

2025.PHHC.016527



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-978-SB-2011

Reserved on: 31.01.2025

Pronounced on: 05.02.2025

Rajinder Singh Appellant

Versus

State of Punjab Respondent

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Manuj Nagrath, Advocate, for the appellant.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the appellant against the judgement dated 22.03.2011, in FIR No.27, dated 16.11.2006, registered at Police Station Vigilance Bureau, Bathinda, vide which, the appellant was convicted for offence under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act) and sentenced as follows by learned Special Judge, Bathinda:-

Under Section 13(2) of the PC Act	Rigorous imprisonment for a period of two years and three months and to pay a fine of Rs.3,000/-, or in default of payment of fine, to further undergo RI for two months.
Under Section 7 of the PC Act	Rigorous imprisonment for a period of one year and three month and to pay a fine of Rs.1,500/- or in default of payment of fie, to further undergo RI for one month

As per the case of the prosecution, on 15.11.2006 within the jurisdiction of Sangat, the appellant (hereinafter referred to as 'accused'), while serving as Revenue Patwari, Halqa Sangat, demanded an illegal gratification of Rs.2,000/- from Kartar Singh (hereinafter referred to as 'the complainant') in exchange for performing his official duty of incorporating an entry in the Rapat Roznamcha regarding the lease of 17 kanals 14 marlas of agricultural land at Rs.6,000/- per month to IB Company Limited for the purpose of setting up a petrol pump. As per the prosecution, this demand was made for personal pecuniary gain, beyond the legal remuneration due to the accused and was intended to favour the complainant in facilitating the entry. Subsequently on 16.11.2006, the accused allegedly negotiated and agreed to accept a reduced the amount to Rs.1,000/- as illegal gratification. Therefore, while acting in his official capacity as a public servant, the accused is said to have accepted a bribe of Rs.1,000/- from the complainant for incorporating the required entry regarding the lease of 17 kanals 14 marlas of land to the said Company. This act allegedly constituted an abuse of his official position for personal financial gain.

Upon receipt of complaint from the complainant, the Anti Corruption Bureau, set up a trap, following which, the accused was apprehended red-handed. The tainted currency notes were recovered from the right pocket of the trousers of the accused. After the completion of all the requisite procedures and the submission of the FSL report (Ex.PW6/H), a charge-sheet was filed against the accused before the learned trial Court.

Charges were framed under Sections 7, 13(2) of the PC Act, to which, the accused pleaded not guilty and claimed trial.

During the trial, the prosecution examined eight witnesses including PW1-Suresh Kumar (shadow witness), PW2-Kartar Singh (complainant), PW6-DSP Sukhdev Singh Virk (Investigating Officer).

At the conclusion of the evidence of the prosecution, all the incriminating evidence against the accused was put to him under Section 313 of Cr.P.C.; the accused denied the allegations and claimed false implication.

In his defence, the accused examined Jagdev Singh, Clerk from the office of the District Collector, Bathinda.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE ACCUSED:

- (i) that the trial Court while passing the impugned judgment failed to consider that the three essential ingredients i.e. demand, acceptance and recovery of tainted money, are not proved in the present case and hence, in the absence of any clear and specific evidence on record with respect to these three essential ingredients, the impugned judgment deserves to be set aside;
- (ii) That PW1-Suresh Kumar (shadow witness) did not support the case of the prosecution, as a result of which,

he was declared hostile. He categorically stated that the complainant never handed over the tainted currency to the accused nor was any recovery of tainted money effected in his presence. Rather this shadow witness deposed that he remained seated in the car and never entered the Vigilance Office during the trap proceedings. All this considerably weakened the case of the prosecution;

- (iii) That the testimony of the complainant suffered from material contradictions particularly regarding circumstances surrounding the alleged demand of bribe, the manner in which the tainted currency was handed over to him, and the precise role played by the accused in the transaction;
- (iv) PW3-Ram Singh (recovery witness) did not corroborate the version of the prosecution regarding the hand wash test on the accused that was intended to confirm the presence of phenolphthalein powder on the hands of the accused;
- (v) PW6-DSP Sukhdev Singh Virk, Investigating Officer, failed to provide a clear and consistent account of the trap proceedings, particularly regarding pre-trap

preparations and the demonstration of phenolphthalein powder application;

