

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-33904-2019 (O&M)
Date of Decision:- 6.2.2023

Sunil Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pawan Kumar, Senior Advocate with
Mr. Ravinder Chaudhary and Ms. Vidushi, Advocates
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioner seeks quashing of FIR No. 2 dated 17.1.2018, Police Station State Vigilance Bureau, District Hisar, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (Annexure P-5) and also challenges sanction order dated 11.10.2018 (Annexure P-6).
2. While the instant petition was filed on 13.8.2019, the trial Court subsequently framed charges against the accused/petitioner on 2.9.2019. The petitioner had moved an application seeking permission to assail order dated 2.9.2019 vide which charges had been ordered to be framed. When the application came up for hearing before this Court on 31.10.2019, the learned counsel for the petitioner confined his prayer to the limited extent of placing on record a copy of order dated 2.9.2019 instead of amendment in

the main petition and accordingly, order dated 2.9.2019 was taken on record as Annexure P-11.

3. The FIR in question was lodged at the instance of Bijender wherein it is alleged that he and his nephew Vikas Kumar were executing construction work on contract for Public Health Engineering Department and had executed work pertaining to construction of Boosting Station in village Daaya, District Hisar during the period from 2013 to 2017 and had also received payment in respect of the work executed by them. However, the security amount of Rs.50,000/- was still lying with the Public Health Engineering Department, Hisar and when they approached the Department for release of the security, J.E. Sunil Kumar demanded bribe of Rs. 10,000/-. The complainant, however, reported the matter to the Vigilance Bureau and accordingly, a trap was laid and Sunil Kumar, J.E. was caught red handed, while accepting an amount of Rs. 10,000/- from the complainant as bribe.
4. The matter was investigated by the Vigilance Bureau and upon conclusion of investigation, a challan was presented against the petitioner. The appointing authority vide order dated 11.10.2018 (Annexure P-6) accorded sanction for prosecuting the accused/petitioner. Subsequently, charges also came to be framed against the accused/petitioner by the trial Court vide its order dated 2.9.2019.
5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that the complainant Bijender has nothing to do with any construction work and had not ever been allotted any contract by the Department and as such, would not have any 'cause of action' or *locus-standi* to lodge the FIR or to claim that his security had been

withheld. The learned counsel, in this regard, has referred to a copy of contract dated 4.3.2013 entered into between the Public Health Engineering Department and Vikas Contractor wherein the name of the complainant Bijender does not figure anywhere. It has been submitted that the petitioner was neither a partner with Vikas, who had executed the construction work nor had any role to play in the construction work and was an absolute stranger and thus, there would have been no occasion for the petitioner to have demanded any amount from a stranger.

6. The learned counsel has next submitted that admittedly even as per FIR, the entire payment in respect of the work executed already stood released to the Contractor and it is only the security amount which remained to be released and as per the conditions of the contract, the security is to be released after three months of the final payment which had been made on 15.11.2017. The learned counsel has also drawn the attention of this Court to a letter dated 14.1.2019 (Annexure P-8) written by the Executive Engineer, Public Health Engineering Department to the Deputy Superintendent of Police, State Vigilance Bureau, Hisar wherein also the Executive Engineer has informed that the security is required to be released after three months of payment of final bill i.e. after 14.2.2018. The learned counsel, in this regard, has also drawn the attention of this Court to a receipt (Annexure P-10) wherein it is specifically written that the security will be due after three months i.e. on 14.2.2018. It has, thus, been submitted that as on the date of laying of trap i.e. on 17.1.2018, the security was not even due and as such, there was no question of any demand of bribe.

7. The learned counsel has further submitted that as a matter of fact the petitioner was not even posted in Hisar as on the date of occurrence and as such, there would be no occasion for the petitioner to have demanded any bribe and that the complainant or the Contractor cannot be said to be so naive to have given an amount to a person who was not even competent and had no jurisdiction to release the security. It has been submitted that the petitioner was relieved of the additional charge of Hisar Sub-Division No. 7 vide order No.5003-05 dated 17.4.2017 w.e.f. 17.4.2017 (Annexure P-4), as is also specifically admitted in reply filed by respondent No. 3. It has next been submitted that the appointing authority, while according sanction for prosecuting the petitioner, has not applied mind and has not considered all the relevant facts.
8. On the other hand, the learned State counsel has submitted that it is a case where the petitioner, pursuant to definite information against him regarding demand of bribe, was caught red handed while accepting an amount of Rs.10,000/- from the complainant and as such, he cannot claim innocence.
9. This Court has considered the rival submissions.
10. The petitioner is specifically named in the FIR wherein specific allegations have been levelled to the effect that the petitioner had been demanding bribe of Rs. 10,000/- from the complainant for the purpose of release of security amount of Rs. 50,000/-, which was lying deposited with Public Health Engineering Department. Pursuant to FIR, a raid was conducted and petitioner was caught red handed while accepting tainted currency notes from the complainant. The contention of the petitioner that the complainant Bijender was never allotted any contract and that he is a stranger and there

