

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26485-2016 (O&M)

Reserved on: 12.01.2024
Pronounced on: 22.01.2024

Ajaib Singh & another
... Petitioner(s)
Versus
State of Punjab & another
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Ashok Bhardwaj, Advocate,
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab assisted by
ASI Balwinder Singh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
27	9.6.2008	Vigilance Bureau, Patiala	7, 13(2) of the Prevention of Corruption Act, 1988

1. Aggrieved by the launching of prosecution against the petitioners, who are complainant and witness, by presenting Kalandra u/s 182 IPC, the petitioners, who have been prosecuted as accused vide said Kalandra in FIR captioned above, had come up before this Court by filing the present petition under Section 482 CrPC in August 2016.
2. Vide order dated 5.8.2016, a coordinate Bench of this Court had stayed the further proceedings.
3. Petitioner’s counsel submits that petitioner no. 2 - Vijay Kumar, was associated in the case only as a shadow witness, and as per paragraph no. 15 of the petition, his statement was not recorded before the competent Court, and thus, no question arises about resiling from his earlier statement or his submitting any false complaint and he has been dragged in the controversy without any basis.

4. Facts of the case are being extracted from the said Kalandra filed under Section 182 IPC (Annexure P5), which reads as under: -

"The brief facts of the case of that on 09.06.2008 Sh. Anil Kumar Sharma DSP Vigilance Bureau, Patiala was present in his office. Then Sh. Ajaib Singh s/o Sh. Nirmoh Singh proprietor of Sidhu Rice Mill, Nihalgah, r/o Laadbanjra Kalan, PS Dirba, dist. Sangrur alongwith his clerk Vijay Kumar s/o Sh. Sh. Kahan Chand r/o Ward no. 2, Sunam, Sangrur appeared before him and got recorded his statement that "I am resident of above said address and proprietor of Sidhu Rice Mill. In the year 2007-08, I have kept stock of 1,11,241 gunny bags of paddy of markfed for sealing in my rice seller. I was to supply rice 25825 Qtl. 16 kgs of the above paddy to the FCI by 30.06.2008. I supplied due rice of 25316 Qtl 1 kg to FCI. At that time Shiv Ram TA and Shri Kanwar Pal Singh TA obtained Rs. 20000 /- , 20,000/- both for passing the trucks of my rice. I was still required to supply 509 Qtl 15 kg to the FCI after milling I supplied 1023 gunny bags of rice to FCI on 06.05.2008 vide contract no. 2087 and 2088 and the same was dumped in Parveen Godown, Lehragaga through trucks. To get this rice passed I met Kanwarpal Singh TA. He told me that if you want to get your rice passed dumped by you, then you have to pay Rs.20,000/- to me as bribe. Then I requested him, then also he did not agree to get less than Rs. 20,000/-. Then regarding this I talked to his colleague TA Sh. Shiv Ram regarding the rice who told me that earlier also I have passed your trucks. If you pay Rs. 20000 /- to me as bribe, then your trucks of rice will be passed. After my repeated requests Shiv Ram TA told me that out of this bribe amount I have to give some amount to my colleague TA Kanwarpal Singh TA. Then again I requested Shiv Ram TA that I have already suffered sufficient loss, then Shiv Ram TA asked me to pay not less than Rs.15,000/- as bribe. Less than that the deal will not be struck, then asked me to give Rs. 15000 / - as bribe and asked me that if you want to get your dumped rice passed on 09.06.2008, then you have to arrange Rs. 15,000/- as bribe and come to my office at S.K. Godown, Lehragaga. I never wanted to pay any bribe. I was coming that to my rice seller after giving false assurance of paying bribe to Sh. Shiv Ram TA, then on the way my clerk Sh. Vijay Kumar S/O SH. Kahan Chand r/o Sunam met me. I shared all the aforesaid conversation with him. He told me that we have already paid sufficient amount to them. He advised me not to pay bribe and advised me to handover these type of corrupt officers to Vigilance Department. After arranging the amount I alongwith Sh. Vijay Kumar have come to your office and present currency notes of Rs. 15,000/- before you. Appropriate legal action may kindly be taken against Sh. Kanwarpal Singh TA & Sh. Shiv Ram TA of FCI Department, Lehragaga. I am complainant. Sh. Anil Kumar Sharma, DSP, VB, FS-2 Patiala recorded the statement of above mentioned complainant Sh. Ajaib Singh and narrated him. After reading his statement and treating the same to be correct, appended his signatures in Punjabi. The same were attested by Sh. Anil Kumar Sharma, DSP. During this period, according to the Govt. duty Sh. Vinod Kumar Horticulture Development Officer, Patiala and Sh. Jasvir Singh fitter, PWD, Branch Patiala came present as independent witness. Both were introduce to

