

**(2009) 05 P&H CK 0192**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 1826-SB of 2004

Jaipal

APPELLANT

Vs

State of Haryana

RESPONDENT

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Date of Decision: May 15, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 313
- Prevention of Corruption Act, 1988 - Section 13(1), 7

Citation: (2011) 1 Crimes 398

**Hon'ble Judges:** Harbans Lal, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Harbans Lai, J.

This appeal is directed against the judgment dated 26.8.2004/order of sentence dated 28.8.2004 passed by the Court of learned Judge, Special Court, Panipat whereby he convicted and sentenced the accused appellant Jaipal to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2,000 u/s 7 of the Prevention of Corruption Act, 1988 (for brevity, "the Act") and in default of payment of fine to further undergo rigorous imprisonment for three months.

2. The facts in brief are that on 15.9.2001 at about 7.30/8.00 a.m., Ram Kunwar reached at Pasina Khurd with his tractor trolley bearing registration No.HR-11-8843 loaded with wooden pieces. On the way, he was made to stop by Highway Patrol Gypsy No.HR-05J-0115. ASI Jaipal accused came to him and stated that he would challan his tractor trolley and impound it. He demanded an amount of Rs.600 as bribe" from him. PW Ram Kunwar stated that he would talk to the owner of the tractor trolley and then he would make the payment. Thereafter, ASI Jaipal took the tractor trolley to the Traffic Post, Gaushala. Ram Kunwar made a telephonic call to the Superintendent of Police, Highway Patrol, Kamal on his mobile and narrated the

facts to him. The former asked him to meet at Blue Jay Restaurant, Samalkha and also told him that he was coming along with Deputy Superintendent of Police there. Around 11.00 a.m., Mr. V. Kamraj SP, Mr. Virender Kumar DSP, Head Constable Prem Chand and some Constables reached in civil dress at the aforesaid restaurant. The Superintendent of Police gave certain directions to Ram Kunwar, when he was alone. After completing usual formalities, the raiding party reached near the Traffic Aid Centre situated in the aforesaid Gaushala. Constable Swaranjit Singh was deputed on the road outside the said Gaushala, whereas Head Constable Prem Chand was directed to stand near the main gate of such Gaushala. The complainant was asked to handover the tainted currency notes to the accused on demand. The DSP also apprised about the appointed signal to HC Prem Chand and Constable Swaranjit Singh who were in civil dress. After a short while, the Constable Swaranjit Singh gave a signal to the DSP upon which DSP Virender Kumar went outside the aforesaid Centre, where accused was present. On personal search of the accused, the initialled currency notes worth Rs.500 was recovered from the right pocket of his uniform shirt. The same were seized vide memo in the presence of aforesaid Head Constable as well as constable. DSP Virender Kumar made a telephonic call to SHO Smalkha to come at the spot. Further investigation was handed over to the said SHO. Mr. Kuldeep Singh Yadav DSP Smalkha on receipt of a V.T. message went to the aforesaid Centre in the Gaushala. He found that Dalbir Singh SHO Smalkha, Varinder Kumar DSP (Traffic), the accused Jaipal ASI and other police officials were present there. Dalbir Singh SHO handed over one sealed envelope said to contain currency notes worth Rs.500. After opening the same, DSP Kuldeep Singh Yadav resealed the envelope with his seal bearing impressions "JK". He recorded the statements of Virender Kumar, DSP, SI Dalbir Singh and Constable Swaranjit Singh, prepared a rough site plan showing the place of occurrence, arrested the accused and recorded statements of the other witnesses. After completion of investigation, the charge-sheet was made in the Court for trial of the accused.

3. The accused was charged u/s 7 of the Act to which he did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined PW1 SI Dalbir Singh, PW2 Vijay Singh Patwari, PW3 HC Ranbir Singh. PW 4 Constable Ranbir Singh, PW5 I-IC Ishwar Singh, PW6 Ram Kunwar Complainant, PW7 HC Shamsher Singh, PW8 Virender Kumar DSP, PW9 Kuldeep Singh Yadav DSP, PW10 Constable Naresh Kumar and PW11 ASI Prem Chand. When examined u/s 313 of Cr.P.C, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded innocence. He came up with the plea that when he was posted in the Highway Patrol, Traffic Aid Centre, Smalkha, Virender Kumar DSP asked him to provide vehicles etc at his cost and he could not fulfil that demand. Therefore, a false case was registered against him. In defence, he examined DW1 Vijender Singh ASI.

4. After hearing the learned public prosecutor for the State, the learned defence counsel and examining the evidence on record, the learned trial Court convicted and

sentenced the accused as noticed at the outset. Feeling aggrieved with his conviction/sentence, he has preferred this appeal.

