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

CRA-S-2099-SB-2003
Reserved on : 24.05.2024
Pronounced on: 30.05.2024

Jagdish Singh (since deceased) through his LR .....Appellant

Versus

Central Bureau of Investigation .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Nikhil Ghai and Mr. Gurjas Gill, Advocates
for the appellant.

Mr. Deepak Sabherwal, Spl. Public Prosecutor, CBI with
Mr. Jasdeep S. Saluja, Advocate
for the respondent-CBI.

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MANJARI NEHRU KAUL, J.

1. The appellant-accused has challenged the judgment of conviction and order of sentence dated 22.10.2003 passed by learned Special Judge, CBI, Punjab, Patiala, in case R.C. No.21 of 14.09.2000 for offences under Sections 7, 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') lodged at P.S. CBI/ACB/Chandigarh, whereby the appellant had been convicted and sentenced as under:-

Offence under Section(s)	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
7 of the PC Act	RI for 02 years	Rs.2,000/-	RI for 02 months
13(1)(d) punishable u/s 13(2) of the PC Act	RI for 02 years	Rs.2,000/-	RI for 02 months

1(b). During the pendency of the appeal, the appellant had died and his wife had been impleaded as his legal heir to pursue the instant appeal.

Case of the Prosecution

2. The facts germane to the case of the prosecution may be noticed as thus:

2(a). The accused was working as an Enforcement Officer in the office of Employees Provident Fund Organization, Jalandhar and was caught red handed while demanding and accepting a bribe of Rs.1,500/- for giving a favourable report qua M/S Janta Coach and Body Builders Pvt. Ltd. Jalandhar, from Gurdeep Singh by Sh. Vipin Chaudhary, DSP Vigilance Bureau, Jalandhar on 03.08.2000. The accused had visited the firm of the complainant i.e. M/S Janta Coach and Body Builders on 27.07.2000 and threatened him that he would give adverse inspection report against them. He further told that the complainant that he would again visit the firm on 03.08.2000 and would write a favourable report after receiving Rs.1,500/- as bribe. Since the complainant did not want to pay the bribe, he alongwith Rajesh Bagga approached the office of S.P. Vigilance Bureau, Jalandhar and lodged a complaint on 03.08.2000 against the accused with allegations of the latter demanding bribe of Rs.1,500/-. During the pre-trap proceedings, the tainted money was handed over to Gurdeep Singh by DSP Vipin Chaudhary and he was instructed that the tainted money be given to the accused on his specific demand. DSP Vipin Chaudhary further instructed Rajesh Bagga to act as a shadow witness, accompany the complainant, hear the conversation between the complainant and the accused and see the transaction of bribe money. He was further asked to give the signal by touching his head with his hands to the raiding party after the passing of bribe money. Dr. Darshan Kumar, Poultry Pathologist and Satnam Singh were joined in the trap party as independent witnesses. After completing the pre-trap formalities, DSP Vipin Chaudhary alongwith witnesses and members of the raiding party proceeded by Govt. vehicle towards the office of M/S Janta Coach and Body Builders, Chaugiti Road, Jalandhar. The vehicle was stopped about 200/250 yards short of M/S Janta Coach and Body Builders. Vipin Chaudhary DSP asked Gurdeep Singh and Rajesh Bagga to proceed to the office of the complainant on foot. When Gurdeep Singh and Rajesh Bagga reached the office of M/S Janta Coach and Body Builders, they found that the accused was already sitting in the office. The accused asked the complainant whether he had arranged Rs.1,500/- as bribe promised by him on 27.07.2000. Gurdeep Singh replied that he had arranged Rs. 1500/- for him and after taking out the tainted money from the pocket of his shirt, handed over the same to the accused. The accused counted the tainted money and put them in his purse and kept the purse in the back pocket of the pant worn by him. Thereafter, the accused started to prepare the inspection report. Rajesh Bagga went out and gave the pre-appointed signal to the raiding party.

