(2013) 09 P&H CK 0365

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA-S-2373-SB 2009 (O and M)

Suba Singh	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Sept. 19, 2013

Citation: (2013) 09 P&H CK 0365

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: R.S. Rai, for Mr. Rajiv Anand, for the Appellant; G.S. Khandewad, DAG, for the Respondent

Final Decision: Dismissed

Judgement

Sabina, J.

Appellant had faced trial in FIR No. 33 dated 17.06.2004 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 (in short "Act"), registered at Police Station Vigilance Bureau, Amritsar. Prosecution story, in brief, is that complainant-Manjeet Singh had five acres of land in Village Duggalwala. On 27.05.2004, complainant approached the appellant for grant of temporary electricity connection. Complainant deposited Rs. 100/- as the requisite fee with the Board. Complainant and Gurdial Singh requested the appellant to release the connection but the appellant raised a demand of Rs. 1500/- as bribe for doing the needful. The matter was settled at Rs. 500/-. Complainant, then approached the Vigilance authorities. Deputy Superintendent of Police (Vigilance) Kashmir Singh recorded formal FIR on the basis of the statement of the complainant. Complainant handed over five currency notes in the denomination of Rs. 100/- each to the Deputy Superintendent of Police (Vigilance) who returned the same to the complainant after application of phenolphthalein powder (in short "P. powder") on them. Complainant was instructed to hand over the said currency notes to the appellant on demand. Gurdial Singh was appointed as a shadow witness and was instructed to give a signal to the raiding party after the bribe money was accepted by the appellant on demand. Gurinder Singh and Rajinder Singh were joined by the Deputy Superintendent of

Police (Vigilance) as official witnesses with the raiding party. Demonstration of working of P. powder was shown to the witnesses. Thereafter, raiding party left for the raid. Complainant along with the shadow witness, met the appellant in his office. Complainant gave the official fee to the tune of Rs. 5000/- to the appellant. At the asking of the appellant, complainant handed over the tainted currency notes to the tune of Rs. 500/- to the appellant. Appellant kept the tainted currency notes in the pocket of his shirt. On receipt of the signal from the shadow witness, Deputy Superintendent of Police (Vigilance) along with the remaining members of the raiding party reached the spot. Deputy Superintendent of Police (Vigilance) introduced himself to the appellant. When the fingers of the appellant were dipped in a solution of sodium carbonate, colour of the solution turned pink. The said solution was put in a nip and was made into a sealed parcel and was taken in possession. Deputy Superintendent of Police (Vigilance) handed over the amount of Rs. 5000/- to the complainant. On personal search of the appellant, tainted currency notes were recovered from his shirt pocket and the same were taken in possession. When the shirt pocket of the appellant was dipped in a solution of sodium carbonate, the colour of the solution turned pink. The said solution was put in a nip and was made into a sealed parcel and was taken in possession. From the almirah lying in the office of the appellant, a polythene envelope containing Rs. 45,250/- was recovered and the same was taken in possession. Upper Division Clerk of the office of the appellant produced before the Deputy Superintendent of Police (Vigilance), receipt dated 17.06.2004 in the name of the complainant with regard to deposit of Rs. 5000/- along with demand notice dated 14.06.2004 directing the complainant to deposit Rs. 5,000/-.

2. After completion of investigation and necessary formalities, challan was presented against the appellant.

3. Charge was framed against the appellant qua commission of offence punishable u/s 13(i)(d) and 13(2) read with Section 7 of the Act.

4. In order to prove its case, prosecution examined ten witnesses.

5. Appellant when examined under 313 of the Code of Criminal Procedure, 1973 (in short ''Cr.P.C.), after the close of prosecution evidence pleaded as under:-

On 15.06.2004 I was not present at PSEB premises at Tarn Taran and I have gone to deposit burnt transformer with TRY No. 3 Workshop Ajnala Road, Amritsar along with Daljit Singh Lineman. On 17.6.2004 I was illegally arrested by the vigilance Bureau officials, Amritsar, from the office of PSEB at Tarn Taran. At that time one Dasondha Singh son of Geja Singh resident of Rasulpur Tehsil and District Tarn Taran, Dalbir Singh son of Ajit Singh r/o. village Duggalwala Tehsil and District Tarn Taran and Daljit Singh lineman PSEB, Tarn Taran and some other people were present there. After my arrest I was taken to police station vigilance bureau, Amritsar, where all the papers work was done by the police officials and I was falsely implicated in this case by the vigilance bureau, at the instance of the complainant. The complainant has a grudge against me

because IO had not allowed him to install any electricity wire for his connection for plying his tube well prior to the sanction of his temporary connection of the tube well by concerned officers of PSEB. The complainant had also a grudge against me because he was not paying the bills of his domestic electricity connection which were due towards him and I was compelling him to clear his all dues. I have never demanded any illegal gratification from the complainant nor I have accepted any such gratification from the complainant. Nothing has happened as alleged by the prosecution. I have been falsely implicated and the entire investigation is biased.

6. Appellant examined three witnesses in his defence. Vide judgment/order dated 30.09.2009, Trial Court ordered the conviction and sentence of the appellant u/s 13(2) of the Act. Hence, the present appeal.

