**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

485-2

**CRA-S-971-SB-2012
Date of decision: 07.11.2024**

Darshan Singh Handa .....appellant

Versus

The State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kamaldip Singh Sidhu, Advocate
for the appellant.

Mr. Amit Rana, Sr. DAG, Punjab.

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MANJARI NEHRU KAUL, J.

1. The appellant is impugning judgment of conviction and order of sentence dated 07.03.2012 passed by learned Special Judge, Ferozepur, vide which he was convicted and sentenced, in case FIR No.50 dated 28.04.1993 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 City Ferozepur, District Ferozepur, as under:-

Offence(s) under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
7 of the PC Act	RI for 02 years	Rs.2,500/-	RI for 03 months
13(2) of the PC Act	RI for 02 years	Rs.2,500/-	RI for 03 months

1A. Both the sentences were ordered to be run concurrently.

2. The prosecution case in brief may be summed up as thus:

On 28.04.1993, complainant Ashok Kumar Puri, accompanied by Gurmej Singh PW7 approached Inspector Bau Singh, PW8 at the Vigilance Bureau in Ferozepur, alleging that he and his four partners had set up a copper wire manufacturing plant financed by a loan taken from Punjab National Bank. As a partner, complainant had applied to the Department of Industries for Seed Margin Money and submitted all requisite documents through appellant Darshan Singh Handa. About 20/22 days prior, the complainant met the appellant regarding the draft for his seed money, and the appellant informed him that the draft was ready as of 31.03.1993 and would be sent by post. However, when the draft did not arrive, the complainant visited Ferozepur again on 27.04.1993, where he met the appellant, who allegedly demanded a bribe of Rs.5,000/- to despatch the draft. The appellant later agreed to accept Rs.4,000/-, with complainant promising to pay the said bribe amount on the following day.

3. Unwilling to pay the bribe, the complainant reported the matter to the Vigilance Bureau. Inspector Bau Singh recorded the currency numbers of forty notes of Rs.100/- each, treated them with phenolphthalein power, and instructed the complainant to hand them to the appellant on demand. Gurmej Singh was designated as a shadow witness to accompany the complainant, observe the transaction, and signal the raiding party upon the acceptance of bribe.

4. The raiding team including Amarjit Singh, Junior Engineer of PWD (B&R) proceeded to the office of the appellant where they observed the complainant and Gurmej Singh enter. Following signal

given by Gurmej Singh, the raiding team entered the office and learnt from him that the tainted money had been handed over to co-accused Avinash Kumar at the instructions of the appellant. Co-accused Avinash Kumar admitted his wrong doing to DSP Bau Singh. Tests confirmed phenolphthalein on the hands of co-accused Avinash Kumar, with the tainted money recovered from his shirt and pocket of his trousers, matching the pre-recorded note numbers. Besides this, his other personal items were also seized.

5. Further search of the appellant yielded Rs.61, a wrist watch and an ID card. The appellant then presented a file related to the complainant, which was seized. Additionally, Gulzari Lal, Despatch Clerk, produced a letter, a despatch register, and a draft for Rs.40,000/- for National Wire Products, which were all then seized and sealed vide different recovery memos. Inspector Bau Singh conducted a site inspection, recorded statement of the witnesses and completed all other requisite formalities. Upon receipt of the report of the chemical examiner, the appellant was formally charged under Section 7 read with Section 13(2) of the PC Act and sent up to face trial. In support of its case, the prosecution examined as many as eight witnesses. No witness was examined by the appellant in his defence.

6. Learned counsel for the appellant has submitted as follows:-

6A. that the impugned order of conviction dated 07.03.2012 is unsustainable since, by the own admission of the prosecution, the tainted money was recovered not from the appellant but from co-accused Avinash Kumar (since expired). The appellant had no involvement with the loan case of the complainant;

6B. that there is no substantial evidence on record to support the alleged demand or acceptance of a bribe by the appellant. In fact, the appellant has been falsely implicated, as he refused to personally hand over the draft of Rs.40,000/- to the complainant, opting instead to despatch it through the proper postal channel;

6C. that the appellant's false implication is further evident from his exemplary service record spanning 33 years, during which he had not faced a single complaint, particularly regarding his integrity;

6D. that the alleged demand for bribe is uncorroborated by any independent witness, with all prosecution witnesses, including the complainant being interested parties, rendering their testimonies unreliable;

6E. that the learned Trial Court erroneously invoked the presumption under Section 20(1) of the PC Act against the appellant, despite this presumption being effectively rebutted during the trial. A prayer has, therefore, been made for setting aside the impugned judgment of conviction and order of sentence.

