IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRA-S-1974-SB-2002 (O&M)
Date of decision: 17.09.2024

Tarlok Singh .....Appellant

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vishal Garg Narwana, Advocate,
Mr. Arishdeep Mraad, Advocate,
Ms. Deepika Chaudhary, Advocate and
Mr. Khushwant Saharan, Advocate
for the appellant.

Mr. Amit Rana, Sr. DAG, Punjab and
Mr. Navdeep Singh, DAG, Punjab.

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MANJARI NEHRU KAUL, J.

1. The appellant is challenging order dated 27.11.2002 passed by learned Special Judge, Bathinda in case FIR No.43 dated 30.06.1997 under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') registered at Police Station Vigilance Bureau, Ferozepur Range, Ferozepur, whereby he was convicted and sentenced to undergo RI for a period of 1 ½ years and to pay fine of Rs.1,500/- and in default of payment of fine, the appellant was to further undergo RI for a period of 02 months.

Submissions by the appellant

2. Learned counsel for the appellant contends that the

appellant has been falsely implicated in the present case which fact was erroneously ignored by the learned Trial Court while passing the impugned judgment. The basis of this false implication, it has been argued, stems from a personal vendetta held by the complainant PW2 Harshdeep Singh, and the Superintendent of Police, Vigilance. It has been further argued that the appellant had previously issued warning letters to the complainant regarding certain irregularities, which angered the complainant. In retaliation, the complainant, in collusion with the SP (Vigilance), who also harboured a grudge against the appellant, conspired to frame the appellant. The animosity of the SP (Vigilance) was due to a prior incident where the uniform of the SP (Vigilance) was soiled with dust from the appellant's moving vehicle, which was seen as an affront by the SP (Vigilance).

3. Learned counsel further submits that at the time the alleged tainted money was placed in the office of the appellant, he was not even present in the room. Instead, the appellant was upstairs, completely unaware of what was transpiring in his absence. It has been further asserted that the complainant, taking advantage of this situation, entered the office of the appellant, without his knowledge and then placed the tainted currency notes inside the drawer of his table. Learned counsel has argued that this act was done behind the back of the appellant with the sole intent of framing him in a false case.

4. In support of the appellant’s false implication, learned counsel has further argued that no independent witness was present when the appellant was allegedly apprehended on the fateful day. It has

been submitted that shadow witness, PW3 Rupinder Singh (hereinafter referred to as 'shadow witness'), who is one of the star witnesses of the prosecution, could not be considered credible as he was well acquainted with the complainant as it was a matter of record that both of them had a long-standing acquaintance for the past 7-8 years. This relationship between the shadow witness and the complainant, therefore, raised serious doubts about the veracity of the testimony of shadow witness PW3 Rupinder Singh, as it clearly was suggestive of the possibility of a bias and collusion between them. Thus, learned counsel has submitted that the learned Trial Court gravely erred in placing reliance upon the testimony of shadow witness PW3 which was not worthy of any trust.

5. Additionally, learned counsel has argued that there was no conceivable reason or occasion for the appellant to demand any bribe from the complainant. Learned counsel has pointed out that no bills had been prepared by the Junior Engineer (JE) in connection with the work of the complainant. As per the rules and procedures, the payment for earth work could only be released after the completion of brick soiling. However, it was the admitted position of everyone including the complainant, that the work of brick soiling had not even commenced, let alone completed. Therefore, as no bill was prepared, no amount of money could had been disbursed to the complainant, eliminating any reason for the appellant to make a demand for bribe.

6. Furthermore, learned counsel has contended that the sanction granted for the prosecution of the appellant was defective. He argued that the sanctioning authority did not independently apply its

mind to the matter before granting sanction. Instead, the sanctioning authority merely signed a draft sanction order prepared by the investigating agency. The mechanical affixing of the signature, without any proper consideration of the facts and circumstances of the case, rendered the sanction invalid, and therefore, the prosecution itself stood vitiated.

7. Learned counsel, while drawing the attention of this Court to the evidence of DW1 Binder Kumar, submitted that this witness had clearly testified that the complainant had come to visit the appellant in his office. While the appellant's servant DW1 went to fetch water for the complainant, the complainant then planted the tainted money in the drawer of the appellant's desk. Learned counsel has argued that the learned Trial Court failed to consider this crucial evidence, which clearly hinted towards the false implication of the appellant. The testimonies of the defence witnesses, provided a plausible explanation for as to how the money came to be in the drawer of the appellant without his knowledge.

