

Narinder Kumar Vs The State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 16, 2009

Acts Referred: Prevention of Corruption Act, 1988 " Section 13(2), 7

Citation: (2010) 1 RCR(Criminal) 355

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: Bipin Ghai, with Mr. Deepak Garg, for the Appellant; Manjari Nehru Kaul, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This appeal is directed against the judgment of conviction, and the order of sentence dated 10.07.1996, rendered by the

Special Judge, Rup Nagar, vide which he convicted Narinder Kumar son of Om Parkash, accused, (now appellant), as under:-

Names of the accused The offence for which conviction was

Sentence awarded

(now appellant) recorded.

U/S.7 read with Section 13(2) of the Rigorous imprisonment for four years. Fine of Rs. 5000/-. In default of payment

Narinder Kumar

Prevention of Corruption Act. of fine to undergo rigorous imprisonment for six months.

2. The facts, in brief, are that, on 21.08.1991, Narinder Kumar son of Gurcharan Dass, resident of Sohana, Tehsil Kharar, District Rupnagar,

came to the office of the Vigilance Flying Squad-I, Punjab, Chandigarh and made his statement Ex.PD, which was recorded by Harjap Singh,

Inspector. It was stated, in this statement, by Narinder Kumar, that he was an agriculturist by profession. About two months prior to 21.08.1991,

he purchased 8 kanals of land from Kabal Singh son of Dasondi Singh, resident of Sohana, for a consideration of Rs. 80,000/-. The sale deed was

registered on 12.06.1991 in tehsil office at Kharar. He was to get the mutation sanctioned, in respect of that sale. He contacted Narinder Kumar,

Patwari, of his village and requested him to enter the mutation, on the basis of the sale deed, referred to above. Narinder Kumar, Patwari,

accused, (now appellant) had been putting him off, on one pretext or the other. It was further stated by him, in his statement that on 21.08.1991,

he went, in the morning, to the Patwar Khana at Sohana, alongwith copy of the sale deed. He requested Narinder Kumar, accused to enter the

mutation. Narinder Kumar, Patwari, told him that the mutation could not sanction in that manner. He (Narinder Kumar), further told him that he

would charge a sum of Rs. 400/- as gratification, other than legal remuneration, for entering the mutation, on the basis of sale deed, referred to

above. When Narinder Kumar, complainant, requested the accused that he was a poor person and, as such, was unable to pay the same, he (

Narinder Kumar) agreed to receive a sum of Rs. 200/- as gratification, other than legal remuneration for the aforesaid purpose. Since the

complainant did not want to pay the gratification, other than legal remuneration for his work, to the accused, he made a false promise, that the

amount was not readily available with him. Narinder Kumar, accused, told the complainant that he should hand over the sale deed to him and he

could bring Rs. 200/-. He further told him, that he would then enter the mutation. By making a false promise, aforesaid, to the accused,

he(complainant) came back. He produced two currency notes of Rs. 100/- each, before Harjap Singh, Inspector and requested him to take

action, in accordance with law. against the accused. The statement was read over and explained to the complainant, who after admitting the same

to be correct, signed it. The numbers of currency notes, which were handed over to Harjap Singh, Inspector, were noted down in memo Ex.PE.

Phenolphthalein powder was applied to the currency notes. Thereafter, Harjap Singh, Inspector, satisfied that nothing was left with the

complainant. The currency notes, to which the Phenolphthalein powder was applied, were handed over to Narinder Kumar, complainant. He was

instructed to go to Narinder Kumar, accused and on his demand, pay the aforesaid tainted currency notes as gratification, other than legal

remuneration. A glass containing water, was fetched, in which sodium carbonate was mixed, as a result whereof, the colour thereof did not change.

When a pinch of powder i.e. Phinol Pathalene was put in the mixture, the water thereof turned into pinkish. The mixture after demonstration was

destroyed. Memo Ex.PF regarding the demonstration was prepared, which was attested by the witnesses. Endorsement Ex.PM on the statement

of the complainant, was made, and the same was sent for registration of the case, on the basis whereof, the FIR Ex.PN was registered. Thereafter,

Harjap Singh, Inspector alongwith Narinder Kumar, complainant and other police officials of vigilance Bureau Flying Squad-I Chandigarh, came to

village Sohana in a jeep. Buta Singh, independent witness, was joined in the raiding party, at Bus Stand, Sohana. He was apprised of all the facts

and circumstances of the case. Buta Singh was instructed to follow up Narinder Kumar, complainant, as a shadow witness and give a signal as and

when gratification, other than legal remuneration in the sum of Rs. 200/- was demanded and accepted by the accused from him (Narinder Kumar,

complainant). The remaining members of the vigilance party stayed near Patwarkhana, by concealing their presence. As soon as, the gratification,

other than legal remuneration, in the aforesaid sum, was demanded and accepted by Narinder Kumar, accused, from the complainant, a signal was

given by Buta Singh, shadow witness. In the meanwhile, Pritam Singh Junior Engineer-II also came present and was joined with the Police party.

