

**239 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-32022-2021 in/and
CRM-A-472-2021
Date of Decision: 7th July, 2022**

State of Haryana

... Applicant

Versus

Babu Lal

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gurbir Singh Dhillon, AAG, Haryana.

AVNEESH JHINGAN , J.(Oral)

1. This is an application under Section 378(3) Cr.P.C. for grant of leave to appeal against acquittal of the respondent in FIR No. 14 dated 12.10.2018 under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short 'the Act') registered at P.S. SVB, Gurugram. The application is accompanied by an application for condoning the delay of 62 days.

2. Brief facts are that a complaint was received by Vigilance Department from Ramesh Yadav. It was alleged that on the basis of the decision given by the Supreme Court in favour of the forefathers of the complainant, documents were produced before the SDM, Gurugram and order for redeeming the mortgage land was passed. A report was prepared which was given to the Tehsildar Manesar who marked it to Halqa Patwari. Halqa Patwari handed over the report to Girdawar Babu Lal (respondent) who cancelled the report and demanded bribe of Rs.10,000/- from complainant for redeeming the land. On complaint a trap was laid, respondent was caught red handed.

3. In contravention of State Government instructions, instead of a Gazetted Officer, Nazir of Deputy Commissioner, Gurugram was deputed for supervising the raid. From the evidence adduced by the prosecution, especially from the deposition of the Investigating Officer (for short 'IO'), it emerged that the respondent had already sent a request for providing police protection in connection with the delivery of possession of the land to the complainant. The Patwari had given notices to both the parties regarding cancellation of mortgage. Further in cross-examination IO stated that respondent had made an application before the Tehsildar on 8th October, 2018 for providing police help and all proceedings relating to the file of the complainant had been completed by the respondent. There was a contradiction in the allegation of the complainant and the statement made by the IO. The complainant alleged that respondent cancelled the report handed over to him by Halqa Patwari. As per the IO, no report was found on the file which was cancelled or objected to by the respondent. For non-compliance of the instructions of the State Government and on failure of the prosecution to prove its case, the respondent was acquitted.

4. Learned counsel for the applicant submits that trial court erred in acquitting the respondent as he was caught red handed.

5. It would be appropriate, at this stage, to reproduce para 14 of the impugned judgment wherein reliance has been placed upon the instructions issued by the Government of Haryana dated 7th January, 2019.

“In this context first of all, this court finds it appropriate to maintain that from time to time, Government of Haryana has been issuing instructions for appointment of Duty magistrate in order to supervise the raids pertaining to gratification cases and in those instructions, Government of Haryana had directed all the Deputy Commissioners of State of Haryana to

depute Gazetted officers to supervise the raid and on account of paucity of Gazetted officers, Government of Haryana in continuation of previous instructions had issued latest instructions to all the Deputy Commissioners of State of Haryana vide its letter no. 4/2/2018-II sent by Additional Chief Secretary to Government of Haryana Vigilance Department dated 07.01.2019 and addressed to all the Deputy Commissioners for deputing Duty Magistrate for raid in trap cases of State Vigilance Bureau Haryana. In the said letter, Government of Haryana while reiterating its previous instructions for appointment of Gazette officers in trap cases vide letter no. 6183 SVB (H) dated 28.06.2018 and the instructions contained in Circular Letter no. 21/3-2000-4JJ (1) dated 04.05.2018 definition of Gazetted officer for the purpose of supervising the trap cases was extended and directions were issued to take the service of gazetted officers of the other departments i.e. Executive Engineer, Principals of School and college etc. etc. and vide this letter Government of Haryana had not made it compulsory to associate only HCS officers or Tehsildar or Naib Teshildar but Government of Haryana had made it mandatory to atleast appoint the Gazetted officer as a Duty Magistrate and appointment of any officer lessor in the rank of Gazetted officer shall cast cloud on the genuineness of prosecution version because in that eventuality, the doubt comes upon the prosecution to justify the appointment of non gazetted officers as Duty Magistrate. Since in the present case, the said directions of Government of Haryana have not been complied with by the prosecution, hence it casts a genuine doubt on the veracity of the prosecution version because in this case Class-III official from the office of Deputy Commissioner was appointed as Duty Magistrate”.

6. In the present case, a Class III employee Nazir of the Deputy Commissioner was appointed for conducting the raid. Prosecution failed to putforth any reason before the trial Court for non-compliance of the instructions. Further the version putforth by the prosecution was found doubtful, as the day on which the raid was conducted, the accused had already completed the work at his end and written a letter for providing police help for delivery of the possession. The parties to the mortgage were given notice by the Patwari of cancellation of the mortgage deed. There is no challenge to the factual findings arrived at by the trial Court. The

7. There is no dispute on the proposition that the acceptance of the amount in itself is not enough for conviction under the Act.
8. 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 conclusion arrived at by the trial court is plausible.
9. The application is dismissed.
10. Since the application for grant of leave to appeal is dismissed on merits, the application for condonation of delay is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

7th July, 2022
Parveen Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No