would be no occasion for the petitioner to demand any amount from him cannot be accepted inasmuch as in the affidavit (Annexure R-1) furnished by Vikas, who had been allotted the contract, he has deposed that Bijender was looking after the work of construction and they have been working together. To a similar effect, is the statement of Bijender (Annexure R-2). As such, even if the construction work had been allotted only to Vikas, it will not make much difference as Vikas to whom the work had been allotted has categorically deposed that the complainant Bijender was working with him.

11. The contention of the petitioner that the entire amount pertaining to job work stood released and only security remained unpaid which was not due as on the date when demand was raised would certainly prompt the Court to scrutinize the allegations minutely. However, having regard to the fact that the petitioner was caught red handed while accepting the bribe of Rs. 10,000/- from complainant in the shape of tainted currency notes, whose serial numbers had been noted down, a strong presumption would be there as regards the guilt of the petitioner. The fact that the petitioner had been transferred to Public Health Engineering Sub-Division Hisar on 18.5.2015 and had also been given additional charge of Sub-Division No. 7, Hisar vide order dated 24.8.2016 which continued with him till completion of project and even on the day when final bill was made i.e. on 31.8.2016, it was petitioner who was posted there, would show that he would have been interacting with Vikas and complainant in the capacity of J.E. and as such, even if he was relieved of the additional duties of Sub-Division no. 7, Hisar w.e.f. 17.4.2017, it cannot be ruled out that upon the petitioner having assured release of security upon payment of Rs.10,000/- would have prompted him to give a bribe of Rs. 10,000/- to the petitioner. It may here

additionally be mentioned that a perusal of reply filed by respondent No.3 indicates that the police had collected call details of petitioner and complainant indicating that they were in regular touch with each other contradicting claims of petitioner that he had nothing to do with complainant. As already stated above, the recovery of tainted currency amount from possession of the petitioner is a strong incriminating circumstance against him. This Court is not to thrash the evidence threadbare at this stage, as would be done at the stage of final arguments at final stages of trial.

12. The contention of the petitioner regarding sanction order dated 11.10.2018 (Annexure P-6) being defective and as the same has not referred to all the facts is also not borne out from the record inasmuch as a perusal of the sanction order shows that sanctioning authority has referred to the relevant facts as regards the petitioner, who was posted as J.E., having demanded and accepted an amount of Rs.10,000/- from the complainant Bijender for the purpose of getting released the security amount and for making DNIT of the work done by the complainant. The sanctioning authority has specifically stated therein that all the documents i.e. statements under Section 161 Cr.P.C., report under Section 173 Cr.P.C. etc., had been perused and was of the considered opinion that the petitioner had committed the offences in question. The sanctioning authority is not required to refer to each of the document while according sanction. If the Court is satisfied that the sanctioning authority was seized of the matter in hand and was aware of the allegations and the facts which constitute the offence and had reached at such conclusion, upon perusal of the documents put up before it including

challan, it cannot be said that the sanctioning authority had not applied its mind. As such, the said contention is also found to be devoid of merit.

13. As a sequel to the discussion made above, this Court finds that the facts as delienated in the FIR and which had surfaced during investigation clearly show that the petitioner, while being posted as J.E., had demanded and accepted an amount of Rs. 10,000/- as illegal gratification for the purpose of getting released the security amount which stood deposited in the office of Public Health Engineering Department. The factum of recovery of tainted currency notes, whose serial numbers had been duly noted down, and which had been passed on by the complainant is a strong incriminating circumstance against the petitioner. As such, the offences alleged against the petitioner are found to be *prima facie* made out and consequentially, there is no ground to quash the FIR at this stage in exercise of powers conferred under Section 482 Cr.P.C.
14. The petition is sans merit and is hereby dismissed.

6.2.2023		(Gurvinder Singh Gill)
kamal		Judge
	Whether reasoned/speaking	Yes / No
	Whether reportable	Yes / No