(2011) 07 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 593-SB of 2002

Madan Gopal		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: July 11, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 7

Citation: (2011) 07 P&H CK 0211

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.
Accused Madan Gopal, having been convicted and sentenced by learned Special Judge, Jalandhar, vide judgment and order dated 04.04.2002, has preferred the instant criminal appeal.

2. Prosecution case is that complainant Jarnail Singh and other villagers of Village Bajuha Khurd made application for demarcation of their 18 plots. Seema Singh - Naib Tehsildar marked the said application to the Appellant, who was Kanungo of Circle Sarih. Accordingly, on 17.11.1998, the complainant went to the Appellant for demarcation of plots. The Appellant demanded Rs. 500/- per plot i.e. Rs. 9,000/- as illegal gratification. However, the deal was struck at Rs. 150/- per plot i.e. for Rs. 2,700/- in all. The Appellant told the complainant that the Appellant would come for demarcation on 18.11.1998. The complainant told that he would collect the amount from plot holders and give the same to the Appellant at the spot. Accordingly, the complainant collected the amount from plot holders.

3. On 18.11.1998, the complainant, accompanied by Harjinder Singh, went to Swinder Singh - Deputy Superintendent of Police (DSP), Vigilance and made statement Ex. P-F

narrating the aforesaid facts and also produced the amount of Rs. 2,700/- comprising of 3 currency notes of Rs. 500/- denomination and 12 currency notes of Rs. 100/- denomination. The DSP applied phenolphthalein powder to the currency notes and gave back the same to the complainant, requiring him to give the currency notes to the Appellant-accused on his demand. Harjinder Singh was sent as shadow witness with direction to watch the proceedings and to give signal to the police party after acceptance of money by the Appellant. Necessary memo Ex. P-G was prepared. Demonstration was also given to the witnesses regarding change of colour of Sodium Carbonate solution to pink on coming into contact with phenolphthalein powder. Memo Ex. P-H was prepared regarding demonstration. Mohan Singh - Social Education and Panchayat Officer was joined as independent official witness in the raiding party. Statement Ex. P-F along with endorsement Ex.P-F/1 made by DSP was sent to Police Station, where on its basis, FIR Ex. P-B was registered. Raiding party went to Village Bajuha Khurd. The Appellant, with the help of other officials, was giving demarcation there. After all the plots were demarcated, the Appellant, accompanied by complainant and shadow witness, came to Gurdwara. Then they went to a room, where the Appellant demanded the bribe amount. Thereupon, the complainant gave the marked currency notes valuing Rs. 2,700/- to the Appellant, who put the same in the pocket of his shirt of Safari suit. Harjinder Singh - shadow witness came out and gave signal to the raiding party. Thereupon, the DSP, along with other members of the party, reached the said room and apprehended the Appellant. On hand-wash of the accused in Sodium Carbonate solution, it turned pink. The solution was sealed in a nip and seized vide memo Ex. P-J. On search of the Appellant, tainted currency notes were recovered from his pocket. Numbers of the currency notes tallied with numbers mentioned in memo Ex. P-G. The notes were seized vide memo Ex. P-K. Pocket of shirt of the accused-Appellant was washed in Sodium Carbonate solution and its colour turned light pink. The solution was sealed in a nip and the shirt was also sealed and both the parcels were seized vide memo Ex. P-L. Relevant record was also taken into possession by the police. Necessary investigation formalities were completed. The accused was arrested. On completion of investigation, accused was sent for trial for offence u/s 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short - the Act).

4. Charge u/s 7 of the Act was framed against the accused, who did not plead guilty and claimed trial.

5. In order to prove its case, the prosecution examined 15 witnesses. Constable Daljinderjit Singh (PW-1) and Varinder Kumar - Moharrir Constable (PW-3), being formal witnesses, tendered their affidavits. Inspector Mukhtiar Singh (PW-2) recorded formal FIR in the case and stated accordingly. Seema Singh - Naib Tehsildar (PW-4) stated that on 12.11.1998, application for demarcation was presented and she made endorsement Ex. P-D on it requiring Kanungo Halqa Sarih to make demarcation and to give report. Jagdish Singh (PW-5) deposed that the accused was posted as Kanungo Halqa Sarih in the year 1998. He also proved Sanction Order for prosecution of the accused.

