

2025:PHHC:011129



925.

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

CRA-S-98-SB-2013

Date of decision: 18.01.2025

Sunil Jindal

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ashok Giri, Advocate, for the appellant.

Mr. Navdeep Singh, DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The instant appeal has been filed against the order dated 04.01.2013 passed by learned Judge, Special Court, Hoshiarpur, vide which, the appellant herein was convicted in case FIR No.10, dated 19.08.2008, under Sections 7/13(2) of the Prevention of Corruption Act, 1988 (for short, PC Act), Police Station Vigilance Bureau, Jalandhar, and sentenced to undergo rigorous imprisonment for 02 years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 02 months.

The case of the prosecution may be summed up as follows:

On 19.08.2008, complainant Gursahib Singh reported to the Vigilance Bureau that Sunil Jindal (hereinafter referred to as accused-appellant), a Senior Officer (SO) at the District Transport Office (DTO), Hoshiarpur, demanded a bribe of Rs.2,000/- for issuing a No Objection

Certificate (NOC) required for a transport related matter. The complainant, who runs a transport business with his brother, agreed to pay Rs.1,000/- but contacted the Vigilance Bureau to report the demand of bribe.

The Vigilance Bureau prepared a trap by marking Rs.1,000/- (comprising one note of Rs.500/- and 5 notes of Rs.100/-) with phenolphthalein powder. The complainant was instructed to hand over the bribe when demanded, and Rajinder Singh was assigned as a shadow witness. The trap was executed successfully, and the accused-appellant was caught accepting the marked currency. A chemical test of his hands confirmed the presence of phenolphthalein powder, turning the solution pink. The bribe money was recovered from the T-shirt pocket of the accused-appellant, and the case property was sealed and deposited, as per the procedure prescribed.

After completing the investigation, including obtaining chemical examination reports and sanction under Section 19(1) of the PC Act, challan was presented before the learned Special Court. Charges under Sections 7 and 13(2) of the PC Act were framed, to which, the accused pleaded not guilty and claimed trial.

The prosecution, in support, presented its evidence through 11 witnesses including the complainant, Gursahib Singh, who appeared as PW-4; shadow witness, Rajinder Singh, who appeared as PW-5; Police Officers, and officials from the DTO office. Upon closure of the evidence of the prosecution, the accused was examined under Section 313 of the

Cr.P.C. He denied the allegations, claiming false implication and presented 03 witnesses in his defence along with some other documents.

Learned counsel for the accused-appellant has made the following submissions:-

- (i) The impugned judgment and order is contrary to facts and law. The order of the learned trial Court is inconsistent with the evidence on record and contrary to the settled principles of law as the learned trial Court failed to consider the factual and legal aspects in their entirety, resulting in a miscarriage of justice;
- (ii) The complainant, PW-4 Gursahib Singh, has a history of exploiting the legal system/legal processes for personal gain. He was acquainted with PW-9 DSP Amarjit Singh, Investigating Officer, who had previously registered a case against one Manjit Singh. In that matter, complainant did not support the prosecution, as he extorted money from Manjit Singh by falsely implicating him. During cross-examination, PW-4 Gursahib Singh denied knowing PW-9, DSP Amarjit Singh, but this was contradicted by the evidence on record. Furthermore, the complainant has a pattern of falsely implicating officials, who do not comply with his demands. This critical aspect was disregarded by the learned trial Court without any valid reasoning;

- (iii) PW-9 DSP Amarjit Singh has been involved in multiple instances of falsely implicating innocent government officials, often in collusion with complainants. Several of these cases have resulted in the acquittal of the accused. Given this pattern, his testimony lacks credibility and cannot form the basis for the conviction of the accused appellant;
- (iv) Both the complainant and the shadow witness turned hostile during the trial and did not support the case of the prosecution regarding the alleged recovery of bribe money. Despite being cross-examined by the Public Prosecutor, their testimonies yielded no material evidence in favour of the prosecution. Recovery of money is a critical element under the PC Act, yet the learned trial Court failed to address this deficiency;
- (v) There was no motive for the accused-appellant to demand a bribe from the complainant. The complainant fraudulently obtained NOC without paying the requisite taxes. Upon discovering this, the accused-appellant refused to verify the NOC. In retaliation, the complainant falsely implicated the accused-appellant in the present case;

(vi) The proper jurisdiction for the complaint was the Vigilance Bureau at Hoshiarpur, where the appellant was posted. However, the complainant PW-4 Gursahib Singh chose to lodge the complaint at Jalandhar, suggesting a deliberate attempt to manipulate the process in connivance with the Investigating Officer, DSP Amarjit Singh, PW-9. This jurisdictional impropriety raises serious doubts about the integrity of the investigation;