5. I have heard the Learned Counsel for the parties, besides perusing the record with due care and circumspection.

6. Mr. Lekh Raj Sharma, Advocate appearing on behalf of the appellant strenuously urged that in this case Phenolphthalein powder was not applied to the currency notes allegedly recovered from the personal search of the accused though when the raiding party started from Kamal to conduct raid at Samalkha, the Forensic Science Laboratory fell on the way from where such powder could have been obtained. As a matter of fact, the accused appellant had strained relations with PW8 Virender Kumar DSP who had asked the former on so many occasions to fulfil his illegal demands which were not fulfilled by him being an honest man. This apart, the appellant had no jurisdiction to impound the vehicles and that being so, there was no question to demand Rs.500 from the complainant for the release of his vehicle. There is no proper and competent sanction accorded by the competent authority for prosecuting the accused appellant u/s 197 of the Code of Criminal Procedure. To add further to it, no independent witness was joined in the raiding party. The raid was conducted beyond jurisdiction. He has sought to place abounded reliance upon the observations rendered in *Re: State of M. P. o. J.B. Singh* 2000 SCC (Criminal) 1507; *Subash Parbt Sorwane v. State of Gujarat* 2002(3) RCR (Criminal) 188; and [Suresh Kumar Shrivastava Vs. State of M.P.](#),

7. Last of all, he agitated at the bar that the ingredients of demand and acceptance have not been satisfied by the prosecution as Ram Kunwar complainant was declared hostile and when he was cross-examined by the learned public prosecutor, no material favourable to the prosecution could be wrenched out.

8. To overcome these submissions, Mr. Vashist pressed into service that of course, the complainant Ram Kunwar did not lend support to the prosecution version, nonetheless the recovery of currency note worth Rs.500 from the possession of the accused appellant go a long way in establishing the charged offence. This contention merits rejection for the reasons to be recorded hereunder.

9. There is no gainsaying the fact that Ram Kunwar complainant (sic) did not toe line with the prosecution. On being cross-examined by the learned public prosecutor, no material as would have been favourable to the prosecution could be elicited under the stress of cross-examination by the learned defence counsel, he stated in candid terms that "I do not know the accused present in Court. He was not present when I was taken to the police station. In my presence, the accused never appeared in the police station." In such cases, it is only the complainant whose evidence could have established the principal ingredients of demand as well as acceptance by the accused for the reason that the conversation in this behalf has to take place in between the accused and the complainant. Thus, the prosecution virtually in these

cases has to sink or swim mainly with the testimony of the complainant. Here in this case, the complainant has resiled from his police statement. He did not sub-serve the prosecution version. The prosecution has utterly failed to prove the demand of bribe money as well as its acceptance. In re State of MP. v. J.B. Singh (supra), it was alleged that the accused police officer had demanded and taken bribe for releasing the complainant. The prosecution witness had stated that he had gone to the police station on the request of complainant's father to find out as to how the complainant was detained. It was held by the Apex Court that it was not sufficient to establish the demand made by the accused. In re: Subash Parbt Sonuane (supra), the accused had accepted the bribe money from the complainant in the presence of witness. There was no evidence that the accused had demanded money from the complainant. The conviction u/s 13(1)(d) was set aside by the Apex Court. In case of obtainment, the initiative vests in the person who receives and in that context, a demand or request from him will be a primary requisite for an offence under the Act. This can be established by proof of either "acceptance" or "obtained". Herein this case, the primary request in relation to demand is missing. The bribe money was recovered from the accused by the raiding party of police. There was no satisfactory evidence as to what conversation took place between the money giver while giving money. The witness also did not depose that the accused had demanded money. It was held that the prosecution case is rendered doubtful and the accused was acquitted. In the present one, too the position is identical as there is no evidence as to the revelation of conversation which took place between the accused appellant and the complainant Ram Kunwar (sic). Thus, the elements of demand as well as acceptance have not been established by the prosecution. In re: Suresh Kumar Srivastava (supra), it was found that there was no evidence that the accused had either demanded bribe or voluntarily accepted it, at the time of trap. It was held that mere recovery of money from accused is not sufficient to raise any presumption against him. The absence of motive on part of the accused either to demand or accept bribe renders the prosecution story doubtful. In the instant case too, mere recovery has been established and that too in the presence of the police officials who by all probabilities were interested in the success of the case [Raghubir Singh Vs. State of Punjab](#), it has been held as under:

The Officers functioning in the anti-corruption department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the Court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe. They should insist on observing this safeguard for the protection of public servants against whom a trap may have been laid. In the present case, the search witnesses were interested witnesses and, therefore, their evidence with regard to the giving of bribe and the recovery of the amount from the person of the accused was not relied upon.