2(b). After getting the pre-appointed signal Vipin Chaudhary, DSP alongwith independent witnesses and other members of the raiding party entered the factory premises and asked the name of the person sitting on the chair who told his name as Jagdish Singh, Enforcement Officer, office of EPFO, Jalandhar. The accused was over-powered and his hands were washed in a freshly prepared solution of sodium carbonate which turned into light pink. The same were put in a nip and sealed with the seal bearing impression VC. The nip was taken into possession vide separate memo. The search of the accused was conducted and the tainted currency notes were recovered from his purse kept in the back pocket of his pant. The numbers of the tainted currency notes were got compared through Dr. Darshan Kumar and Satnam Singh with the handing over memo prepared earlier. The Serial Numbers of the currency notes were found to be correct. An amount of Rs.2,320/- one identity card, one Driving Licence and one wrist watch were also recovered during the course of personal search of the accused. The tainted currency notes and the articles recovered during the personal search were taken into possession vide separate memos. The observation/inspection memo signed by the accused and the inspection register were also seized by the trap laying officer. The Forensic Science Laboratory, Punjab, Chandigarh vide his report has confirmed the presence of phenolphthalein ions in the nip. The sanction for the prosecution of the accused was procured. On completion of the investigation, the challan was presented in the Court and the accused was charged under Section 7 and 13(1)(d) punishable u/s 13(2) of the PC Act. To support its case, the prosecution examined examined 08 witnesses along with documentary evidence. The statement of the accused under Section 313 of the Cr.P.C. was recorded and he also examined two witnesses in his defence evidence.

Submissions of the appellant

3. Learned counsel for the appellant asserts that the prosecution failed to establish the demand and acceptance of bribe beyond a reasonable doubt. The case of the prosecution relied heavily on the testimonies of two key witnesses PW-1 Gurdeep Singh (complainant) and PW-2 Rajesh Bagga (shadow witness). It is noteworthy that both of them were already well acquainted with each other for many years and had jointly approached the Vigilance Bureau to lodge the complaint against the appellant. The shadow witness admitted that they were known to each other for the past 3-4 years and the complainant too confirmed that they had met 4-5 times previously. This long standing relationship and acquaintance between the two suggested a potential pre-planned conspiracy to falsely implicate the appellant.

3(a). Moreover, the shadow witness testified that no specific discussion regarding the demand for money/bribe took place between the appellant and the complainant for doing any illegal work. While placing reliance upon the decision of Hon'ble the Supreme Court in ***Neeraj Dutta Vs. State (Govt. of N.C.t. of Delhi) : 2023 SCC OnLine SC 280***, it was further argued that merely demanding money did not constitute an offence under Section 7 of the PC Act unless the demand was for illegal gratification other than legal remuneration.

3(b). Learned counsel further argued that the case of the prosecution stood more complicated in view of the ambiguity surrounding the presence of the shadow witness at the time of the alleged bribe demand. He submitted that the shadow witness had deposed that upon arriving at the office of the complainant, the appellant was already present there. However, the complainant testified that shadow witness PW-2 Rajesh Bagga had arrived 10 minutes after the arrival of the appellant. Additionally, learned counsel submitted that the complainant also admitted that the shadow witness had entered his office with the Vigilance Officer, which clearly indicated that the shadow witness was not present when the alleged demand for bribe was made. Learned counsel further asserted that the defence witness DW-1, Jagdish Rai, who was present in the office at the time of the alleged incident, corroborated this by confirming that only the complainant and the appellant were there, further discrediting the presence of the shadow witness at the crucial moment.