(vii) There are significant contradictions in the statements of the prosecution witnesses, which undermine the credibility of the case:-

(a) As per the allegations in the FIR and challan, the accused-appellant demanded bribes multiple times before 19.08.2008, and twice on the day in question. However, the shadow witness testified that the bribe was demanded only once, at 01.30 P.M., after the application was marked by the DTO;

(b) The NOC in question had been issued by the appellant on 02.06.2008 without demand for a bribe. It is implausible that the accused-appellant would later demand a bribe for verifying a document he himself had issued;

(viii) An independent witness Tikka Singh, DW-3, who was present in the office of the accused-appellant during the alleged incident, categorically deposed that the accused-appellant did not demand any money. He also testified that the money was forcibly thrust into the pocket of the accused-appellant. His testimony holds greater evidentiary value than that of the shadow witness, who was a close acquaintance of the complainant and, therefore, an interested party. The Hon'ble Supreme Court has held in *Mir Mustafa Ali Hasmi Versus The State of A.P., 2024(3) RCR (Criminal) 562*, that the testimony of a shadow witness, who is a close friend of the complainant, should be treated with caution and may be discarded outright.

(ix) The claims of the prosecution regarding the recovery of money are inconsistent and unreliable:

(a) The shadow witness, PW-5 Rajinder Singh initially stated that the money was recovered by Mohan and Jagmohan but later claimed it was taken out by the Investigating Officer, DSP Amarjit Singh, PW-9;

(b) As per the challan, the accused-appellant himself disclosed the location of the money, while the

complainant PW-4 claimed that it was directly recovered from the pocket of the accused-appellant;

(c) These contradictions render the recovery highly suspect and failed to prove the twin ingredients of demand and acceptance, essential under the PC Act;

(d) No preliminary inquiry was carried out to verify the genuineness of the complaint before laying the trap. This procedural lapse further weakens the case of the prosecution;

(e) The Investigating Officer PW-9 has a history of abusing his official position and conducting illegitimate raids. This pattern of misconduct undermines the reliability of the investigation in the present case.

(f) The sanction for prosecuting the accused-appellant was not granted in accordance with the legal requirements, rendering it invalid and vitiating the proceedings.

Learned counsel for the State has vehemently argued that the impugned judgment of conviction does not warrant any interference as it is

based on sound appreciation of evidence. In addition, the counsel for the State has made the following submissions:

- (i) PW4-Gursahib Singh, who runs a transport business with his brother Gurbhej Singh, sold a bus (bearing No.PB07 1083) to a buyer in Rajasthan. The NOC for the bus was sent to the Registration Authority in Ganganagar;
- (ii) PW-4 Gursahib Singh approached the office of DTO, Hoshiarpur on multiple occasions for the verification of the NOC, intending to register a new bus under the same route permit. During this process, accused-appellant, an official at the DTO, demanded a bribe of Rs.2,000/- for issuing the verification certificate. However, since the complainant was unwilling to pay the bribe, he instead filed a complaint with the DSP, Vigilance Bureau, Jalandhar. On 19.08.2008, the accused- appellant was apprehended and recovery of the marked currency notes made from him. It has been further submitted that the chemical test conducted on the hands of the accused-appellant confirmed the presence of the phenolphthalein powder applied to the currency notes which had been handed over by the complainant to the Investigating Officer, DSP Amarjit Singh, PW-9, before the trap was laid. It has still been further asserted that although PW4-

Gursahib was declared hostile on certain aspects, his testimony sufficiently demonstrated that the accused had demanded and accepted bribe. Learned State counsel argued that the statements of PW4-Gursahib Singh regarding the recovery process and the operation carried out by the Vigilance Bureau were consistent and corroborated the case of the prosecution. Learned State counsel has also submitted that the shadow witness PW-5 Rajinder Singh also corroborated the account given by PW-4 Gursahib Singh, confirming the demand for the bribe, its acceptance, and the subsequent recovery of the marked currency notes from the shirt pocket of the accused;

- (iii) The bribe money had been forcibly placed in his pocket by an unknown individual, as per learned counsel for the accused-appellant, however, no such suggestion about the money being thrust into the pockets of the accused appellant was given to any of the prosecution witnesses, much less the complainant and, thus, it was not supported by any credible evidence.
- (iv) The objection raised with respect to the complainant intentionally reporting the matter to the Vigilance Bureau in Jalandhar rather than Hoshiarpur is also

baseless as the Head Office of the Vigilance Bureau is situated in Jalandhar, and Hoshiarpur falls under its jurisdiction.