7. Learned counsel for the State, on the other hand, has vehemently argued as follows:-

7A. that the appellant, who was employed as a dealing clerk in the Department of Industries, demanded a bribe of Rs.5,000/- from the complainant in return for forwarding the draft of seed money, which the complainant had rightfully applied for after procuring the necessary documents. Subsequently, the appellant agreed to reduce the demanded bribe to Rs.4,000/-. A trap was laid, and on the instructions of the appellant, the bribe was handed over to co-accused, Avinash Kumar. Following this, a chemical test was conducted on the hands of co-accused Avinash Kumar, which turned pink, confirming contract with the tainted money;

7B. that all necessary procedures were meticulously followed during both the pre-trap and post-trap operations, thereby leaving no room to question the integrity of the trap proceedings. Additionally, all key witnesses, including the complainant and the shadow witness, fully corroborated the case of the prosecution during the trial. Their testimonies proved not only the demand for the bribe but also the subsequent acceptance of the bribe by co-accused Avinash Kumar under the directions of the appellant;

7C. that given the success of the prosecution in proving the case against the appellant with cogent evidence, coupled with the presumption arising under Section 20 of the PC Act, the retention of the draft by the appellant until 28.04.1993-the day the bribe was paid-further proved the case of the prosecution against the appellant. Therefore, learned State counsel has argued that the instant appeal was clearly bereft of any merit and the impugned judgment of conviction did not warrant any interference.

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

9. Undisputedly on 28.04.1993, the appellant was serving in

the Department of Industries and was responsible for handling cases related to the Seed Margin Money Scheme within the said department. During the trial, PW6 Ashok Kumar Puri (complainant), PW7 Gurmej Singh (shadow witness) and PW8 DSP Bau Singh, testified consistently as per the case of the prosecution. They stated that the complainant had submitted an application to the Department of Industries for Seed Margin Money, along with all requisite documents, which were subsequently received by the appellant. The appellant has been reassuring the complainant that the draft for seed margin money would be sent through post; however, he failed to despatch the draft.

10. On 27.04.1993, the appellant allegedly demanded a bribe of Rs.5,000/- from the complainant to facilitate the despatch of the draft. Following the request of the complainant, the appellant agreed to reduce the bribe amount to Rs.4,000/- and promised to personally hand over the draft to the complainant. Though the complainant initially disagreed to arrangement, instead reported the demand to the Vigilance Bureau leading to the said set up of a trap.

11. On the day of the trap, at the direction of the appellant, the complainant handed over the bribe money in the presence of the shadow witness to co-accused Avinash Kumar. Following the acceptance of the tainted money, hands of Avinash Kumar were washed in a solution of sodium carbonate which turned pink, confirming the presence of the tainted currency. The currency notes as well as the solution from the hand wash were duly seized and sealed as per the procedural standards.

12. PW3 Surjit Singh, General Manager of Industries Department, testified unequivocally that it was the appellant, who had brought the letter (Ex.PC) related to the case of the complainant for his signatures, which was then duly signed by PW3 Surjit Singh. Similarly, PW5 Gulzari Lal (Despatch Clerk) confirmed that the appellant was responsible for handing the draft of Rs.40,000/- which he subsequently entered in the despatch register. These testimonies of both these material witnesses clearly establish that the appellant was directly handling the case of the complainant.

13. Further, it stood proved during trial that the draft for Rs.40,000/- (Ex.P1) was prepared on 31.03.1993. Despite this, it was neither despatched to the complainant nor processed further and remained with the appellant until 28.04.1993. The covering letter for this draft was also prepared only on 28.04.1993, when the complainant ultimately gave Rs.4,000/- as bribe to co-accused Avinash Kumar at the behest of the appellant. The appellant could not provide any satisfactory explanation for why the draft was withheld from despatch for nearly a month after its preparation.

14. In his statement under Section 313 of the Cr.P.C. the appellant attempted to defend himself by claiming that he had only handled the case of the complainant once on 24.02.1993. However, this assertion is contradicted by the evidence on record.

15. Although the tainted money was ultimately recovered from co-accused Avinash Kumar and not directly from the appellant, it stood proved during trial that the appellant had asked the complainant, upon

meeting him on the day of the incident, whether he had brought the agreed bribe. Upon the confirmation by the complainant, the appellant seated him in a room with co-accused Avinash Kumar and subsequently fetched the prepared draft, which he handed over to the complainant in exchange for the bribe money. The case of the prosecution was comprehensively supported by all the material witnesses, including the shadow witness and investigating officer who testified to the entirety of the events.

16. Once it was proven that the tainted money was recovered from co-accused Avinash Kumar, who had received it at the behest of the appellant and the appellant himself had subsequently handed over the draft to the complainant, a presumption under Section 20 of the PC Act arises, indicating that the bribe was received as a reward under Section 7 of the PC Act. It is essential to emphasize that the demand and acceptance of bribe are not always proven through direct evidence but can also be inferred from the surrounding circumstances. In the instant case, neither the appellant nor the co-accused provided any evidence to rebut the presumption under Section 20 of the PC Act nor did they present any motive or reason for the prosecution witnesses to falsely implicate them.

17. As a sequel to the above, the instant appeal being devoid of any merit is dismissed.

07.11.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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