3(c). Learned counsel for the accused has asserted that he had no reason to demand any bribe from the complainant as he was merely performing his official duties. The appellant had informed the complainant about the pending provident fund deposits for workers from January, 2000 to June, 2000, warning of potential penalties, which the complainant also acknowledged during his testimony before the learned Trial Court. Learned counsel further emphasized that there was thus, no risk of any adverse report since the provident fund deposits had already been completed by 02.08.2000, as was also admitted by the complainant during his deposition. Furthermore, learned counsel drew the attention of this Court to the cross-examination of the complainant wherein he confirmed that while the Enforcement Officers had urged him to expedite the provident fund contributions, they had not threatened him of any action.

3(d). Furthermore, learned counsel submitted that the recovery of the money had also not been proven by the prosecution. The money was allegedly recovered from a wallet found in the back pocket of the trousers of the appellant, yet this wallet was never produced before the learned Trial Court. While drawing the attention of this Court to the testimony of PW-7 DSP, Vipin Chaudhary, it was further submitted that as per this witness, the tainted currency notes were recovered from a brown purse kept by the appellant in his back pocket, however, official witnesses PW-3 Satnam Singh and PW-4 Dr. Darshan Kumar testified that the purse was not recovered from the appellant but was lying on the table, and the tainted money was found inside the purse, and not on the appellant. In such circumstances, learned counsel argued that the non-production of the purse was detrimental to the case of the prosecution. It was also argued that PW-4 Darshan Kumar had admitted during his testimony that the wallet was never tested with a solution to prove that money was recovered from it. Therefore, an adverse inference for not leading the best evidence ought to have been drawn against the prosecution, which fact was ignored by the learned Trial Court.

3(e). Learned counsel also contended that pre-trap proceedings in the present case were also dubious. PW-3 Satnam Singh and PW-4

Dr. Darshan Kumar admitted that no pre-trap proceedings took place in their presence. PW-4 Darshan Kumar further admitted that the statement of the complainant was not recorded in his presence nor was any money exchanged in their presence at the Vigilance Office. Learned counsel submitted that these admissions created significant doubt regarding whether any pre-trap proceedings even took place before the raid.

3(f). Additionally, it was also argued that the sanction granted in this case was defected, having been issued in a perfunctory manner without due application of mind by the Sanctioning Officer. While referring to the deposition of PW-6 Ajay Singh, the Officer who granted sanction, attention of this Court was drawn to the following part of his deposition:-

> *".........The Section was mentioned in the sanction order. It may be correct that the section was picked up from the Draft Sanction Order.........."*

3(g). It was, thus, vehemently asserted by the learned counsel that on reviewing this deposition it stood revealed that the Sanctioning Authority was not even aware of the specific Sections of the PC Act under which allegations had been levelled against the appellant, indicating a clear non-application of mind.

<u>Submissions of learned Standing Counsel for CBI</u>

4. Learned Standing counsel for the CBI submits that the appellant, who was working as an Enforcement Officer at the Employees Provident Fund Organization (EPFO), demanded illegal

gratification from the complainant during a visit to the latter's firm on 27.07.2000. The appellant threatened the complainant of an adverse inspection report if the bribe was not paid. The appellant also further indicated that he would visit the firm again on 03.08.2000, and if the bribe was provided, he would then submit a favourable report.

4(a). It has been argued by the learned Standing counsel that the complainant's deposit of the entire provident fund on 02.08.2000 does not negate the demand for bribe made by the appellant. Despite the deposit, the appellant could still issue unfavourable report due to the delay in the complainant's deposit of the provident fund, which was supposed to be completed in the following month.

4(b). Learned Standing counsel further asserted that there were no irregularities in either the pre-trap or post-trap proceedings as had been argued by the learned counsel for the appellant, and proper procedure was followed. The demand and acceptance of the illegal gratification were conclusively proven by the recovery of the tainted currency notes from the wallet of the appellant. The complainant testified that the appellant counted the currency notes before placing them in his pocket, which was corroborated by the sodium carbonate solution turning pink when it came into contact with the hands of the appellant. All prosecution witnesses, including the shadow witness, supported the case of the prosecution, thereby proving the allegations against the appellant beyond a shadow of doubt.

