



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

CRR-1131-2021

Reserved on : 16.10.2024

Pronounced on : 23.10.2024

Jaspal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Ms. Palvi, Advocate for
Mr. Ishan Gupta, Advocate
for the petitioner.

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

MANJARI NEHRU KAUL, J.

1. The petitioner has approached this Court challenging the validity of the impugned order dated 06.03.2020 passed by learned Additional Sessions Judge-cum-Special Judge, Ludhiana framing charges as well as the accompanying charge sheet dated 06.03.2020 wherein the petitioner has been charged for offences under Sections 7, 8 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act'), 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.

2. Learned counsel for the petitioner has advanced a series of arguments alleging that the learned Trial Court erred in framing charges against the petitioner, who is a private person, not a public servant, and



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thus, not subject to the provisions under the aforementioned Sections of the PC Act. Learned counsel for the petitioner contends that the order framing charges, suffers from various legal infirmities. It has been argued that the learned Trial Court, while framing charges under Sections 7, 8 and 13(2) of the PC Act, failed to consider the absence of any material evidence collected by the investigating agency that could subject the involvement of the petitioner in the alleged offence. As per the learned counsel, there is no substantive evidence collected by the investigating agency indicating that the petitioner had any complicity in the crime for which he is being prosecuted.

3. It has been further argued by learned counsel for the petitioner that the petitioner is neither a public servant nor a person performing any public function or duty, therefore, Sections 7 and 13(2) of the PC Act are not applicable to the petitioner. It has been further contended that even as per the own case of the prosecution, there is no allegation that the petitioner gave or promised any undue advantage to a public servant. Consequently, the essential ingredients of an offence under Section 8 of the PC Act are also absent. The counsel for the petitioner has still further highlighted that there are no allegations against the petitioner regarding the solicitation of a bribe for inducing a public servant to cancel the General Power of Attorney (GPA) of the complainant.

4. Learned counsel for the petitioner has furthermore asserted that the learned Trial Court framed the charges in a mechanical and casual manner, without a proper evaluation of whether the essential



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ingredients of the alleged offences were made out. Given the absence of any substantial allegation or evidence, the charges under Sections 7, 8 and 13(2) of the PC Act could not have been validly framed against the petitioner.

5. It has lastly been argued by the learned counsel for the petitioner that it is a matter of record that the complainant has since expired; the death of the complainant has caused a significant blow to the case of the prosecution. With the complainant no longer available for cross examination, it is submitted that the allegations against the petitioner cannot be substantiated, further weakening the case of the prosecution.

6. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has argued that the petitioner was caught red handed accepting a bribe of Rs.5,000/-. The currency notes recovered from the petitioner matched those provided by the complainant for the trap, and the phenolphthalein test confirmed the involvement of the petitioner, as the petitioner's hand turned pink dipped in the solution.

7. Learned State counsel has further contended that the petitioner, along with co-accused Himmat Singh, was acting on behalf of another accused, Suresh Kumar, and accepted the bribe for the purpose of cancelling the GPA of the complainant in exchange of illegal gratification. Learned State counsel submits that even if the petitioner cannot be directly charged under Sections 7, 8 and 13(2) of the PC Act, he can still be charged under Section 7A of the PC Act for



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abetting the offence.

8. However, learned State counsel has been unable to refute the fact that the petitioner is neither a public servant nor someone performing any public function or duty, which is a necessary condition for invoking the provisions of Sections 7 and 13(2) of the PC Act. Additionally, it has not been disputed by the learned State counsel that the complainant had not levelled any allegations against the petitioner when the trap in question was laid.

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

10. 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 the Court, based on the material produced by the prosecution, finds reasonable grounds to believe 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.

11. The petitioner has been charged for offences under Sections 7, 8 and 13(2) of the PC Act which, for facility of reference are being reproduced hereinunder:-

“7. Offence relating to public servant being bribed.—Any public servant who,—

(a) obtains or accepts or attempts to obtain from any



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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.

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8. Offence relating to bribing of a public servant.

(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention-

(i) to induce a public servant to perform improperly a



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public duty; or

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration. - A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation. - It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

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13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1. - A person shall be presumed to have



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intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2. - The expression "known sources of income" means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

12. Section 7 of the PC Act deals with the offences related to public servant accepting and obtaining undue advantages in relation to their official duties. It penalizes any public servant who, in exchange for an undue advantage, performs or refrains from performing a public duty, dishonestly or improperly. It is fundamental that the accused under this Section must be a public servant, as defined under Section 2(c) of the PC Act. Similarly, Section 13 of the PC Act criminalises acts of misconduct by a public servant, such as misappropriation of property or illicit enrichment. Akin to Section 7 of the PC Act, the core requirement for an offence under Section 13 of the PC Act is that the accused must be a public servant.

13. Furthermore, Section 8 of the PC Act pertains to the bribing of a public servant by any person, with an intent to induce him to perform public duty improperly. While the provisions of the Section are not restricted to public servants, it applies to those who intentionally offer a bribe or illegal gratification to a public servant.

This Section provides certain exceptions including instances where a



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person is compelled to give a bribe and reports the matter within the prescribed time frame.

14. Adverting to the instant case, it is undisputed that the petitioner is indeed a private person and does not hold any position of public office or discharge any public duty as envisaged under Section 2(c) of the PC Act. In the circumstances, this Court finds it difficult to comprehend how the charges under Section 7 and 13(2) of the PC Act have been framed against the petitioner. These Sections specifically relate to public servants/target public servants, and without such status, the petitioner cannot be charged under these provisions, as per law.

15. Regarding Section 8 of the PC Act as is evident it applies to persons offering or promising bribes to public servants. In this regard, it would be relevant to refer to the following observations made by Hon'ble the Supreme Court in ***Babji Vs. State of Andhra Pradesh*** :

AIR 2018 Supreme Court 3831:-

“6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity.....”

15A. In the present case, however, it has not been alleged that

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the petitioner gave or promised any undue advantage in order to induce a public servant. The case of the prosecution against the petitioner is based solely on the recovery of tainted currency notes, without any direct allegation of bribing or promising to bribe a public servant. Therefore, the learned Trial Court erred in framing charges under Section 8 of the PC Act against the petitioner.

16. Additionally, the submission made by the learned State counsel that the petitioner can be charged under Section 7A of the PC Act, is without merit. Section 7A of the PC Act which pertains to abetting bribery came into effect on 26.07.2018, while the alleged demand for illegal gratification and the trap took place in May, 2017. Furthermore, Article 20 of the Constitution of India clearly provides that penal provisions cannot be applied retrospectively. Consequently, the petitioner cannot be charged under Section 7A of the PC Act.

17. As a sequel to the above, the impugned order and charge sheet dated 06.03.2020 are unsustainable in the eyes of law and hereby set aside. The instant petition stands allowed accordingly.

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

23.10.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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