- (v) The recovery of marked notes, corroborative testimonies of witnesses, and chemical analysis results, conclusively prove that the accused appellant demanded and accepted bribe.

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

As per allegations levelled by the prosecution against the accused-appellant, he, in his capacity as a public servant, demanded, and accepted an illegal gratification of Rs.1,000/- from the complainant PW-4 Gursahib Singh, for issuing a NOC with respect to the transfer of a bus.

For an accused to be convicted under Sections 7 and 13(2) of the PC Act, the prosecution is required to establish the following essential elements:-

- (a) a demand for illegal gratification made by the accused in his official capacity;
- (b) acceptance of the illegal gratification pursuant to such demand; and
- (c) recovery of the tainted money from the accused, corroborating the primary evidence of demand and acceptance.

It is settled law that mere recovery of tainted money, without proof of demand and acceptance, cannot sustain a conviction. However, once demand and acceptance are established, the presumption under Section 20 of the PC Act arises, placing burden on the accused to rebut the same with plausible evidence.

The case of the prosecution primarily hinges on the testimony of PW-4 Gursahib Singh (complainant), PW-5 Rajinder Singh (shadow witness), and the recovery of Rs.1,000/- from the accused-appellant by the raiding party constituted by the Vigilance Bureau.

PW4, the complainant, testified that the accused-appellant demanded Rs.2,000/- as illegal gratification and later accepted Rs.1,000/- during the trap laid by the Vigilance Bureau. This testimony was duly corroborated by shadow witness, PW-5 Rajinder Singh, who observed the accused accepting the money and signalling the other members of the raiding party, who were stationed in close vicinity.

While minor contradictions did indeed appear in the testimony of the complainant, PW-4 Gursahib Singh, during his cross-examination, they were limited to ancillary details and did not affect the core allegation of demand and acceptance. The shadow witness, PW-5, consistently supported the version of the complainant, affirming that the accused-appellant accepted the money.

The Investigating Officer, DSP Amarjit Singh, in the presence of not only the complainant and the shadow witness but also the other members of the trap team recovered Rs.1,000/- from the shirt pocket of the

accused-appellant during the trap. This recovery was witnessed by PW-5 Rajinder Singh and documented as part of the trap proceedings. The accused-appellant failed to provide a satisfactory and plausible explanation for the presence of tainted money in his pocket, and his defence of forced placement of money lacks credibility. DW-3 Tikka Singh, though a witness of the accused-appellant, admitted during his cross-examination that he did not see the money being forcibly placed in the pocket of the accused-appellant.

The prosecution relied on office order No.5166-72, produced by PW-11 Hari Om, Clerk, DTO office, which proved that the accused-appellant was authorized to issue NOCs for school and mini-buses. The argument by the learned counsel for the accused-appellant that the accused-appellant was not competent to issue the NOC remained unsubstantiated and rather was contradicted by the unchallenged documentary evidence.

The learned counsel for the accused-appellant strenuously questioned the credibility of the complainant, citing his involvement in prior cases registered by the Vigilance Bureau. However, the prior involvement of the complainant, if any, in other cases, without evidence of malafide intent, does not render his testimony in the present case unreliable. Both, PW-4 Gursahib Singh, PW-5 Rajinder Singh, provided consistent accounts of demand, acceptance, and recovery, which were corroborated by independent witness.

Once demand and acceptance were proved through credible evidence, the statutory presumption under Section 20 of the PC Act arose.

The accused-appellant failed to rebut this presumption with any plausible explanation or evidence.

Therefore, the prosecution successfully proved beyond reasonable doubt that the accused-appellant demanded and accepted Rs.1,000/- as illegal gratification for issuing a NOC. Further, the recovery of tainted money from the pocket of the accused corroborated by the testimonies of the complainant and shadow witness also strengthen the case of the prosecution; although minor discrepancies in the evidence led by the prosecution were pointed out but they are trivial and natural in cases involving human testimony. They do not undermine the overall credibility of the case of the prosecution. Even the argument of forced placement of money is not supported by any cogent evidence and fails to rebut the presumption of guilt under Section 20 of the PC Act.

As a sequel to the above, the impugned order does not warrant any interference and comes across as a well reasoned order which deserves to be upheld.

Present appeal stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

January 18, 2025
sanjeev

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