4(c). It was further argued that the presence of the shadow witness at the scene was also firmly established. Both the complainant and the shadow witness detailed in their testimonies the circumstances under which the bribe was demanded, the handing over of the money, and the subsequent recovery of the tainted currency from the appellant. When the appellant demanded and received the bribe, the shadow witness (PW-2) gave the pre-determined signal to the trap team. This signal led the team to enter the office and conduct further proceedings, validating the presence of the shadow witness at the scene.

4(d). Learned Standing counsel further submitted that there was indeed an occasion for the appellant to demand bribe, as he had the authority to pass an adverse order against the complainant. This assertion as per the learned counsel stood reinforced by the recovery of the report Ex.PW1/3, from the scene, prepared by the appellant, which he had been withholding over the complainant's head until the bribe was paid.

4(e). Learned Standing counsel did acknowledge that the case had been remanded back to the learned Trial Court by the High Court, but it was only to address the issue of sanction. The learned Trial Court had since determined that the sanction was duly obtained by the prosecution in this case. Learned counsel argued that the Sanctioning Officer could not be expected to be aware of every detail of the case of the prosecution, and his lack of knowledge on certain aspects would not invalidate the sanction. He further asserted that it was not necessary for the Sanctioning Officer to remember the specific Sections under which the offence was committed, awareness of the allegations against the appellant sufficed granting the sanction.

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

FINDINGS OF THE COURT

6. Before proceeding further, it would be apposite to reproduce Section 7 and 13(1)(d) of the PC Act which are reproduced as under:-

> *"**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*
>
> *(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.

***7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence**.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, 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.*

XXXX XXXX XXXX

XXXX XXXX XXXX

***13. Criminal misconduct by a public servant**.-*

(1) XXXX XXXX XXXX

(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

XXXX XXXX XXXX"

7. A reading of the above reproduced Sections reveal that stringent measures have been laid down for addressing corruption by public servants. To establish the commission of an offence under

Section 7 of the PC Act, the prosecution must prove both demand for and acceptance of illegal gratification beyond doubt. Furthermore, Section 13 of the PC Act emphasizes active solicitation by an accused, necessitating incontrovertible proof of the intent of the accused and voluntary acceptance of gratification as a bribe. The prosecution must unequivocally establish that the accused knowingly and willingly accepted the bribe, as has also been held by Hon'ble the Supreme Court in a catena of judgments.

8. In the present case, to substantiate the demand and acceptance of illegal gratification by the appellant, the prosecution examined the complainant Gurdeep Singh as PW-1 and the shadow witness Rajesh Bagga as PW-2. PW-1 complainant testified that on 27.07.2000, during a visit to his firm, M/s Janta Coach Body Builders, the appellant, upon learning that the provident fund for January, 2000 to June, 2000 was pending, threatened him with a huge penalty unless a bribe of Rs.2,000/- was paid, which was later negotiated to Rs.1,500/-. It was agreed that the appellant would revisit the firm on 03.08.2000 to collect the bribe. A complaint was subsequently lodged by the complainant with the Vigilance Bureau. On the day of the trap, the appellant arrived at the premises of the complainant, perused the requested records, and prepared the inspection report i.e. Ex.PW1/3. Upon completion of the report, the appellant demanded the bribe. The complainant then handed over the tainted currency notes (bribe) to the appellant. The appellant counted the tainted notes and placed them in

his wallet, kept in the rear pocket of his trousers. PW-2 shadow witness then signaled the raiding party as per the pre-decided plan.

9. In his cross-examination, PW-1, complainant, confirmed the time-line of events, corroborating the testimony of PW-2 shadow witness. Shadow witness PW-2 further deposed that the complainant showed certain documents to the appellant, who then started preparing his report. After demanding and receiving the bribe, the appellant placed the tainted currency notes in his purse, and it was thereafter that the shadow witness PW-2 flashed the pre-decided signal to the raiding party.

