

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1307-SB of 2005

Date of Decision: 21st November, 2022

Gurcharan Singh

Appellant

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nikhil Ghai, Advocate for the appellant.
Mr. Jiteshwar Singh, Assistant Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of conviction under Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') in FIR No. 59 dated 29.7.1998, registered at Police Station Vigilance Bureau, Ferozepore Range, Ferozepore, Gurcharan Singh (appellant) is in appeal.

2. The facts as per the case of the prosecution are that Nazar Singh made a complaint. He narrated that he himself and his brother were the beneficiaries of Will of his uncle Tara Singh. It was alleged that he had met the appellant who was posted as Halqa Patwari. He handed over the Will, death certificate and order of the court to the appellant for entering the mutation and for redemption of the mortgaged land. The appellant demanded bribe of Rs. 5500/-, the deal was struck at Rs. 4500/- and Rs. 2500/- were paid. After twenty five days, the complainant went to the appellant, he was told that mutation had been sanctioned but redemption of the land was yet to be done and balance amount was demanded. The complainant along with Mohinder Singh on 29.7.1998 made a complaint to

the Vigilance Bureau and a trap was laid. Twenty currency notes of denomination of Rs.100/- each were laced with Phenolphthalein Powder. Mohinder Singh and Gurjit Singh Clerk of DFSC office were the shadow witness and official witness respectively. On reaching the office, the complainant and the shadow witness after giving instructions were sent inside. The appellant told that the work would be done only when the balance amount is paid and thereafter, the laced currency was handed over. The appellant put the notes in handkerchief and then kept it in the right pocket of his shirt. On signal of the shadow witness, the members of the raiding party reached the spot. On seeing the raiding party, the appellant threw the handkerchief containing the currency. On washing the hands of the appellant and the handkerchief with Sodium Carbonate solution, the colour turned pink.

3. On receiving the sanction, charge under Section 13(2) of the Act was framed.
4. The prosecution to prove its case examined ten witnesses.
5. In statement under Section 313 Cr.P.C., the appellant denied the allegations and pleaded innocence. He stated that the complainant in greed of getting reward of Rs. 25,000/- falsely implicated him. He further stated that the mutation had already been sanctioned by Tehsildar on 20.7.1998, there was no occasion for him to demand the amount. He also stated that the complainant forcibly tried to put the currency notes in his pocket and during the scuffle the currency notes fell on the ground.
6. The appellant examined one witness in defence.
7. The trial court considering that:

- (i) though the official witness was declared hostile, the mutation had already been sanctioned but redemption of mortgaged land was not done;
- (ii) on the basis of recovery of the tainted notes from the appellant, invoking presumption under Section 20 of the Act;
- (iii) the appellant had not given any explanation with regard to possession of the laced currency; and
- (iv) disbelieving the testimony of DW1-Sukhdev Singh on the ground that the villager just out of sympathy deposed in favour of the accused

convicted the appellant under Section 13(2) of the Act vide judgment dated 27.7.2005. Vide order of even date, the appellant was sentenced as under:

Section	Sentence	Sentence in default of payment of fine
Section 13(2) of the Act	Undergo rigorous imprisonment for three years and fine of Rs. 5000/-	To further undergo rigorous imprisonment for two months

8. Learned counsel for the appellant submits that the mutation was sanctioned prior to the date of raid and there was no occasion for the appellant to demand illegal gratification. The contention is that it was not proved that redemption of the mortgaged land was sought by the complainant. It is further submitted that the shadow witness had not supported that a demand was made by the appellant.

9. Learned counsel for the State defends the impugned judgment.

He submits that the prosecution witnesses had supported the case of prosecution. The contention is that in hand wash test, the colour of the solution turned pink which itself proved the acceptance of the amount.

10. Heard learned counsel for the parties and perused the record.

11. From the perusal of the charge-sheet, it is forthcoming that charges were framed under Section 13(2) read with Section 7 of the Act. Section 13 of the Act, as stood at that time, is reproduced below:

“13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known source of income.

Explanation.- For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.”

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than (four years) but which may extend to (ten years) and shall also be liable to fine.”

12. It would be appropriate to mention here that the trial court while conducting trial proceeded for offence under Section 13(2) of the Act i.e. the sub-section which deals with the quantum of punishment. It was not specified as to under which clause of sub-section (1) of Section 13 of the Act, the appellant was made to face trial. After considering the facts and appreciating the evidence and going through the charge-sheet it is evident

that the case falls within ambit Section 13(1)(d) of the Act.