On receipt of signal, given by Buta Singh, shadow witness, the Police party, headed by Harjap Singh, Inspector, raided the temporary

Patwarkhana, where the accused was sitting. The accused was asked to raise up his hands. A glass, containing water, was fetched, in which

sodium carbonate was put, as a result whereof, the colour of the solution did not change. Thereafter, the fingers of the hands of the accused were

got dipped therein, as a result whereof, the colour of the same turned into pinkish. The solution was put in a nip, duly sealed and taken into

possession vide recovery memo Ex.PG, attested by the witnesses. Thereafter, the accused was asked, as to where, the tainted currency notes had

been kept by him. The accused took out two currency notes, from the front left hand side pocket of his shirt. The numbers of those currency notes

were compared with the numbers of the currency notes mentioned in memo Ex.PE and the same tallied. The currency notes were taken into

possession vide memo Ex.PH, attested by the witnesses. On personal search of the accused, a purse, containing Rs. 2582/-, wrist watch, identity

card and one driving licence, were recovered, which were taken into possession, vide recovery memo Ex.PJ, attested by the witnesses. The left

pocket of the shirt of the accused, was reversed and dipped into a freshly prepared solution, in the aforesaid manner, as a result whereof, the

colour thereof, turned into pinkish. The mixture was put in a nip, and taken into possession vide separate recovery memo. The shirt was converted

into a parcel and taken into possession vide memo Ex.PK, attested by the witnesses. The mutation register, roznamcha register and the sale deed,

which were produced by the accused, were taken into possession, vide recovery memo Ex.PL. The site plan of the place of raid and recovery,

Ex.PO was prepared. The accused was arrested. After the completion of investigation, and on receipt of sanction Ex.PA, for launching

prosecution, against the accused, the challan was presented.

3. On his appearance, in the Court, the accused was supplied the copies of documents, relied upon by the prosecution. Charge u/s 7/13(2) of the

Prevention of Corruption Act, 1988 (hereinafter referred to be as the "Act" only), was framed against him, to which he pleaded not guilty, and

claimed judicial trial.

4. The prosecution, in support of its case, examined Shibu Ram, Junior Assistant, D.C. Office Ropar, (PW-1), who proved the sanction order

Ex.PA, Narinder Kumar, complainant, (PW-2), who deposed in terms of the prosecution version as stated above, Buta Singh, shadow witness,

(PW-3), who corroborated the statement of Narinder Kumar, complainant, (PW-2), in all material particulars, Harjit Singh, (PW-4), who stated

that the Patwar Khana was situated in the house of Baldev Singh in Chobara and Harjap Singh, Inspector, Vigilance Bureau Flying Squad-I,

Chandigarh, (PW-5), the Investigating Officer. The prosecution also tendered into evidence the affidavits PP to PR of Piara Singh, Constable,

Santosh Singh, Assistant Sub Inspector and Sant Singh, Head Constable, respectively. Baldev Singh, PW was given up by the Additional Public

Prosecutor for the State, vide statement dated 06.09.1994 as won over by the accused. Thereafter, the Additional Public Prosecutor for the State,

closed the prosecution evidence.

5. The statement of the accused u/s 313 Cr.P.C., was recorded. He was put all the incriminating circumstances, appearing against him, in the

prosecution evidence. He pleaded false implication. He admitted that he was posted as Patwari at Sohana on 21.08.1989. The remaining

allegations were denied by him. He took up the following plea in his statement u/s 313 of the Code of Criminal Procedure:-

There was land at village Patti Sohana which is Bechirag village. Narinder Kumar, complainant had purchased the land measuring about 1 kanal.

Patwari Halqa of the year 1982-83 in lieu of entered the mutation of sale in favour of Narinder Kumar, complainant, had entered mutation of

mortgage. Narinder Kumar came to him that I should correct that mutation of mortgage in his favour into mutation of sale. I advised him that first

land mortgaged with him be got redeemed and then entry of sale in the mutation register can be made under the Order of A.C.II Grade Kharar.

He did not agree and was adamant that mutation be deleted and sale entry be made. I refused. He fell annoyed and got this case foisted. Narinder

Kumar, complainant is the property dealer and has given many plots to police officials and obliged them. Police has connived with him. Buta Singh,

shadow witness is also property dealer and he is in league with the complainant. The case is false, I am innocent. There is regular Patwari Khana

at Sohana, where I alone was Patwari. No raid was conducted.

6. He also examined Ram Lal, DW-1 and Nirmal Singh, Kanungo Moharrir, DW-2 in his defence. Thereafter, he closed the defence evidence.

7. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused,

as stated above.

8. Feeling aggrieved, the instant appeal, was filed by the appellant.

9. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The Counsel for the appellant, at the very outset, submitted that the trial Court was wrong, in placing reliance on the evidence of Narinder

Kumar, complainant, (PW-2), which was not corroborated through any other source, to come to the conclusion that the accused committed the

offence, aforesaid. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Narinder Kumar, (PW-2), is the

complainant. From the statement of Narinder Kumar, complainant, (PW-2), it was proved that he wanted the mutation of the land, purchased by

him, vide sale deed dated 12.06.1991, entered and in that connection, he met the accused on 21.08.1991. It was also proved that the accused

told him that the mutation would be entered in case, the complainant, paid a sum of Rs. 400/- as gratification, other than legal remuneration, for the

said purpose. It was also proved from his statement that on his request, the accused agreed to accept a sum of Rs. 200/- instead of Rs. 400/- as

gratification, other than legal remuneration. Since Narinder Kumar, complainant, did not want to pay the gratification, other than legal remuneration,

for the entry of mutation, to the accused, who was Patwari, at the relevant time, he lodged a complaint. It was also proved from his statement that

the currency notes of Rs. 200/-, which were handed over by him to Harjap Singh, Inspector, after having been applied the Phenolphthalein

Powder to the same and after noting down the numbers thereof, were handed over to him. It was further proved, from his statement that as per the

instructions of Harjap Singh, Inspector, he (complainant) alongwith Buta Singh, shadow witness, went to the accused, for the aforesaid work, and,

on his demand, he paid him the tainted currency notes, referred to above. It was also proved from his statement that on the signal given by Buta

Singh, shadow witness, the Police party, headed by Harjap Singh, Inspector, raided and recovered the tainted currency notes, referred to above,

from the accused. The statement of Narinder Kumar, complainant, was duly corroborated through the statement of Buta Singh, shadow witness.

No doubt, Buta Singh, shadow witness, (PW-3) made certain improvements, and contradictions, in his statement, but perusal of the record shows

that the same are only minor and insignificant, which do not, in any way, affect the merits of the case. Further corroboration to the statement of

Narinder Kumar, complainant, (PW-2), was furnished through the circumstance that the accused failed to explain, as to under what circumstances,

the tainted currency notes of Rs. 200/- were found in his possession, which were a short while ago in his (complainant's) possession. Still further

corroboration to the ocular evidence was provided through the hand wash and the pocket wash of the shirt of the accused, as a result whereof, the

solution turned into pinkish. This proved that the accused had handled the tainted currency notes, which were a short-while ago, with the

complainant. Still further corroboration is provided through the report of the Forensic Science Laboratory which was left unexhibited and which is

at page No. 39 of Sessions Case No. RT-9 dated 26.05.1992, that on analysis, in the solution of both the nips of handwash and pocket wash,

sodium carbonate and phenolphthalein powder were found. In Hans Raj v. State of Haryana (1997 (3) RCR 427, the principle of law, laid down,

was to the effect, that the chemical test, is a corroborative piece of evidence. Even no explanation, was furnished by the accused, as to how, the

solution, in which the fingers of his hand were washed, and the solution, in which, the pocket of his shirt was washed turned into light pinkish. In

Rup Singh Vs. The State of Punjab , it was held that where the accused was not able to explain the presence of phenolphthalein powder, on his

hands, his conviction, under the relevant Sections, was legally sustainable. There was no reason, on the part of Narinder Kumar, complainant, (

PW-2), to falsely implicate the accused, in the instant case. There is nothing, on the record, that the complainant and Narinder Kumar, as also the

other witnesses were having any enmity with the accused earlier to the incident. The trial Court, was right, in holding that the evidence of the

prosecution witnesses duly corroborated through other items of circumstantial evidence, was cogent, convincing, reliable and trustworthy. The trial

Court was, thus, right in coming to the conclusion, that the evidence of Narinder Kumar, complainant, and Buta Singh was sufficient to convict the

accused and award him sentence. This Court after re-appraisal and re-appreciation of the evidence, led by the prosecution, also comes to the

same conclusion. The findings of the trial Court, in this regard, are, thus, affirmed.

11. It was next submitted by the Counsel for the appellant, that Narinder Kumar, complainant, when appeared as PW-2, in his statement, stated

that earlier he got entered mutations from the accused, but no gratification, other than legal remuneration, was demanded, from him (complainant).