<u>Submissions by the State</u>

8. Learned State counsel, on the other hand, has submitted that the charges against the appellant are well supported by the evidence on record. The demand and acceptance of bribe by the appellant stands conclusively proven through the testimonies of PW2-complainant and shadow witness PW3 Rupinder Singh. PW2-complainant provided a detailed account of how the appellant demanded the bribe in exchange for clearing his pending bills. This

testimony as per the learned State counsel stood corroborated by the testimony of the shadow witness PW3 Rupinder Singh, who was present along with the raiding party and during the trap proceedings.

9. Furthermore, it has been submitted that phenolphthalein test conducted as part of the trap proceedings further corroborated the case of the prosecution. After the bribe money was recovered from the appellant, his hands were washed in the chemical solution, which turned light pink. This change in the colour, was conclusive proof that the appellant had handled the tainted currency notes, thereby clinchingly proving the acceptance of bribe.

10. Learned State counsel also submits that the testimony of PW5 Darshan Kumar (JE), further strengthened the case of the prosecution; PW5 Darshan Kumar admitted that the bill of the complainant had not been cleared because the payment had been stopped by the Sub Divisional Officer (SDO). However, the decision to withhold the payment was made under the instructions of none other than the appellant, who, in his capacity as the Executive Engineer, had the authority to release or withhold the payments. This testimony as per the learned State counsel supported the allegations made by the complainant that the appellant had demanded bribe in order to release the pending payment.

11. In addition, learned State counsel has pointed to the procedural integrity of the trap proceedings. The pre-trap and post-trap proceedings were conducted in the presence of an independent witness, PW1 Pushipinder Singh, who is a Gazetted Officer. The presence of this

independent witness, ensured that the trap proceedings were conducted in a fair and impartial manner, and therefore, the contention of the appellant that he had been falsely implicated was unsustainable.

12. Moreover, the learned State counsel argued that the appellant in his statement recorded under Section 313 of the Cr.P.C., admitted that the tainted money was recovered from the drawer of his table. This admission, coupled with the other evidence on record, clearly proved the guilt of the appellant.

13. Finally, learned State counsel contended that the sanction for the prosecution of the appellant was duly granted by the competent authority after a thorough and proper application of mind. Learned State counsel submitted that in the circumstances, the arguments of the appellant that the sanction had been given in a routine manner deserved to be rejected.

14. I have heard learned counsel for the parties and perused the relevant material on record.

15. Before proceeding further, it would be essential to outline the relevant provisions under which the appellant stands convicted:-

> "***7. Offence relating to public servant being bribed***.*—Any public servant who,—*
> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
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> *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

13. Criminal misconduct by a public servant.

XXX XXX XXX

(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."

16. The offence under Sections 7 and 13(2) of the PC Act is constituted by two fundamental ingredients: (i) demand of illegal gratification by public servant, and (ii) acceptance of such gratification. Both these ingredients must be proved beyond reasonable doubt to

sustain a conviction. It is a settled principle of law that in the absence of proof of demand, the charge under the PC Act cannot be proved. The factum of demand and acceptance can either be proved from direct evidence or through certain circumstantial evidence. Adverting to the instant case, the prosecution sought to prove the demand and acceptance of bribe of Rs.20,000/- by the appellant, who was the Executive Engineer at the relevant time, for clearing the bills related to the work undertaken by the complainant. To this effect, the prosecution relied heavily on the testimonies of two key witnesses: complainant PW2 Harshdeep Singh and the shadow witness PW3 Rupinder Singh.

17. Complainant PW2-Harshdeep Singh deposed during his examination in chief that the Junior Engineer had prepared a running bill for earth filling work undertaken by him. When he approached the appellant, who was the Executive Engineer responsible for sanctioning the bill, the appellant demanded Rs.30,000/- as illegal gratification for the approval. Upon the request made by the complainant, the amount was reduced to Rs.20,000/-. Subsequent to this demand, the complainant, along with shadow witness PW3 Rupinder Singh, reported the matter to the Vigilance Bureau, leading to the trap being laid. Complainant further deposed that on the day of the trap, he, accompanied by the shadow witness, went to the premises of the appellant where, upon a demand made by the appellant, he handed over Rs.20,000/-. The appellant then placed the money in the drawer of his table which was subsequently recovered by the trap team.

18. The testimony of the shadow witness PW3 Rupinder Singh

corroborated the version of the complainant on all material particulars. Shadow witness PW3 Rupinder Singh stated that after learning about the demand for illegal gratification by the appellant, they approached the Vigilance Bureau. The shadow witness stood his ground while detailing about the pre-trap and post-trap proceedings. According to him, after the demand was made, he witnessed the complainant handing over Rs.20,000/- to the appellant, who then placed the tainted money in his drawer.

