that the respondent had demanded Rs.2,000/- as illegal gratification from the complainant for making report regarding parole case which was factually

incorrect.

The defence taken by the respondent was that Rs.2070/- was due as government fee for the copies of revenue record got prepared by the complainant. The defence was accepted as probable. It was held that presumption under Section 20 of the Act cannot be drawn against the respondent as he had not accepted the money knowing it to be bribe. Further, that defence raised was substantiated by deposition of DW1-Sadhu Ram Patwari. It was revealed that the complainant was not owning land but in his cross-examination he stated that he used to visit Patwar Khana two to four times a month. These facts lended support to the statement of the respondent that the complainant received illegal remuneration from the public to get their work done in Patwar Khana and he kept the grudge against the revenue officials who refuse to oblige him. He was habitual of making false complaints. The said aspect created a dent in the story put forth by the prosecution. Benefit of doubt was given to the respondent.

Learned counsel for the State submits that the trial court erred in acquitting the respondent as prosecution witnesses had supported the case of the prosecution and tainted money was recovered from the respondent.

Heard learned counsel for the State and perused the record.

Law is well settled that for conviction under Section 7 of the Act, demand and acceptance of illegal gratification has to be proved. Presumption under Section 20 of the Act can be drawn against the accused if it is proved that he had accepted or obtained or attempted to obtain undue advantage. Presumption under Section 20 of the Act is rebuttable.

The defence taken by the respondent was accepted as a probable defence. It was substantiated by the deposition of DW1-Sadhu Ram Patwari and the record produced by him. As per the record produced, government fee of Rs.2070/- was due from the complainant. The prosecution failed to prove the demand and acceptance of the illegal gratification by the respondent.

No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment. The view taken by the trial court is plausible.

The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

24th August, 2022.
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Whether reasoned/speaking	Yes
Whether reportable	Yes