13. The complainant supported the case of the prosecution, but it is settled law that his deposition is to be relied upon with some caution, as he is interested in success of the trap. Reference in this regard is made to the decision of the Supreme Court in **Mukut Bihari and another v. State of Rajasthan, 2012(3) RCR (Criminal) 980.**

14. The shadow witness PW5-Mohinder Singh has not specified that the appellant made demand of the illegal gratification. He stated that the appellant told the complainant that he had done his work and thereafter the complainant gave the currency notes. The relevant portion of his statement is reproduced below:

“Nazar Singh enquired from the accused if his work had been done. Accused told that he had done his work and Nazar Singh gave him Rs.2000/- (tainted notes) to the accused. Accused enraped the said tainted notes in handkerchief and put the same in his pocket of shirt which was put inside pocket. I came outside the office and gave signal to the police party then police party raided the office of the accused. Accused put out the handkerchief from his pocket and the accused had thrown the same on the ground.”

15. In his cross-examination, he stated that four to five private persons were sitting in the room of the appellant and the raiding party had not asked any person present there to attest the document prepared.

16. The official witness PW6-Gurjit Singh stated that on signal from the shadow witness, the raiding party went inside the office of the appellant and they saw the amount in handkerchief lying on the ground. He was declared hostile. As per his cross-examination, he had stated before the police that the appellant was sitting on a chair outside his office in the

verandah and table was lying before him. On seeing the police party, the appellant took out the handkerchief from his pocket of shirt and threw it on the ground.

17. DSP- Baljit Singh PW9, Investigating Officer, reiterated the allegations in the complaint and the procedure adopted for laying the trap and after apprehending the appellant. He further stated that on receiving the signal from the shadow witness the raiding party went inside the premises, the appellant on seeing them threw the currency notes wrapped in handkerchief from the right pocket of his pant and he had picked the currency notes from the ground. He supported the fact that on washing of the hands and handkerchief with Sodium Carbonate solution, the colour turned pink.

18. DW1-Sukhdev Singh stated that the complainant was known to him. On the relevant date, he went to the office of the appellant. The complainant was having some currency notes in handkerchief and he forcibly tried to give it to the appellant who refused, in the scuffle the currency notes fell on the ground. In the meantime, the officials of the raiding party came there and picked the notes. The relevant portion of his testimony is quoted below:

“Nazir Singh who is known to me also came there, who told Gurcharan Singh that he had some work with him but he in return told that he does not know his any work with him. Then said Nazir Singh was having some currency notes in a handkerchief and he forcibly tried to give those notes to the accused but he refused and during scuffle those currency notes fell on the ground and than in the meantime, vigilance persons came there and they picked up those notes.”

19. On considering the facts and re-appreciating the evidence, it is evident that earlier to the day of trap, the complainant was the only witness to the demand. On 29.7.1998, the complainant and shadow witness as per instructions went to the office of the appellant. The shadow witness in his testimony has only stated that a query was made by the complainant as to whether his work had been done, the appellant answered in affirmative and thereafter the complainant gave laced currency to the appellant. Even as per the prosecution, there is no other witness to the demand.

20. It would not be out of place to mention that as per cross-examination of the shadow witness, four to five persons were sitting in the office of the appellant at the time of raid but none was joined as an independent witness. The official witness was declared hostile. As per his testimony when the raiding party entered the premises, the amount wrapped in handkerchief was lying on the ground. Investigating Officer-DSP Baljit Singh deposed that the appellant on seeing the raiding party threw the currency wrapped in handkerchief.

21. DW1-Sukhdev Singh an independent witness was examined by the appellant. He specifically stated that he was present in the office of the appellant on the relevant day. The complainant had forcibly tried to give laced currency to the appellant and during scuffle the handkerchief and the currency fell down.

22. The law is well settled that for invoking presumption under Section 20 of the Act, acceptance of the bribe is to be proved and for acceptance there has to be a demand. In the case in hand, apart from the deposition of the complainant, there is no witness substantiating the

demand by the appellant. In other words, the demand is doubtful and variation in deposition of prosecution witnesses the acceptance of bribe by appellant is also under shadow of doubt. In such circumstances, the presumption under Section 20 of the Act cannot be invoked against the appellant.

23. There is another angle to be considered i.e. mutation was not only entered by the appellant but also sanctioned prior to the date of trap. There is not an iota of evidence to support the allegation that redemption of the mortgaged land was sought by the complainant. The occasion for the appellant to demand illegal gratification is doubtful.

24. The variations in the testimonies of the prosecution witnesses with regard to the recovery of the amount, read with deposition of DW1, prove fatal to the story put forth by the prosecution.

25. Giving benefit of doubt, the appellant is acquitted. The judgment of conviction and order of sentence are set aside.

26. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

21st November, 2022
mk

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