10. Further in re: Gurcharan Singh v. State of Haryana 1994 Criminal Law Journal 1710 it has been held that "the evidence of complainant or trap witness cannot be relied upon in the absence of independent corroboration." Needless to say, in the instant case, no independent witness was associated. A glance through the testimony of Kuldeep Singh Yadav DSP PW9 would reveal that phenolphthalein powder was not applied to the alleged currency notes. It is in the cross-examination of Virender Kumar DSP PW8 that no chemical powder was taken from the FSL Laboratory. Oftenly chemical, i.e., phenolphthalein powder is used in trap cases, but that method was not applied in this case." It also surfaces in the cross-examination of this witness that we (referring to the raiding party) crossed over Madhuban where FSL laboratory is situated. It implies that this laboratory did fall on the way from Karnal to Samalkha, the place of raid. It clearly indicates that this phenolphthalein powder could have been obtained from this laboratory. The Investigator has not assigned any reason for not applying this powder to the alleged currency notes. To my mind, only the hand wash of the accused appellant would have established the recovery of the alleged currency note from his personal search as no independent witness was joined in the proceedings. Such hand wash would have been obtained only if the phenolphthalein powder had been applied to the alleged currency notes. In re: Ham Avtor v. State 1994 (1) RCR (Criminal) 412 the Investigating Officer had not treated the currency notes with phenolphthalein powder though he had sufficient time to procure it, it was held that this has weakened the prosecution case and the accused was inter alia acquitted on this ground. Herein, too such powder having not been applied to the alleged currency notes, the prosecution case is rendered highly doubtful. It is in the cross-examination of Virender Kumar DSP PW8 that "It is correct that ASI Jai Pal (referring to the accused) was not empowered to challan the vehicles." If the accused appellant was not vested with such power how he would have impounded the tractor trolley of the complainant or threatened that the same would be released unless he pays Rs.500 as bribe money. In re; Ram Avtar (supra), it has been observed that "it must be shown that the accused was in a position to show favour in exercise of official functions." In re; Kanwal Pal Singh v. State of Punjab 1998 (2) RCR (Criminal) 351, the police conducted raid and recovered tainted currency notes of Rs. 300. It was found that the accused were not dealing with the subject for which the complainant agreed to pay illegal gratification. The accused were acquitted by giving benefit of doubt. In the case at hand, the accused appellant being not authorized to impound the vehicles, by no stretch of speculation could be expected to have impounded the tractor trolley of the complainant and for release of the same, would have putforth a demand of Rs. 500 as bribe money. As is borne out from the evidence of Kuldeep Singh Yadav DSP PW9, later on, the investigation was handed over to him. It is in his cross-examination that "Prior to my arrival, the recovery proceedings were complete. I cannot tell under what circumstances, the recovery was effected. All the criminal investigations are to be carried out by the local police. It is correct that DSP Virender Vij or any traffic police official did not pass

on any information to me about the arrest of the accused or about the recovery, nor such information was passed on to police station Samalkha, which is under my jurisdiction." This evidence clearly indicates that this local police officer came to know about this episode at a belated stage though he was posted at the relevant time as DSP, Samalkha. There seems to be hotch-potch at every step of the investigation for the reasons best known to the prosecution. It is in the cross-examination of this witness that Sub-Divisional Magistrate and Tehsildar are posted and working as such at Samalkha. The prosecution has not apportioned any reason for non-joining of the Sub-Divisional Magistrate or Tehsildar of Samalkha in the raiding party. It is in the cross-examination of Prem Chand ASI PW11 that "Jai Pal ASI accused was known to me earlier and he was also knowing that was working with DSP. The accused was visible to us and vice versa. Other police officials came there later on." It is inferable from this evidence that the accused could be seen by the members of the raiding party. This further improbabilises the prosecution story.

11. The accused appellant has come up with a specific plea that when he was posted in the Highway Patrol, Traffic Aid Centre Samalkha, then DSP Virender Kumar asked him to provide him vehicles etc., at his (accused- appellant) cost, but he (accused appellant) could not fulfil that amount and that is why, this case has been planted upon him. Vijender Singh ASI DW1 has testified that "At that time DSP Virender Kumar was the senior officer of TAC, Samalkha. The said DSP was having strained relations with ASI Jaipal Singh and ASI Jaipal Singh failed to fulfil his unwanted demands on certain occasions. On certain occasions, DSP Vijender Singh asked ASI Jaipal Singh to arrange some private vehicles for him. On 15.9.2001, when I was posted as Head Constable in TAC Samalkha, no raid was conducted in my presence. No vehicle was impounded by ASI Jaipal on 15.9.2001 in TAC Samalkha." This witness could not be shattered or shaken, rather he stood like a rock in his cross-examination. In other words, his credibility could not be impeached in any manner. More to the point, he being an officer of the rank of Assistant Sub-Inspector would have not deposed against a senior officer of the rank of DSP. However, he had deposed falsely against the officer of the rank of DSP. In these premises, on the basis of this testimony, it has to be held that the relations between DSP Virender Kumar as well as the accused appellant were soured. It is possible that DSP Virender Kumar to satisfy his ego that his subordinate did not oblige him, would have planned to rope in the accused falsely in this case. This may be the reason for not treating the alleged currency note with phenolphthalein.

12. In re: State of Haryana v. Ram Singh 2002(1) RCR(Cri) 443 the Apex Court has ruled that the evidence tendered by defence witnesses cannot always be termed to be tainted one. They are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. An identical view has been taken by the Division Bench of this Court in re: Malkiat Singh v. The State of Punjab. 2007(1) RCR (Criminal) 626 So, the credibility and the

trustworthiness has to be attributed to Vijender Singh ASI DW1 at par with that of the prosecution.

13. In the ultimate analysis, this appeal is accepted setting aside the impugned judgment/ order of sentence. The accused is hereby acquitted forthwith of the charged offence.