10. Both PW-1 complainant and PW-2 shadow witness were categoric and consistent qua the demand and acceptance of the bribe and corroborated each other on all material facts. Minor discrepancies with respect to their time of arrival does not undermine the credibility of their otherwise unshaken and consistent testimonies. The presence of PW-2 shadow witness is further supported and corroborated by the testimonies of not only the complainant PW-1 but also the other official witnesses who were part of the trap team.

11. Furthermore, the argument by the learned counsel for the appellant qua his false implication since both the shadow witness and the complainant were well acquainted with each other, holds no merit. The plea taken by the appellant in his statement under Section 313 of the Cr.P.C. claiming false implication on account of he reporting against the default in depositing the due provident fund amount by the complainant, is also unconvincing, given the complaint preceded the

inspection report of the appellant on 03.08.2000, which was completed by the appellant only after the trap.

12. Furthermore, the argument of the learned counsel for the appellant with respect to the recovery of the tainted currency notes from his wallet not having been proved is equally unpersuasive. Although there were minor discrepancies in testimonies of PW-3 Satnam Singh and PW-4 Dr. Darshan Kumar about whether the wallet was on the table or in the pocket of the appellant, which however, could be attributed to the fact that these witnesses had entered the room/office of the complainant at a later point in time after the flashing of the pre-determined signal by PW-2 shadow witness. These discrepancies which are minor in nature cannot have the effect of discrediting the witnesses testimony in this case when all prosecution witnesses confirmed that money was recovered from the aforesaid wallet of the appellant, and corroborated each other that the hand wash of the appellant had turned pink upon dipping in the sodium carbonate solution. This fact without doubt corroborated the acceptance of bribe amount by the appellant as well as the testimony of the complainant wherein he had stated that the appellant counted the tainted currency notes with both of his hands before putting them in his wallet. The suggestion put to the prosecution witnesses by the defence that it was on account of the DSP Vipin Chaudhary PW-7, the Trap Laying Officer (TLO) shaking hands with the appellant resulting in the hand wash turning pink of the appellant was denied by all the prosecution witnesses.

13. The argument by the learned counsel for the appellant that even the pre-trap proceedings were doubtful, is baseless as PW-7 DSP Vipin Chaudhary, TLO confirmed the pre-trap formalities were completed before the arrival of the official witnesses. Once the demand and acceptance of illegal gratification in the present case have been proven beyond reasonable doubt, the presumption under Section 20 of the PC Act would arise against the appellant to presume that the same had been accepted and obtained by him as a motive or reward under Section 7 of the PC Act. Furthermore, the appellant's potential to influence the inspection report, even after the complainant's delay in the deposit of the provident fund on 02.08.2000 establishes the motive and the reason for demand of illegal gratification.

14. Coming to the contention of the learned counsel for the appellant qua an invalid sanction having been given, the same is also meritless. Regarding the validity of the sanction, the deposition of the Sanctioning Officer PW-6 Ajay Singh demonstrates due application of mind, as he carefully examined all the material placed before him before concluding that the accused had committed an offence under Section 13(1)(d) of the PC Act. Although PW-6 Ajay Singh did not recall specific Sections, he was well aware of the illegal gratification allegations, which indicated that the sanction had been given after due application of mind and after considering all the material placed before him. Even otherwise, mere procedural defects in the sanction process would not invalidate the case of the prosecution, as Hon'ble the Supreme Court in ***Criminal Appeal No.1864/2013 titled as 'P.I. Babu***

Vs. C.B.I.' decided on 18.01.2024, has categorically held that mere invalidity of sanction cannot be a ground for acquittal of an accused.

15. In the circumstances, this Court has no hesitation hold that the impugned judgment of conviction and order of sentence do not warrant interference. Accordingly, the instant appeal is hereby dismissed.

30.05.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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