

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

CRA-S-No.1192-SB OF 2002
DATE OF DECISION : 10th MAY, 2017

Jagat Ram

.... appellant

Versus

Central Bureau of Investigation

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : None for the appellant.

Mr. Sumeet Goel, Advocate, Retainer Counsel for CBI.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the order dated 22.07.2002 passed by Special Judge, Chandigarh in C.C. No.116/3/26.3.96/12/7/2K by which the appellant was convicted for offence under Section 7, 13(1)(d) read with 13(2) Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of two years and fine of ₹1000/- for each offences and in default to undergo further imprisonment for a period of detention already undergone by him.

Facts:

2. Briefly stated the prosecution case is that the appellant-accused Jagat Ram was posted as Director Postal Services, Punjab Circle in the office of the Chief Post Master General, Sector 17, Chandigarh. He had demanded ₹10,000/- as bribe amount in two installments from Ms. Suman, Manager and Harish Nanda, Managiner Director of Pearlless

Electronics Private Limited for not returning the material i.e. the postal repellers and not claiming any recovery from them as per the guarantee clause. Out of the agreed amount ₹10,000/- installment of ₹5,000/- was paid on 02.12.1994 and balance was to be paid on 05.12.1994. Case was registered against the appellant-accused on the basis of the written complaint of Ms. Suman and Mr. Harish Nanda. Thereafter, a trap was arranged and the trap party caught the appellant while collecting ₹5,000/- from the complainant at *Ghazal* Restaurant where the appellant-accused had called them for receiving balance amount of ₹5,000/-. The necessary documentation was made after arrest of the appellant was made. Investigation was completed and thereafter challan was filed in the trial Court. The appellant was put on trial and the trial court finally convicted him.

Arguments:

3. In support of the appeal, the learned counsel for the appellant contended that the prosecution had failed to prove its case of demand and acceptance by the appellant by legal and proper evidence and, therefore, the appellant was entitled to be acquitted. He then contended that appellant had examined defence witnesses who had clearly stated enmity between the complainant Suman as her uncle who was working under the appellant was chargesheeted by the appellant in number of departmental cases and that is why in order to take revenge the trap was arranged by Suman on the instructions of her uncle. Further the evidence to that effect has been completely ignored by the trial court. The learned counsel for the appellant then submitted that the prosecution

miserably failed to prove the demand and acceptance and at any rate the conviction could not have been recorded. He then submitted that the trial court did not even frame any point for determination and proceeded to decide the case in haphazard manner. He then prayed for acquittal of the appellant-accused or in the alternative for remand of the case to the trial Court since according to him the trial court has not framed any point for determination.

4. *Per contra*, learned counsel for the CBI opposed the appeal and submitted that the order and judgment made by the trial Court is a detailed judgment considering each and every piece of evidence led by the prosecution as well as the defence and, therefore, there is no reason to interfere with the impugned judgment of conviction. He also submitted that the trial court has given weighty reasons for recording conviction and, therefore, the conviction is required to be maintained. He also invited my attention to the evidence of the sanctioning authority and submitted that there is documentary and oral evidence regarding sanction. This court itself can look into it and decide the same rather than making an order of remand. He prayed for dismissal of the appeal.

Consideration:

5. I have heard learned counsel for the parties at length and perused the entire evidence tendered by the prosecution. I have perused the reasons recorded by the learned trial Judge for holding that there was demand and acceptance by appellant and has also hold that sanction was accorded by the authority according to law.

6. It is indeed strange that in the entire judgment the trial court did not frame a single point for determination. It went on to decide the case without framing any point for determination. It is the trite law that the trial court ought to frame points for determination and then record answers on those points for determination. There is a failure on the part of the trial court in the present case in that behalf.

7. Be that as it may. Looking to the fact that the occurrence took place in the year 1994, I am not inclined to make any remand order on any count whatsoever, since conclusion can be drawn on the evidence on record.

8. Insofar as the aspect of demand and acceptance is concerned, after perusal of the entire evidence and after comparing findings of the trial court, I am inclined to agree with the findings recorded by the trial court that the prosecution has proved the demand and acceptance through the evidence of the witnesses beyond any doubt. Following are the reasons recorded by the trial court for the said purpose.