6. Pal Singh (PW-6), Bahadur Singh (PW-7), Santokh Singh (PW-9), Gurdev Singh (PW-10) and Gurmail Singh (PW-11) stated that they had paid Rs. 150/- per plot to complainant Jarnail Singh for payment as bribe to the accused for demarcation of the plots.

7. Jarnail Singh - complainant (PW-8), Harjinder Singh - shadow witness (PW-13), Mohan Singh - Social Education and Panchayat Officer (PW-14) and Swinder Singh - DSP (PW-15) broadly stated according to the prosecution version narrated herein before.

8. Amrik Singh - DSP (PW-12) stated about part investigation of the case conducted by him.

9. The accused, in his statement u/s 313 of the Code of Criminal Procedure (in short - Cr.P.C.), while admitting that he was posted as Kanungo Halqa Sarih in the year 1998 and also admitting that application for demarcation of plots was marked to him by Seema Singh - Naib Tehsildar (Plots), broadly denied all the other incriminating circumstances appearing against him in the prosecution evidence. The accused alleged that on 18.11.1998, he went to Village Bajuha Khurd along with Patwari and Peon and made demarcation of the plots for about four hours. Langar of tea and snacks had been prepared in Village Gurdwara, where 40-50 persons had gathered. The accused stated that tea was served to him and his subordinates also. After a short while, the complainant took him to a small room in the Gurdwara, where complainant and shadow witness were already present. Two Constables in plain clothes also entered the room and bolted the room from inside. Jarnail Singh - complainant offered to give some money to the accused as reward/tip for his efforts in making demarcation, but the accused refused to accept the same. However, the Constables caught hold of the accused, whereas the complainant forcibly put the currency notes in his pocket. Thereafter, raiding party came and Constables opened the door of the room on recognizing the voice of the DSP. The accused pleaded that he was falsely impleaded in the case.

10. In defence, the accused examined four witnesses namely Rajinder Kumar (DW-1), Gurbachan Lal (DW-2), Shangara Singh (DW-3) and Darshan Singh - Patwari (DW-4). They broadly stated according to the defence version.

11. Learned Special Judge, Jalandhar, vide impugned judgment and order dated 04.04.2002, convicted the accused u/s 7 of the Act and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs. 5,000/-, and in default, to undergo further rigorous imprisonment for six months. Feeling aggrieved, the convict Madan Gopal has preferred the instant appeal.

12. I have heard learned Counsel for the parties and perused the case file.

13. Learned Counsel for the Appellant vehemently contended that demand of bribe by the accused is not proved. It was contended that according to the prosecution evidence, after demarcation of plots had already been conducted, the accused was called for tea in

Gurdwara and then the alleged demand was made, and therefore, it was no demand in the eyes of law as the work had already been done by the accused. It was also submitted that there is testimony of Jarnail Singh - complainant (PW-8) only regarding the initial demand on 17.11.1998. Learned Counsel for the Appellant also argued that the complainant has stated that the accused took out the tainted money from his pocket and it was for this reason that on hand-wash of the accused, the solution of Sodium Carbonate turned pink. In was also submitted that in view of order of Naib Tehsildar for demarcation, the accused was bound to make demarcation. It was also pointed out that Mohan Singh (PW-14) turned hostile. Learned Counsel for the Appellant also relied on five judgments: (1) a judgment of this Court in the case of State of Punjab v. Kushal Singh Pathania reported as 2004 (4) R.C.R. (Cri) 498, (2) another judgment of this Court in the case of Mehar Chand v. State of Haryana reported as 2004 (4) R.C.R. (Cri) 655, (3) again, a judgment passed by this Court in the case of Amrik Singh v. State of Punjab reported as 2005 (4) R.C.R. (Cri) 310, (4) a judgment of Delhi High Court namely Ram Chander v. State (Govt. of NCT Delhi) reported as 2009 (4) R.C.R. (Cri) 880 and (5) an un-reported judgment of this case Court in the case titled Balwant Singh v. State of Punjab bearing Criminal Appeal No. 29-SB of 1995 -decided on 17.02.2003.