complainant Ajaib Singh and his companion Sh. Vijay Kumar above said and both were joined in the party. Then the above said complainant Ajaib Singh handed over 30 currency notes of denomination of 500/- each bearing numbers 2AG-780563, 9EM-861117, 3DU-816451, 7AB-185733, 8FM-111025, 7BC-077867, 3DS-023490, 1AE-980440, 2BB-104011, 2BK-183912, 6AN-230740, 5AB-064034, 4CB-707792, 2AE-529281, 7CD-406734, 4GL-181335, 5AA-353046, 8CB-646765, 7DQ-940403, OAT-747536, 4BU-090662, 8CV-229641, 3BF-117026, 9AE-921704, 9ET-035519, 9BT-798347, 5BK-213520, 5DF-074498, 1AT-932985 & 3DH-277531, total Rs. 15,000/- to Sh. Anil Kumar Sharma DSP. After ensuring that above said complainant Ajaib Singh do not have any other amount etc., these notes were handed over to him after immersing them in Phenol Pathelin powder and was instructed that when Sh. Shiv Ram and Kanwarpal Singh TA of FCI Lehragaga asked the bribe for doing his work, then he should give these powder immersed notes to them and shall not shake hand with them. Memo of presentation and handing over of currency notes were prepared, which was signed by the witnesses. Then after getting water in the clean glass, solution was prepared after adding sodium carbonate powder in it, then the colour of the solution did not changed and it remained white. Then one piece of paper by immersing it in Phenol Pathelin powder was dipped and shaped in the above solution, then colour of the solution turned light pink. This demonstration was nicely shown to the witness and the solution was thrown away and the piece of paper was destroyed. Memo of solution was prepared, which was signed by the witnesses. Then Sh. Anil Kumar Sharma, DSP chalked out a scheme and above said Sh. Vijay Kumar was made a shadow witness and was instructed that he will go alongwith complainant Ajaib Singh to the office of FCI Lehragaga at S.K. Godown. He will witness with his eyes and ears the entire conversation between the complainant and Shiv Ram TA regarding transaction of bribe and when Shiv Ram obtain bribe from the complainant, then he will come out of the office and will call the raiding party by making circle on his head by right hand, which will be standing near by the office on different points. Demanding or bribe by Shiv Ram TA and Sh. Kanwar Pal TA of FCI Lehragaga, District Sangrur fulfills the ingredients of commission of offence u/ss 7, 13 (2) 88 PC Act. Therefore the ruka was sent to Police Station Vigilance Bureau, Patiala through HC Harminder Singh for registration of FIR against above said Technical Assistant (TA) for commission of above offences. Sh. Anil Kumar Sharma DSP alongwith Inspector Balwinder Singh, Sub Inspector Randhir Singh, Hawaldar Manjinder Singh, Hawaldar Rajneesh Kaushal, C. Joginder Singh alongwith SH. Vinod Kumar Horticulture Development Officer, Patiala and Sh. Jasvir Singh, Fitter PWD (B&R) Mechanical, Patiala, complainant and shadow witness proceeded for raid investigation on govt. Gipsy no. PB-11-3063, driven by driver C-2 Jasvir Singh and after arranging another private vehicle. The investigation bag was also taken. Before proceeding, hands of entire raiding party were washed with soap. Then the investigating officer alongwith raiding party reached Lehragaga and the vehicles were parked near the godown. The complainant and shadow witness were got down from the vehicle and according to the prepared scheme were marched on foot towards the office of FCI situated in S.K.

