2024:PHHC:140150

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-795-2020
Reserved on : 16.10.2024
Pronounced on : 23.10.2024

Suresh Kumar .....Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Sunil Chadha, Sr. Advocate with
Ms. Sonia Monga, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab assisted by
Inspector Yogesh Kumar.

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MANJARI NEHRU KAUL, J.

1. The petitioner has challenged the order dated 06.03.2020 passed by learned Additional Sessions Judge-cum-Special Court, Ludhiana whereby charges under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') have been framed against the petitioner in case FIR No.5 dated 22.05.2018 under Sections 7, 8 and 13(2) of the PC Act registered at Police Station Economic Offences Wing, Punjab Vigilance Bureau, Ludhiana.

Submissions made by learned senior counsel for the petitioner

2. Learned senior counsel for the petitioner has made the following submissions:-

2A. that the learned Trial Court gravely erred in framing charges against the petitioner under Section 7 and 13(2) of the PC Act. A bare perusal of the charge sheet clearly reveals that the basic ingredients required to constitute the offences under these Sections were entirely absent. Furthermore, for charges to be framed under the aforementioned provisions of law, there must be specific allegations relating to the demand, acceptance, or receipt of illegal gratification, none of which are even remotely suggested in the material on record. The prosecution has failed to substantiate these essential elements, thus, rendering the framing of charges as being fundamentally flawed and legally unsustainable;

2B. that in order to bring a charge under Section 7 of the PC Act, the prosecution is required to unequivocally demonstrate that there were both a demand for and subsequent acceptance of illegal gratification by the petitioner. However, there is not even a whisper of any allegation to this effect. The complainant never alleged that the petitioner made any demand for a bribe or even communicated with the complainant at any stage. Furthermore, the investigating agency has not presented any evidence, oral or documentary suggesting that the petitioner was involved in any illicit demand or acceptance of gratification. In the absence of such allegation, the framing of charges under Section 7 of the PC Act is wholly unsustainable;

2C. that the allegations in the FIR, as well as in the entire narrative of the case, are exclusively directed against co-accused Himmat Singh, who is a private individual. It is undisputed that all the alleged interactions and transactions concerning illegal gratification took place between the complainant and Himmat Singh. The petitioner had no role or involvement in the same. When the investigating agency laid out the trap, it was Himmat Singh who was apprehended at the spot, and he subsequently implicated one Jaspal Singh, from whom the tainted money was allegedly recovered. The petitioner was neither present at the scene of the crime, nor was any recovery of tainted money made from him. There is no material on record indicating that the petitioner conspired with the co-accused or had any connection with the alleged transaction of bribe. The prosecution has not even produced any evidence from which it can be even remotely discerned that the petitioner had any involvement in the alleged conspiracy;

2D. that the only piece of evidence against the petitioner is the disclosure statement made by co-accused Jaspal Singh, which, holds weak evidentiary value, especially in the absence of any corroborative evidence. It is trite law that disclosure statements made by the co-accused cannot form the sole basis for conviction unless supported by independent and credible evidence. In the instant case there is no direct or circumstantial evidence linking the petitioner to any demand, acceptance, or recovery of the bribe money. Without such corroboration, charges under Sections 7 and 13(2) of the PC Act cannot be sustained against the petitioner;

2E. that the complainant expired on 12.11.2019. In light of the demise of the complainant, even if the trial were to proceed, it would serve no meaningful purpose. The complainant's testimony was crucial to proving the case of the prosecution, and without the complainant, the entire case against the petitioner would crumble. Continuing the trial would, therefore, be a futile exercise.

Submissions by the State counsel

3. Learned counsel for the State while opposing the prayer and submissions made by the counsel opposite has submitted as follows:-

3A. that at the stage of framing charges, the role of the learned Trial Court is limited to assessing whether a *prima facie* case is made out against the accused;

3B. that the contentions raised by the learned senior counsel relate to his defence, which cannot be considered at this preliminary stage, but would be examined during the trial;

3C. that as per the disclosure statement of co-accused Jaspal Singh, the bribe amount of Rs.5,000/- was intended for the petitioner, with Jaspal Singh and accused Himmat Singh each receiving Rs.500/- for facilitating the transaction.

