
(2006) 03 P&H CK 0137

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 93-SB of 1996

Hari Dev Aggarwal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 10, 2006

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1)(d), 7

Citation: (2006) 3 RCR(Criminal) 82

Hon'ble Judges: M.M. Aggarwal, J

Bench: Single Bench

Advocate: D.S. Bali and D.V. Gupta, for the Appellant; Varun Katyal, Advocate for CBI for the Respondents and K.S. Shergill, AAG, Punjab for the State, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Aggarwal, J.

This is an appeal against judgment/order dated 9.1.1996 of Special Judge, CBI, Punjab, Patiala whereby accused appellant had been convicted for offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1980. For the offence u/s 7 of Prevention of Corruption Act, he was sentenced to RI for one year and to pay fine of Rs. 1000/- and in default of payment of fine to further undergo RI for one month. For offence u/s 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, he was sentenced to undergo RI for one year and to pay fine of Rs. 1000/- and in default of payment of fine to further undergo RI for one month,

2. The prosecution case is that accused-appellant was posted as Insurance Inspector in the Employees' State Insurance Corporation at Ludhiana. He was a public servant. He was authorized to check the factories and the workers working in the factory for the purpose of covering them under the Employees State Insurance Scheme. Karnail Singh complainant and his sons had three units in one premises

under the name and style of M/s. Sukhpal Polish Works in New Janta Nagar at Ludhiana. Only 4-5 workers were working in each of the unit and it was not covered under the Employees State Insurance Scheme. However, accused visited the premises of Karnail Singh on 14.10.1992 and told him that he will treat all the three units as one factory and would cover it under the Employees State Insurance Scheme. He told the complainant that in that case complainant would suffer loss of Rs. 10,000/- to Rs. 12,000/- per year if the factory is covered under the Employees State Insurance Scheme. The accused demanded illegal gratification of Rs. 500/- per month from Karnail Singh complainant for showing him favour for not covering his factory under the Employees State Insurance Scheme. After bargain, the matter was settled at Rs. 400/- per month. Karnail Singh complainant did not want to pay this illegal gratification to the accused. Then accused told Karnail Singh complainant that he would come on 22.10.1992 at noon time in his factory to take the bribe money. At that time, Gurbax Singh witness was present in the factory of the complainant. Then on 22.10.1992, Karnail Singh accompanied by Gurbax Singh witness went to the office of the Vigilance Bureau at Ludhiana. Sardul Singh DSP Vigilance was present there. Karnail Singh apprised Sardul Singh DSP of the entire matter and demand of illegal gratification by the accused. Sardul Singh DSP (Vig.) recorded the statement of Karnail Singh complainant and then four currency notes of the denomination of Rs. 100/- each were given by Karnail Singh to the DSP on which phenolphthalein power was applied and then necessary formalities were done. Karnail Singh was instructed to hand over the tainted money to the accused, on demand. Gurbax Singh witness was to follow Karnail Singh as shadow witness and then was to give signal to the vigilance party. Ruqa was prepared for registration of the case. Formal FIR was recorded and then Karnail Singh and Gurbax Singh were made to sit in the office premises of the factory. Other members of the raiding party stood outside the factory. Then at about 12.30 noon accused had come on scooter and entered the office room, where Karnail Singh and Gurbax Singh were sitting. Accused demanded the bribe from Karnail Singh. Karnail Singh then gave the tainted currency notes of Rs. 400/- to the accused. Accused had counted the currency notes and put them in the right side pocket of his pant. Gurbax Singh had been watching the transaction. He stood up and signaled the raiding party. Accused was apprehended. Rs. 400/- i.e. tainted money was recovered from him. Necessary formalities were completed. After completion of the investigation, accused- appellant was challaned for offence under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The accused was sent up for trial. He faced trial. The case of the prosecution was found to be proved. He was accordingly convicted and sentenced as aforesaid.

3. Counsel for the appellant had argued that accused-appellant was busy on 14.1.1992 as was clear from the statement of DW-3 Bakshish Singh, who was Deputy Regional Director of ESI Corporation at Chandigarh on 14.10.1992. It was pointed out that Bakshish Singh had gone on tour from Chandigarh to Ludhiana. Accused had remained present in the office from 11 AM till 3.30 PM on 14.10.1992 along with

other inspectors. To the same effect is the statement of DW-2 J.S. Rana, Head Clerk, ESI Corporation, who had stated that Bakshish Singh who was Deputy Regional Director of ESI Corporation Chandigarh had gone to Ludhiana on tour on 14.10.1992 and returned in the evening of counsel for the accused/appellants does not have much force.

4. Counsel for the appellants had further argued that in this case Gurbax Singh PW7 and Sat Pal PW8 had to be cross-examined by the prosecution and, therefore, no reliance can be placed on their testimonies. It was further pointed out that DSP Sardul Singh appearing as PW-10 has stated that the tainted money was recovered from the right side pocket of the shirt of the accused. As per recovery memo, it was recovered from the pant. PW8 Sat Pal had also stated that it was recovered from the pant. PW6 Karnail Singh had stated that these were recovered from the pocket but did not tell as to whether it was pant or shirt, whereas Gurbax Singh PW7 has said nothing as to from where the tainted money was recovered, however, I find witnesses are consistent that tainted money was recovered from the accused and number of notes recovered, tallied. Then pant of the accused was taken off and its right pocket washed in solution and color of solution became pink.

5. In this case, Karnail Singh PW6 had fully supported the prosecution case. He had been cross-examined at length but his testimony could not be shaken. As far as statement of PW7 Gurbax Singh is concerned, he had supported the prosecution version but when he said the DSP Sardul Singh had given four currency notes in the denomination Rs. 100/- each to the complainant then he was cross-examined on the point that, in fact, the complainant had given Rs. 400/- currency notes to the DSP and then the DSP had noted down the number.

6. Similarly Sat Pal PW8 had also been cross-examined and the learned PP had declared him hostile when he stated that Hari Dev, father of the accused took out the currency notes from the right pocket of his pant and handed over the same on the table. It was discrepant from the prosecution version as currency notes were recovered from the pocket of the accused. From the perusal of statement of PW8, it would come out that he had supported the prosecution case on all material facts.

7. Merely because prosecution had to cross-examine PW7 Gurbax Singh and Satpal PW8 on some minor points it will not mean that reliance cannot be placed on the testimony of these witnesses. Neither Karnail Singh PW6 nor DSP Sardul of Vigilance Department had any motive against the accused-appellant to falsely implicate him. Similar is the case of PW7 Gurbax Singh and PW8 Sat Pal. From their statements, I hold that prosecution case against the accused-appellant that he had demanded illegal gratification and then had accepted the same, was duly proved. There is no merit in this appeal and the same is dismissed. Bail bonds of the accused-appellant shall stand cancelled and he shall be taken into custody.

Appeal dismissed.