19. Despite being subjected to an extensive cross examination both these material witnesses, i.e. the complainant and shadow witness, maintained consistency in their testimonies. No material contradictions or discrepancies were elicited that would warrant discarding their statements. As per learned counsel for the appellant, the shadow witness was a known acquaintance of the complainant, and his testimony should have therefore, been discredited by the learned Trial Court. However, this Court finds that a mere acquaintance between witnesses would not be sufficient to undermine the reliability of an otherwise consistent and credible testimony. Both these witnesses come across as being truthful and credible, and their testimonies were subjected to the rigors of cross examination without any material being brought on record to suggest otherwise.

20. Furthermore, following the alleged acceptance of bribe, the shadow witness went outside the house of the appellant and gave the pre-arranged signal to the vigilance team. The trap team then entered the premises and conducted the sodium carbonate test. When the

appellant dipped his hands into the solution, it turned pink, indicating presence of the tainted currency notes. Phenolphthalein test was conducted in the presence of an independent witness, PW1 Pushpinder Singh, Gazetted Officer. His presence further fortifies the fairness and transparency of the trap proceedings. This Court, therefore, finds no reason to doubt the integrity of the trap or the test results.

21. No doubt, learned counsel for the appellant highlighted certain minor discrepancies regarding the timing of the trap proceedings as recorded by PW1 Pushpinder Singh, however, this Court finds that such discrepancies are trivial and do not in any manner create dent in the case of the prosecution. Minor inconsistencies in the timing of events do not, by themselves, render the core of the evidence led by the prosecution unreliable, particularly when the evidence of the key witnesses remained consistent on all material facts.

22. In his statement recorded under Section 313 of the Cr.P.C., the appellant denied the allegations and claimed that the tainted money was planted in his drawer by the complainant while his servant went to fetch water. The appellant also alleged that he was falsely implicated due to personal animosity on the part of the SP (Vigilance) Satpal Singh, whose uniform had been soiled by dust from the vehicle of the appellant.

23. This Court finds that the defence raised by the appellant is implausible. Significantly, the appellant did not dispute the recovery of the tainted money from his drawer. His explanation that the money was planted by the complainant was unsupported by any cogent evidence

and appears to be an afterthought.

24. In the light of the material and evidence on record, this Court has no hesitation in concurring with the findings of the learned Trial Court that presumption under Section 20 of the PC Act was rightly attracted in the present case. Section 20 allows the Court to presume that a public servant, who accepts gratification other than legal remuneration did so as a reward for performing an official act. Once the prosecution proves the acceptance of illegal gratification, the burden then shifts to the accused to rebut the presumption. In the instant case, the appellant has failed to provide any satisfactory explanation or evidence to rebut this presumption.

25. Furthermore, although learned counsel for the appellant laid a lot of emphasis on the testimony of the appellant's servant DW1 Binder Kumar to substantiate that the tainted money had been planted. This Court, however, finds this defence witness unreliable for two reasons. Firstly, as the servant of the appellant, likelihood of his employer influencing him could not be ruled out and hence, he could not be termed as an independent witness. Secondly, the testimony of DW1 Binder Kumar was inconsistent with the own version of the appellant. While DW1 claimed that the complainant returned to the appellant's house after 5-7 days along with police officials, the appellant himself suggested during cross examination that the raid was conducted on the same day when the money was allegedly planted.

26. It was also argued by learned counsel for the appellant that no bill was prepared by JE and, hence, there was no occasion for him to

demand a bribe. However, the testimony of PW5 Darshan Kumar (JE), clearly proved that a bill of Rs.1,54,214/- was prepared and the payment was withheld by the appellant and the SDO. This Court finds this evidence credible, and it corroborates with the version given by the complainant that the appellant had demanded illegal gratification to clear the bills.

27. As per the appellant's claim of false implication due to animosity with SP (Vigilance), this Court finds no substance in the said argument. There is no evidence on record to support this allegation of personal vendetta by the SP, and the issuance of warning letters to the complainant does not, by itself, prove a sufficient basis for false implication.

28. It was also vehemently argued by the learned counsel for the appellant that the sanction for prosecution was defective as the sanctioning authority had merely signed the draft prepared by the investigating agency without proper application of mind. Even if this contention is accepted, this Court finds that it would not by itself, vitiate the conviction. The appellant failed to demonstrate any prejudice or failure of justice arising from the alleged defect in sanction. Therefore, this argument deserves to be rejected.

29. As a sequel to the above, this Court has no hesitation to concur with the findings recorded by the learned Trial Court in the impugned order/judgment that the prosecution was successful improving the demand and acceptance of illegal gratification by the appellant without any reasonable doubt. Therefore, this Court finds no

merit in the instant appeal, which stands dismissed accordingly.

30. Pending applications, if any, stand disposed of.

17.09.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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