Godown and the investigating officer alongwith raiding party followed them. When the complainant and the shadow witness entered the office of the FCI situated in the godown, then the investigating officer alongwith raiding party concealed them near the godwon and started waiting for the signal of the shadow witness. After some time the shadow witness signaled as prescribed, after coming out of the office. On getting his signal, the investigating officer alongwith the raiding party and taking the shadow witness alongwith them reach the office of FCI situated in SK Godown. Then one person was talking with complainant Ajaib Singh in the Veranda outside the office of FCI. The Investigating Officer and introduced himself and raiding party to the said person, asked his name and designation, who told his name as Shiv Kumar TA office of FCI Lehragaga, District Sangrur. He was directed not to move and was informed regarding legal proceedings. Then a solution of sodium carbonate was prepared by putting in glass of water. Then the colour of the solution remained clean. Then the fingers of both the hands of aforesaid Shiv Ram TA were got washed in the solution turn by turn, then the colour of the solution turned light pink. Then this light pink solution was put in clean glass quarter and was sealed AKS and was taken into police possession through form. The memo of hand-wash was prepared. The memo was signed by the witnesses. Then the investigating officer in the presence of the govt. witnesses asked regarding the amount taken by Shiv Ram TA in bribe, then the same was produced by him by taking out from the right side pocket of grey colour trouser worn by him. Then the investigation officer Sh. Anil Kumar Sharma DSP matched the numbers of these recovered notes through the govt. witnesses with the already prepared memo regarding handing over of currency notes by speaking the numbers. Then numbers of all the notices were correctly matching. These recovered notes were taken in to police possession as proof vide memo of recovery of currency notes. The memo was prepared and was signed by the witnesses. Then the investigation officer, in the presence of the witnesses conducted search of above said Shiv Ram as per the procedure. During search one purse of brown colour was recovered from the back pocket of his trouser in which there were currency notes of Rs. 300/- one driving license, 1 identity card and one wrist watch mark Titan, one mobile phone mark NOKIA. The above said all the articles were taken into police possession through memo of jamatalasi and memo was prepared. The memo was signed by accused Shiv Ram and the witnesses. Then in the presence of the witnesses, a glass was filed with clean water and solution was prepared by adding sodium carbonate in it. Then the colour of the solution remained clear. Then another trouser was arranged for above said Shiv Ram and right pocket of the trouser worn by him was reversed and immersed in the above solution and the same was stirred and squeezed, then the colour of the solution turned light pink. This light pink solution was poured in a quarter and the same was sealed by Sh. Anil Kumar Sharma DSP vide his seal AKS. Separate parcel of the trouser was prepared and same was sealed with seal of AKS. Sample sealed was prepared separately. The seal after use was handed over to the Govt. witness Sh. Vinod Kumar, Horticulture Development Officer. Parcel of quarter of solution and trouser were taken into police

possession through memo. The memo was prepared. Memo was signed by the witnesses. Then in the presence of the witnesses, on demand of Sh. Anil Kumar Sharma DSP, the accused Shiv Ram TA produced one analysis register of the year 2007-2008 which were filed up from page 1-37, kept on his table and at Sr. No. 563 & 564 there were entries of passing of the vehicles vide contact no. 2087 & 2088. This record was taken into police possession as proof vide a memo. The memo was prepared. The witnesses appended their signatures on the memo. Then Sh. Anil Kumar Sharma, DSP took into possession vide memo, the attested Photostat copies of the relevant record from Sh. Sarup Singh, AG-2 i.e. Official of the office of FCI, Lehragaga. The memo was signed by the witnesses. Then Sh. Anil Kumar Sharma DSP recorded the statements of the witnesses at the spot and other documentation was completed and after spot inspection, inquiry was conducted from above said Shiv Ram and he was arrested in the present case. Information regarding his arrest was forwarded. The case property was deposited in the malkhana of police station Vigilance Bureau, Patiala in intact position. But his other companion accused Kanwarpal Singh, TA succeeded in fleeing from the spot, who was arrested in the present case on 07.08.2009.....”