“19. PW15 Nagar Mal was posted as Superintendent Circle, stamp Depot, Ludhiana. He proved supply order of three pest repellers as Ex.PW15/1. He further proved letters dated 22.1.94 and 24.6.94 Ex.PW15/2 and PW15/3 respectively. TA bill file of the accused Ex. PW15/4 has been proved by this witness. TA bills are Ex. PW15/5 to PW15/16, prosecution by stating that she and Darshan Ram had reached the office of CBI where Sh. Surjan

Singh DSP introduced to them with Miss Suman and Harish. They were further told that accused was demanding the bribe. Miss Suman talked to the accused on telephone and that talk was taped. She identified her signatures on the conversation transcript as Ex. P53. She further proved that accused asked Suman as to whether she had brought the money that was demanded from her earlier by him and that she told that she had arranged the amount of Rs.5000/-. This witness further corroborated the fact that accused accepted the bribe of money of Rs.5000/- and amount was recovered from him. Similarly, she supported the story on the material particulars.

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21. PW17 Smt. Suman is one of the complainant. She proved her complainant Ex.PW13/A and narrated the prosecution story concerning her regarding the demand of bribe and acceptance of the tainted money of Rs.5000/- by the accused and the recovery of it from the accused.
22. PW18 is V. K. Anand who was Inspector CBI on 2.12.94. His statement is that complaint of Suman and Harish Nanda was handed over by him to the Superintendent of Police who ordered the

registration of the case. After making endorsement Ex. PW18/A and FIR Ex. PW10/1 was recorded. He further gave details of the investigation part of the story.

23. PW19 Om Parkash is the Investigating Officer of this case. He reiterated the investigating part of the story as has been given in para No.2 of this judgment. He prepared rough site plan Ex.PW19/A. Ex.PX is the report from the Forensic Science Laboratory according to which two sealed glass bottles gave positive test for phenolphthalein and sodium bicarbonate.

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37. Accused had admitted in statement u/s 313 Cr.P.C. that he was posted and was functioning as Director Postal Services. He further admitted that orders for pest repellents were issued under his verbal instructions. His next admission is that final authority for making purchases for the post offices under the charge of Director Postal Services is the Director only if the amount of purchase exceeds Rs.500/-. According to him orders were placed by Om Parkash Talwar, Superintendent Post Offices on his formal approval. In such a situation it is clear that pest repellents were purchased from M/s.

Pearless Electronics pvt. Ltd on the verbal orders by different Postal Subordinate Offices. Purchases were made not from Miss Suman under his verbal orders but from M/s Pearless Electronics Pvt. Ltd where Miss Suman was working as Manager whereas Harish Nanda was working as Managing Director. Had Miss Suman been proprietor of the firm then there could be some weight in the defence of the accused that he could not get the purchases made under his verbal order from her nor could he demand or accept illegal gratification from her on account of the fact that he got conducted some enquiries against her father who was working under him. In this case she was simply a Manager of M/s Pearless Electronics Pvt. Ltd. moreover, enmity on account of official matters if any was with the father of Miss Suman and not with Miss Suman who was employed by M/s Pearless Electronics Pvt. Ltd. there is sufficient evidence on record that Miss Suman was called by the accused in Ghazal Restaurant. Demand of bribe was got confirmed by the investigating officer Surjan Singh DSP and this fact stands corroborated from the statement of PW1 as well who deposed that on 2.12.94 he had received telephone message from Ms. Suman that

she wanted to talk with the accused and that he told her that he was busy in the meeting but she insisted requesting him again to call him saying that she had some urgent talk. PW1 sent message to the accused in the Chamber of Chief Post Master General where he was present and that accused came to his seat and heard the telephone and that accused present in the Court then talked on telephone. This conversation was taped and transcript of the cassette is Ex.P53. If the accused was not to accept the bribe through Miss Suman Manager of the firm at Ghazal Restaurant knowing fully well that she is the daughter of Bachan Singh he would not have called her at the Restaurant. Question as to why he did not accept bribe in the building where father of Suman was putting up is well within the knowledge of the accused and it cannot be expected from the prosecution to explain it. There is another aspect of the case on account of which defence version falls on the ground. It is that Harish Nanda was the Managing Director of M/s Pearless Electronics Pvt. Ltd. Lalita Sharma is shadow witness in the case. Other witnesses examined by the prosecution are Darshan Ram, V.K. Anand and Om Parkash Investigating Officer. No convincing evidence is on

the record that Harish Nanda, Lalita Sharma, Darshan Ram, V. K. Anand and Om Parkash had enmity or motive to implicate the accused falsely.

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41. After x-raying the evidence on record and considering the rival arguments regarding variations in the statements of the witnesses pointed out by Id. Counsel for the accused, I am of the considered view that they cannot assume significance in the facts and circumstances of this case. Statements of the material witnesses i.e. trap witnesses have been recorded from 1997 to 2001. Accused was caught red handed after he accepted the bribe of Rs.5000/- on 2.12.94. After lapse of time human memory gives way and such like variations as have been pointed out by the Id. Counsel for the accused are bound to occur in the statement of the witnesses. Camera type observations cannot be expected from human beings. On all the material issues the statements of the witnesses are unanimous. Rather such like minor differences indicate that witnesses are natural and not tutored. In these circumstances, minor discrepancies pointed out in the statements are not suicidal to the case of the prosecution nor on their basis version of the prosecution can be thrown

to the waste paper basket. No material infirmity in the statements of the material witnesses has been pointed out to disbelieve them.”