He further submitted that if the accused was not demanding any gratification, other than legal remuneration, from him, for entering the mutation, on

other occasions, how on this occasion, he would demand the same from him (complainant). The submission of the Counsel for the appellant, in

this regard, does not appear to be correct. If the accused did not demand and accept gratification, other than legal remuneration, on the earlier

occasions when the mutations were got sanctioned by the complainant, from him, that did not mean that he could not demand the same, in the

instant case. It was for the accused, to decide, as to when he was to demand and accept gratification, other than legal remuneration, and when he

was not to do so. If the accused did not commit an offence on one occasion, that does not mean that he could not commit the same, on any other

occasion. The case of the prosecution, on account of this reason, did not, in any way, become improbable and unnatural. The submission of the

Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

12. It was next submitted by the Counsel for the appellant, that the accused was falsely implicated, in the instant case. It was further submitted that

during the year 1981-82 Narinder Kumar, complainant got mortgaged share of the land belonging to Nasib Singh. He further submitted that the

mutation was duly sanctioned, in respect of that mortgage, regarding the share of Nasib Singh. He further submitted that Narinder Singh,

complainant, wanted that the entry of mortgage, should be changed to the one of sale in the revenue record. He further submitted that when the

accused refused to do so, he was falsely implicated. He further submitted that the complainant, later on, was successful, in getting those entries

altered and changed. He further submitted that since the accused refused to oblige the complainant by doing an illegal work, referred to above, he

felt aggrieved and involved him in this case. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The sale

deed Ex.P11 produced by Narinder Kumar, complainant showed that he purchased 8 kanals of land from one Kabal Singh, and wanted the

mutation thereof to be entered, in his favour, in the revenue record. The record in respect of Ex.DA, DB, DC and DD, mutations, remained in the

possession of the accused or the Revenue Officers. With a view to save the accused, from the clutches of law, the cuttings, in the jamabandies,

were made either by the accused or by the Revenue Officers. The evidence of Ram Lal, DW-1 and Nirmal Singh, DW-2 does not establish as to

who made the cuttings in the columns of jamabandies and how those entries could benefit the complainant. Ram Lal, DW-1, admitted that he did

not know, who made the cuttings, in the jamabandies. Ram Lal, DW-1, during the course of cross- examination, stated that he did not know who

was the predecessor of Devi Dass. Ram Lal, DW-1, further stated that the register, remained in the custody of Patwari. He further stated that he

came to know, about the cuttings on 02.08.1995, when he received the summons. He, however, did not make any report to the higher authorities,

regarding the cuttings. This clearly goes to show that the Revenue Officers, were in connivance with the accused and, were out and out, to save

him from the present case. On account of this reason either the Revenue Officers changed the entries and got the same changed through somebody

else. The defence version and the defence evidence were thoroughly discussed by the trial Court in para No. 13 of its judgment and, ultimately, it

came to the conclusion, that the same were not reliable. This Court, on careful perusal and re-appreciation of the evidence, also finds that the trial

Court was right in disbelieving the defence version and the defence evidence. The submission of the Counsel for the appellant, that the accused

was falsely implicated as he refused to do the illegal work of Narinder Kumar, referred to above, being devoid of merit, must fail, and the same

stands rejected.

13. Last of all, the Counsel for the appellant submitted that the appellant, has been facing the agony of the protracted criminal proceedings since

21.08.1991, the date when the case was registered against him i.e. for the last more than 17 years. He further submitted a lenient view may be

taken and the sentence be reduced suitably. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. The

public servants, who indulge into corrupt practices, by demanding and accepting gratification, other than legal remuneration, in the discharge of

official duties, as a motive or reward, deserve deterrent punishment as corruption has affected the very fabric of the society. In my opinion, the trial

Court, was right in awarding the rigorous imprisonment for a period of four years, to the accused (now appellant). The sentence, awarded to the

accused, can neither be said to be excessive, nor harsh. Undue sympathy to impose inadequate sentence, would do more harm to the justice

system, to undermine the public confidence, in the efficacy of law, and the society could no longer endure under such serious threats. It is,

therefore, the duty of every Court to award proper sentence, having regard to the nature of offence, and the manner, in which it was executed or

committed. No ground, therefore, is made out, for further reduction, in the sentence. The submission of the Counsel for the appellant, being without

merit, must fail, and the same stands rejected.

14. No other point, was urged, by the Counsel for the parties.

15. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, are based on

the correct appreciation of evidence, and law, on the point. The same do not warrant any interference. The same are liable to be upheld.

16. For the reasons recorded, hereinbefore, the appeal is dismissed. The judgment of conviction and the order of sentence, are upheld. If the

appellant is on bail, his bail bonds shall stand cancelled.

17. The Chief Judicial Magistrate, shall take necessary steps, in accordance with the provisions of law, to comply with the judgment, keeping in

view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit the compliance report within two months.

18. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is

sent within the time frame.

19. The Registry shall keep track of the matter, and put up the compliance report, if received, within the time frame. Even if, the same is not

received, within the time frame, the matter shall be put up, within 10 days, after the expiry of the same.