..... On this, Sh. Birbal Singh DSP, VB, Patiala, prepared cancelation report dated 17.04.2013 in the present case and submitted in the court on 02.05.2013. while hearing this cancelation report, the court of Sh. B.B.S Teji, Additional Sessions Judge, Sangrur, vide his order dated 16.11.2013, rejected this cancelation report and direction were issued for obtaining sanction against the accused and for taking action against the complainant Ajaib Singh. As per the directions of the court investigation was conducted in the case and challan dated 26.05.2014 was prepared against the accused and challan file was sent to the competent authority, General Manager (R) Food Corporation of India, Regional Office, Punjab, Chandigarh for obtaining sanction against the accused. But the competent authority vide their office letter no. Vig. 4 SGR-4515) PB/2008/QC/1691 dated 30.09.14 again declined sanction against the accused (the same is attached with the cancelation report). Vide head office letter no. 3559-VB-S-6 dated 27.01.2015 and SSP, VB Patiala Range Patiala letter no. 1048-VB-C-3 dated 30.01.2015, after noticing all the facts, it was directed to submit cancellation report in the Hon'ble Court and for taking appropriate legal action against complainant Ajaib Singh and shadow witness Vijay Kumar. Separate action will be initiated against complainant Ajaib Singh and shadow witness Vijay Kumar. Therefore for want of sanction, cancelation report u/s 173(2) Cr.P.C. in the present case was prepared and submitted in the court on 13.02.2015. Statement of the complainant Ajaib Singh s/o Sh. Nirmoh Singh was recorded in the court of Ld. Special Judge, Sangrur on 14.08.2015. At the time deposition the complainant Ajaib Singh s/o Nirmoh Singh resiled from his statement recorded before the police. Due to this the Ld. Special Judge, Sangrur vide order dated 02.09.2015 accepted the cancelation report. Vide the present Calendrait is requested that the above complainant Ajaib Singh has resiled from the earlier statement got recorded before the police, on 14.08.2015 while making statement before the Ld. Special Judge, Sangrur, gave

consent in favour of the cancellation report, due to which the Ld. Special Judge, Sangrur accepted the cancellation report on 02.09.2015."

5. I have heard counsel for the parties and gone through the pleadings.

6. In a nutshell, the reason for launching proceedings against the petitioner-complainant under Section 182 IPC was that he allegedly did not support his initial version. However, it remains undisputed that even the competent authority had refused to grant sanction for prosecution; without such sanction, there was no jurisdiction with the concerned Court to take cognizance of the offence. Even if the petitioner-complainant Ajaib Singh had not supported his initial stand during investigation, it would not have changed the outcome of the prosecution because, in the absence of sanction, the accused could not have been put to trial, what to talk of framing of charges and conviction. Regarding Ajaib Singh's resiling from his original statement before the police and giving his consent to the cancellation report cannot be read as not supporting the prosecution's case because the competent authority, which is part of the Government itself, had denied sanction to prosecute the accused and now, the poor complainant cannot be burdened for giving consent and thereby disrupting the criminal prosecution. If anybody had disrupted the criminal prosecution, it would have been the competent authority as well as the investigating agency itself and not the petitioner-complainant who had merely not opposed such cancellation. Thus, in the entirety of the facts and circumstances of the case, even if all the allegations levelled in the *Kalandra* are accepted on their face value, it cannot be said that the petitioner-complainant had given false information *qua* the crime. In absence of due sanction to prosecute the accused, it can also not be said that the petitioner had given any false information about the bribe, for the reason that when the fingers of the accused in the FIR, smeared with phenol phthalein applied on currency notes, were put in the glass of water containing sodium carbonate, the color of the solution turned light pink, which points that the accused had received the currency notes immersed with phenanthrene powder. It was the competent authority which had refused to grant sanction and in the absence of a sanction, simply because the petitioners had not opposed the cancellation report filed by the investigating agency, it would not make out an offense under 182 IPC.

7. Given above, the present petition is allowed the *Kalandra* (Annexure P-5) and consequent proceedings are quashed *qua* the petitioners. Bail Bounds/ surety bonds, if any, shall stand disposed of.

Petition is allowed in the terms mentioned above. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

January 22, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No