9. I agree with the findings of the fact which are based on evidence and, therefore, I hold that the prosecution proved the demand and acceptance. The defence failed to rebut the prosecution evidence. Presumption arises under Section 20 of the Act regarding acceptance of money.

10. The next important question is about the sanction for which also no point for determination was framed. I have myself perused the evidence of the person PW9 M. S. Mahi Pal who proved the sanction and I have also seen the documents, in particular Ex.PW9/A, the sanction order. The trial court has given no importance to the aspect of sanction and has casually recorded the finding about the sanction, which cannot be appreciated. The findings recorded by the trial court on the aspect of sanction is as under:

“13. PW9 M.S. Mahi Pal was Dest Officer Vigilance. He proved that sanction for prosecution was granted against the accused by the President of India. Grant Sanction was conveyed to CBI under his signatures which is order Ex.PW9/A. It was sent in the name of the Hon’ble President. He further stated that he is competent to sign the sanction order.”

11. It is the trite law that defective sanction, unproved sanction or sanction on non-application of mind, are all fatal to the prosecution

case under Prevention of Corruption Act. In the present case what I find is that the prosecution miserably failed to prove the aspect of application of mind by particular person or by any authority by tendering legal evidence before the court that the sanction was granted after application of mind by a particular person on behalf of the President of India. The prosecution brought the evidence of PW9 M. S. Mahi Pal but did not examine any official who had actually applied his/her mind and given sanction Exhibit PW-9/A. Following is the evidence of PW-9-M. S. Mahi Pal:

“Since September, 1995 I am posted as Dest Officer Vigilance Deptt. Of Posts, New Delhi. Vigilance cases are processed by me. In the present case sanction for prosecution of the accused was granted by the President of India to whom the entire file containing all details was sent by our office. On receipt of sanction from President of India regarding grant of sanction was conveyed to the CBI under my signatures which order is Ex.PW9/A. I identify my signatures on this order Ex.PW9/A which was sent in the name of the president. I am competent to sign sanction order in this case.

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Today I have not brought the sanction that was originally received from the President regarding launching of prosecution against the accused. It is incorrect that I have deposed falsely.”

12. He is the only witness examined by the prosecution on the question of sanction. Perusal of his evidence shows that he is a Desk Officer, who has put the signature on the sanction order in the name of President of India. He also admitted that he has not produced any original order received from the President of India regarding sanction for launching the prosecution against the appellant. In other words, the copy made from the original sanction order was proved by him as Desk Officer. The primary evidence was thus not produced. If his examination is carefully perused, he does not claim that he was authorized to grant sanction after application of mind or that he was the authority authorized by the President to grant sanction upon application of mind to the entire papers. He is merely a Desk Officer and not the appointing authority. It is a well settled legal position that the prosecution has to prove that the sanction was granted upon application of mind by appointing authority. It appears that the competent authority was the President but then under the delegated powers of appointing authority or the delegate ought to have been examined to show grant of sanction after application of mind to the entire papers. PW-9 has also not uttered a word on the entire aspect. On the contrary, his entire evidence shows that he has merely signed the sanction order on behalf of the President of India. All the above manner of proving sanction is absolutely preposterous and having no legal sanctity. In other words, in my opinion, it is no sanction in the eye of law for launching prosecution. The prosecution ought to have examined the superior officer to whom the powers were delegated and who had applied his/her mind to the entire

papers and then granted sanction under his signatures. However, that was not done. Thus the prosecution has miserably failed to prove any legal sanction. As earlier stated that trial court has not at all dealt with this aspect of the matter which is the heart and soul of a case under the PC Act.

Conclusion:

13. In that view of the matter, I find that for want of legal and proper sanction, the prosecution case must fail. It is unfortunate that the prosecution did not bother to bring the required evidence, documentary as well as oral, as stated above to prove the sanction and as a sequel allowed the appellant to go scot-free. This is how the anti-corruption case has been conducted. In the result, I make the following order.

ORDER

- (i) CRA-S-No.1192-SB OF 2002 is allowed.
- (ii) Impugned judgment and order dated 22.07.2002 passed by Special Judge, Chandigarh, is set aside.
- (iii) The appellant is acquitted of the charge framed against him.
- (iv) Fine if any be refunded to him.

10TH MAY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : *Yes*

Whether Reportable : *Yes*