- (vi) The sanction granting prosecution of the accused Ex.PW8/A, on the face of it, is invalid as there was no reference number and date on the same, rendering it procedurally irregular; it clearly comes across as a stereo typed document without any independent application of mind by the sanctioning authority;
- (vii) There was an inordinate delay of 10 months between the execution of the lease deed (12.01.2006) and the filing of the complaint (16.11.2006). No satisfactory explanation was provided by the complainant for this questionable delay, raising genuine and serious doubt regarding the credibility of the case of the prosecution. The lease deed of the complainant was registered on 12.01.2006, yet he waited until 16.11.2006 to file the complaint without offering any reasonable explanation for the delay. During cross-examination, he admitted that he frequently the Patwari's office, yet inexplicably failed to have his report registered earlier and did not make any prior complaint to a senior officer regarding the alleged demand for a bribe;

- (viii) That the complainant and his family did not even collect the rapat from 16.11.2006 to 02.03.2007, nor did they obtain any order of jamabandi, indicating that there was no urgency in the matter;
- (ix) That the accused is a victim of false implication due to prior dispute between him and the complainant; the accused had previously conducted a land demarcation in which half kanal of the land of the complainant was found to belong to one Sukhdev Singh, which was one of the reasons why the complainant was nursing a grudge against the accused. The complainant had earlier filed a complaint against the accused before the Deputy commissioner Bathinda and the Chairman of Scheduled Castes and Scheduled Tribes, Punjab, against the accused, which clearly supported the history of hostility between the parties.
- (x) That moreover, and significantly, the accused was on leave from 28.05.2006 to 11.07.2006, during which time Avinash Kumar was officiating as Patwari. If the accused had indeed demanded a bribe, as alleged, no satisfactory explanation was provided as to why the complainant did not approach the officiating Patwari to

have the necessary work completed during the absence of the accused;

- (xi) That the lease entry had already been recorded on 14.11.2006-two days before the alleged demand for a bribe. Since the necessary work had already been completed, there was no occasion for the accused to demand any bribe.

SUBMISSIONS BY THE LEARNED STATE COUNSEL:

- (i) That the prosecution successfully proved the case against the appellant and the impugned judgment, therefore, does not warrant any interference;
- (ii) The complainant, PW2, Kartar Singh, clearly and consistently testified that the accused demanded Rs.1,000/- for issuing an attested copy of the record. The case of the prosecution was further supported by the recovery of the tainted currency notes from the right hand pocket of the trousers of the accused. The hand wash as well as the pocket wash of the trousers of the accused turned pink which clinchingly proved that the accused had demanded and accepted bribe in exchange to extend favour to the complainant. Hence, all three ingredients, demand, acceptance and recovery of bribe, stand proved against the accused;

- (iii) The minor inconsistencies in the testimonies of some of the witnesses would not in any manner create dent in the case of the prosecution since the core facts of the case i.e. demand, acceptance and recovery of currency notes, were fully proved and corroborated during trial;
- (iv) Lastly, the sanction for prosecution of the accused was accorded in accordance with law and any trivial technical defects in the sanctioning process would not vitiate the conviction;
- (v) That the prosecution witnesses remained consistent on all material aspects, and their testimony, when read as a whole, supports the case of the prosecution.

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

Upon a thorough examination of the entire record and the submissions advanced by learned counsel for the parties, this Court finds no merit in the instant appeal and hereby upholds the judgment passed by learned Special Judge, Bathinda, for the reasons to follow.

It is a well settled principle that mere recovery of tainted currency notes is not sufficient to sustain a conviction under the PC Act unless the prosecution proves, beyond reasonable doubt, that there was a clear and unequivocal demand for illegal gratification by the accused. Demand is a *sine qua non* for an offence under Section 7 of the PC Act and

in the absence of such proof, mere possession and recovery of tainted currency notes would not constitute an offence.

In the present case, the trial Court, while passing the impugned judgment, relied heavily on the testimony of the complainant-Kartar Singh, PW2, who categorically deposed that the accused demanded Rs.2,000/- for making an entry in the revenue records. He further testified that, after negotiation, the demand was reduced to Rs.1,000/-. The demand was allegedly made in the course of the official duties of the accused as a Revenue Patwari.