3D. On a specific query put by the Court, learned State counsel has, however, on instructions conceded that apart from this disclosure statement the investigating agency had not gathered any other material or evidence to substantiate the claim that the petitioner had demanded or accepted illegal gratification. On a further query, learned State counsel on instructions has also not been able to dispute that there is no additional evidence on record, beyond the disclosure statement of co-accused, to show any conspiracy between the petitioner and the co-accused with respect to the alleged transaction of bribe.

Findings of the Court

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

5. As per the settled law, at the stage of framing charges, the learned Trial Court is tasked with determining whether, based on the material collected by the prosecution, there exists a *prima facie* case against the accused. At this stage, the Court is not to evaluate the defence of the accused or to weigh the merits of the case. If, based on the material produced by the prosecution, the Court finds reasonable grounds to belief that the accused may have committed the alleged offences, it must proceed to frame charges. However, if the material on record does not disclose the essential ingredients of the offences alleged, the accused must be forthwith discharged.

6. In the instant case, the petitioner has been charged for offences under Section 7 and 13(2) of the PC Act which for the facility of reference are being reproduced hereinunder:-

> *"**7. Offence relating to public servant being bribed**.—Any public servant who,—*
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> *(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.

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(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."

7. Hon'ble the Supreme Court, in the landmark judgment of ***Neeraj Dutta Vs. State (Govt. of NCT of Delhi) : 2022 LiveLaw (SC) 1029*** unequivocally clarified the law regarding offences under Section 7 and 13 of the PC Act. Hon'ble the Supreme Court laid down the principle that the proof of demand and acceptance of illegal gratification by a public servant is an indispensable requirement to

prove an offence under these Sections. Hon'ble the Supreme Court held that proof of demand and acceptance of illegal gratification is *sine qua non* for establishing the guilt of a public servant under Section 7 and 13(1)(d)(i) and (ii) of the PC Act; the prosecution must first establish the demand for illegal gratification and then prove its subsequent acceptance. This fact can be establish through direct evidence (oral or documentary) or through circumstantial evidence in the absence of direct proof. It further went on to hold that mere acceptance or receipt of illegal gratification, without proof of prior demand, does not constitute an offence under Section 7 or 13(1)(d) of the PC Act. The Apex Court explained that the existence of a demand is crucial to differentiating between mere acceptance and the obtainment of a bribe, with the latter being punishable under Sections 7 and 13(1)(d) of the PC Act.

8. In applying these principles to the present case, it is evident that there was neither a demand nor acceptance of illegal gratification by the petitioner. The complainant had no interaction with the petitioner, and as not disputed by the learned State counsel on instructions also, there is no evidence collected by the investigating agency indicating that either any demand had been made by the petitioner from the complainant or any money from the complainant ever reached the petitioner. Furthermore, the petitioner was not present when the trap was laid, and no recovery much less of the tainted money was made from him. Thus, apart from the disclosure statement of the co-accused there is no material on record to support the allegations

under Section 7 and 13(2) of the PC Act.

9. Given the absence of any material on record to support the basic ingredients necessary to constitute the offences alleged, and applying the law as elucidating by Hon'ble the Supreme Court in ***Neeraj Dutta's case (supra)***, it becomes abundantly clear that the prosecution has failed to satisfy the essential legal requirements for the charges to stand. The charges framed against the petitioner under Sections 7 and 13(2) of the PC Act are without merit, and the petitioner, therefore, is entitled to be discharged.

10. Accordingly, the instant petition is allowed and the impugned order dated 06.03.2020 whereby charges under Sections 7 and 13(2) of the PC Act have been framed against the petitioner, is set aside.

23.10.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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