7. Learned Senior Counsel for the appellant has submitted that the prosecution had miserably failed to prove its case. There were material discrepancies in the statements of the witnesses. In fact, the complainant had not deposited the requisite fee for release of connection to him. Consequently, there was no occasion for the appellant to have demanded or accepted bribe from the complainant. Complainant had falsely involved the appellant in this case as he was not regularly paying the electricity bills and the appellant had been compelling to him to clear his dues. In support of his arguments, learned Senior Counsel has placed reliance on Amrik Singh Vs. State of Punjab 2005(4) RCR (Cri) 310.

8. Learned State Counsel, on the other hand, has opposed the appeal and has submitted that all the prosecution witnesses had duly supported the prosecution case. Further, the complainant had met the appellant in pursuance to the demand notice dated 14.06.2004 received by him. However, appellant had demanded bribe from the complainant for doing the needful. Complainant had handed over the requisite fee along with the bribe money to the appellant and the appellant was caught red-handed while accepting bribe.

9. In the present case, complainant while appearing in the witness-box has deposed as per the prosecution case. Statement of the complainant is duly corroborated by the shadow witness PW-2 Gurdial Singh with regard to payment and acceptance of bribe by the appellant and its recovery from his shirt pocket. So far as the recovery of the bribe money from the shirt pocket of the appellant is concerned, in this regard, statements of the complainant and shadow witnesses are duly corroborated by PW-3 Gurinder Singh, official witness and PW-10, Kashmir Singh (Investigating Officer).

10. There is no force in the argument raised by learned Senior Counsel for the appellant that the complainant had no occasion to give bribe to the appellant as he had not deposited the requisite fee for release of the connection. Exhibit PW9/C is the demand notice dated 14.06.2006 whereby, complainant was directed to deposit Rs. 5000/- for release of connection. The said notice was proved by PW-9 Tara Singh. The said notice was taken in possession by PW-10 Deputy Superintendent of Police (Vigilance), Kashmir Singh from PW-9 after the appellant was caught red-handed while accepting bribe. This

shows that the complainant had a reason to meet the appellant qua release of his connection in pursuance to the demand notice dated 14.06.2006 (Annexure PW9/C). Complainant has categorically deposed that he had handed over Rs. 5,000/- along with the bribe money to the appellant on the day of raid. Statement of the complainant in this regard, has been corroborated by PW-2 Gurdial Singh. The receipt with regard to deposit of Rs. 5000/- dated 17.06.2004 as well as the demand notice dated 14.06.2004 were taken in possession by the Deputy Superintendent of Police (Vigilance).

11. Thus, in the present case, prosecution had been successful in proving its case. Appellant had the occasion to meet the complainant for release of electricity connection to him after demand notice (Annexure PW9/C) was issued to him. Since the appellant had demanded bribe from the complainant, the matter was reported to the Vigilance authorities. In a raid organized by PW-10-Deputy Superintendent of Police (Vigilance) Kashmir Singh, appellant was caught red-handed while accepting bribe. Complainant as well as shadow witnesses were cross-examined at length but their testimony with regard to demand and acceptance of bribe by the appellant and its recovery from his shirt pocket could not be shattered. When the fingers of the appellant were dipped in a solution of sodium carbonate, the colour of the solution turned pink. This shows that the appellant had dealt with the tainted currency notes. The colour of the shirt pocket of the appellant had also turned pink when it was dipped in a solution of sodium carbonate. This corroborates the statements of the complainant and shadow witnesses that tainted currency notes, after acceptance had been kept by the appellant in his shirt pocket.

12. In the present case PW3 was an independent witness and had been joined by the Deputy Superintendent of Police (Vigilance) at the time of raid. PW-3 has corroborated the statements of the complainant as well as shadow witnesses qua recovery of the tainted currency notes from the shirt pocket of the appellant.

13. Although, the appellant, when examined u/s 313 Cr.P.C. has taken the plea that the complainant had not cleared his domestic electricity bills but the said plea is not established on record, as no notice issued to the complainant asking him to deposit his arrears of electricity charges has been proved on record.

14. DW-1 Raghbir Singh fails to advance the case of the appellant, as he had proved that on 15.06.2004, appellant had deposited a damaged transformer with him. Further, in his cross-examination, the witness deposed that the entry proved by him had been made by the appellant and it had not been made in his presence.

15. DW-2 Dalbir Singh deposed that the complainant was from his village. He knew the complainant as well as the appellant. On 17.06.2004, he was present in the office of Punjab State Electricity Board, Focal Point, Tarn Taran. At about 1.00/2.00 p.m., appellant had been taken away by police officials in a jeep towards Amritsar. Appellant had not demanded or accepted bribe from the complainant. In his cross-examination, he deposed that he did not make any complaint to the higher officials qua apprehension of

the appellant. Hence, DW-2 fails to advance the case of the appellant. DW-3 Dushanda Singh has corroborated the statement of DW-2. The said witness also did not move any complaint to any police official regarding false implication of the appellant and therefore, his statement also fails to advance the case of the appellant. It appears that DW-2 and DW-3 being friends of appellant have deposed in his favour to help him in this case.

16. Learned Senior counsel for the appellant has failed to point out any material discrepancy in the statements of the official witnesses which would render their statements doubtful. Hence, no ground for interference is made out. Dismissed.