The complainant's testimony stands corroborated by the pre-trap proceedings. Enough evidence was led by the prosecution before the trial Court to show that a written complaint was submitted by the complainant, serial numbers of the currency notes were recorded, and a trap team was constituted. No doubt, during trial, the defence sought to challenge the veracity of the statement of the complainant by contending that he had personal enmity with the accused, however, despite rigorous cross-examination, the testimony of the complainant remained unshaken, and no material inconsistencies emerged that could discredit his version.

While arguing before this Court, the learned counsel for the accused relied heavily on the fact that the shadow witness, PW1-Suresh Kumar, turned hostile and did not support the case of the prosecution with respect to the demand. However, the law is well settled that the non-support of a shadow witness does not automatically vitiate the case of the

prosecution if demand is otherwise proved through reliable evidence. The testimony of the complainant, if not reliable and corroborated by surrounding circumstances, can suffice to prove demand, even in the absence of corroboration from the shadow witness.

During trial, the shadow witness stated that the complainant never handed over the tainted currency notes to the accused nor was any recovery of tainted money effected in his presence; and further, he remained seated in the car and never entered the Vigilance Office during the trap proceedings. However, seemingly, the shadow witness turned hostile for reasons but obvious. The recovery memo pertaining to the recovery of the tainted bribe money bears the signatures of the shadow witness, from which, it is, therefore, discernable that the shadow witness had seemingly resiled for reasons but obvious.

In view of the above, this Court finds that the prosecution has successfully proved the first essential ingredient, that is, demand for illegal gratification, against the accused.

Once demand is proved, the next crucial ingredient is the acceptance of the bribe amount by the accused.

During trial, the prosecution led cogent evidence to prove that the accused accepted the tainted money from the complainant on 16.11.2006. The complainant categorically deposed that he handed over the pre-treated currency notes to the accused in furtherance of the demand. His testimony is duly corroborated by the recovery witness, PW3-Ram Singh,

and the Investigating Officer, PW6-DSP Sukhdev Singh Virk, both of whom confirmed the sequence of events leading to the apprehension of the accused with the tainted money.

During trial as well as before this Court, it was vehemently argued by the learned counsel for the accused that the complainant was harbouring personal enmity against the accused and that the money was forcibly thrust into his pocket. However, had such been the case, the accused would have immediately raised an alarm or protested. A belated defence that the money was forcibly placed in the pocket of the accused cannot be accepted, in the absence of an immediate protest by the accused at the relevant time.

The accused has failed to offer a satisfactory explanation for the presence of tainted money in his possession. Consequently, this Court finds that the second essential ingredient, that is, acceptance of bribe, has been proved beyond reasonable doubt.

The final essential ingredient in cases under the PC Act is the recovery of tainted currency notes from the accused.

In the present case, the prosecution was able to successfully prove that the tainted currency notes were recovered from the right side pocket of the trousers of the accused during the trap proceedings. The recovery was made in the presence of PW3-Ram Singh, and the recovery memo, Ex.PC, not only records the details of the recovered notes but

pertinently also bears the signatures of the shadow witness, PW1-Suresh Kumar, as already observed in the earlier part of this order.

Furthermore, the phenolphthalein test conducted on the hands of the accused yielded a positive result, as confirmed by the FSL report, Ex.PW6/H. A positive phenolphthalein test conclusively proves that the accused handled the tainted money, thereby strengthening the case of the prosecution against him.

Accordingly, this Court finds that the prosecution in the present case, convincingly proved the third essential ingredient - recovery of tainted currency notes from the accused.

The accused failed to offer a plausible explanation for the presence of tainted money in his possession. Furthermore, the argument raised by the learned counsel for the accused regarding the prior enmity and false implication would also not come to his rescue as the accused failed to provide credible evidence that the complainant had any motive to falsely implicate the accused.

Coming to the next contention of the learned counsel for the accused with respect to the delay in the lodging of the complaint, it would not vitiate the case of the prosecution, especially considering the corroborative evidence. The delay, if any, would not be sufficient to cast doubt on the authenticity of the complaint. The contentions of the learned counsel for the accused qua the discrepancies in the testimony of the prosecution witnesses, particularly regarding the time of arrival at the

Vigilance Office and the specific details of the recovery, to say the least, are of a minor and insignificant nature, and do not detract from the core facts of the case. These inconsistencies do occur with the passage of time and cannot undermine the credibility of the prosecution case. The evidence cannot always be flawless and it is the overall reliability of the evidence that matters.

In view of the above, this Court finds no merit in the present appeal and it is dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

February 05, 2025
sanjeev

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