14. Learned State counsel, however, contended that Jarnail Singh - complainant (PW-8) and Harjinder Singh - shadow witness (PW-13) have duly proved the demand and acceptance of bribe money by the accused. Their statements are corroborated by Mohan Singh (PW-14) and Swinder Singh - DSP (PW-15). At the relevant time, Mohan Singh was posted as Social Education and Panchayat Officer. It was also pointed out that the demand of illegal gratification by the accused has been mentioned in the FIR also. It was also submitted that Mohan Singh (PW-14) is an independent witness. It was also argued that recovery of tainted money from the accused has also been proved by the aforesaid four witnesses.

15. I have carefully considered the aforesaid rival contentions. Demand and acceptance of bribe money by the accused is fully proved by the prosecution evidence. Jarnail Singh - complainant (PW-8) and Harjinder Singh - shadow witness (PW-13) have stated about the demand of illegal gratification by the accused. Initial demand made by the accused on 17.11.1998 was from the complainant only and none else was present at that time. Consequently, no other witness could be examined by the prosecution to corroborate the testimony of the complainant regarding the said demand. At the time of trap, the demand was made from the complainant in the presence of shadow witness and both of them have stated about the said demand. It is thus amply proved that the accused made the demand of illegal gratification for making the demarcation.

16. Recovery of tainted money from the accused has also been proved by the reliable statements of prosecution witnesses. Their veracity could not be impeached in their lengthy cross-examination. In fact, the accused had also admitted the recovery of tainted money from him. Recovery of tainted money from the accused further corroborates the prosecution case. It would not be out of place to notice that there is no reason why

prosecution witnesses would depose falsely against the accused. Even Jarnail Singh - complainant and Harjinder Singh - shadow witness had no motive to implicate the accused falsely. Swinder Singh - DSP had no reason to implicate the accused falsely. There is also independent witness Mohan Singh, who was Social Education and Panchayat Officer at the relevant time. There is no reason to discard the statements of these witnesses.

17. It is also significant to notice that version of the accused is that he refused to accept the bribe money when offered to him as tip or reward for the work of demarcation done by him after the demarcation had been completed. However, if it had been so, there would have been no reason for implicating the accused in a false case. On the other hand, the complainant and other plot holders would have felt obliged by the accused for making demarcation without taking any illegal gratification. In these circumstances, there was no question of implicating the accused in a false case. The mere fact that the bribe money was paid after the demarcation had been completed would not absolve the accused because the accused had demanded the bribe money before the demarcation and had struck the deal with the complainant for Rs. 2,700/- @ Rs. 150/- per plot. The accused, who was posted as Kanungo, could feel assured to get the bribe money even after completing the demarcation because of his official authority over the villagers.

18. In spite of endorsement by Naib Tehsildar requiring the accused to make demarcation, the accused could have advanced many excuses to avoid making demarcation or could have delayed it or would not have made proper demarcation, if his demand was not satisfied. As regards Mohan Singh (PW-14), even in examination-in-chief, he has broadly supported the prosecution case. He further supported the prosecution case in his cross-examination by the Public Prosecutor. Consequently, the testimony of Mohan Singh does not help the accused in any manner. On the contrary, he has broadly supported the prosecution case.

19. Judgments cited by counsel for the Appellant are not applicable to the facts of the instant case. Finding in those cases was on the basis of evidence and facts and circumstances thereof. Finding of guilt or innocence depends on the evidence and facts and circumstances of each case.

20. For the reasons aforesaid, I uphold the finding of learned Special Judge that guilt of the accused-Appellant stands proved beyond reasonable doubt. Accordingly, judgment of conviction of accused Appellant is affirmed.

21. Learned Counsel for the Appellant next contended that in view of conviction of the Appellant, he was dismissed from service. It was also submitted that age of the accused at present is above 60 years. It was also pointed out that the occurrence took place on 18.11.1998 i.e. more than 121/2 years ago. In view of these circumstances, prayer for reduction in sentence has been made. The prayer was opposed by learned State counsel.

22. I have carefully considered the matter. Keeping in view the aforesaid circumstances, as well as the amount of bribe money, I am of the considered opinion that ends of justice would be met if the substantive sentence of imprisonment is reduced from four years to two years, while maintaining the sentence of fine and the sentence of imprisonment in default thereof. It is ordered accordingly. With reduction in sentence only as aforesaid, the appeal stands disposed of. The Appellant, who is on bail, shall surrender to the bail bonds or shall be arrested to undergo the remaining period of sentence.