

**(2011) 01 P&H CK 0463**

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

**Case No:** Criminal Appeal No. 908-SB of 2000

Rachhpal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 21, 2011

**Acts Referred:**

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

**Citation:** (2011) 3 RCR(Criminal) 394

**Hon'ble Judges:** Jitendra Chauhan, J

**Bench:** Single Bench

**Advocate:** Sukhbir S. Mattewal, for the Appellant; Rajinder Mathur, AAG, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Jitendra Chauhan, J.

The present appeal is directed against the judgment and order dated 8.9.2000 passed by the learned Special Judge, Jalandhar, whereby the accused/Appellant has been convicted and sentenced to undergo R1 for a period of one year and to pay a fine of Rs. 500/- or in default of payment of fine, to further undergo RI for a period of two months for the offence u/s 7 of the Prevention of the Corruption Act, 1988 (for short "the Act"). He is also sentenced to undergo RI for a period of one year and to pay a fine of Rs. 500/- or in default of payment of fine, to further undergo RI for a period of two months u/s 13(2) of the Act. Both the sentences were ordered to run concurrently.

2. Brief facts of the prosecution case are that Rakesh Kumar, herein "complainant" had set up a factory in Bhargo Camp, Jalandhar for manufacturing scissors used for surgical purposes. The complainant submitted an application in the Abadpura Sub-Division, P.S.E.B. for obtaining electric connection. He paid the requisite fee for

this purpose. The S.D.O. made an order for the release of electric connection in the favour of complainant. However, the same was not installed in his premises. In this regard, the complainant met Rachhpal Singh, herein "the Appellant", who was posted as J.E. But the Appellant kept on postponing the matter on one pretext or the other. On 22.11.1994, the complainant alongwith Jit Lal again went to the office of Appellant and requested him for the installation of Electric Meter. The accused/Appellant demanded Rs. 1,000/- as illegal gratification for doing the needful. After negotiation, the deal was settled for Rs. 700/- The complainant after making false promise to the accused left the office of the accused with the assurance to the accused/Appellant that he would bring the aforesaid amount. The complainant then approached DSP Harish Kumar and narrated the episode to him.

3. DSP Raghbir Singh recorded the statement of the complainant, Exhibit PB. After making endorsement, Exhibit PB/1 on it, the same was sent to the police station for registration of the case. On the basis of which, formal FIR, Exhibit PB/2, was registered in Police Station Division No. 6, Jalandhar.

4. The complainant produced seven currency notes of the denomination of Rs. 100/- each before DSP Harish Kumar, PW11, who after applying phenolphthalein powder to the currency notes handed over the same to the complainant. DSP Harish Kumar directed the complainant to approach the accused and to pay the aforesaid currency notes to the Appellant only on demand and should not shake hands with him. Jit Singh was asked to act as a shadow witness and to hear the conversation between the complainant and the accused and when the money is passed on the accused, he should pass a signal to the raiding party. Ranbir Singh, PW8, Superintendent from the office of S.D.O. Panchayati Raj was joined in the raiding party as an independent official witness. The raiding party left for the office of the accused and stopped at some distance from that office. The complainant and the shadow witness went to the office of the accused. On reaching there, the Appellant demanded bribe money from him. On that, the complainant handed over the said currency notes to the Appellant, who after counting placed the same in the drawer of his table. The shadow witness flashed a signal to the raiding party, who was stationed at some distance outside the office of the accused. After that the police party reached the office and apprehended the accused/Appellant. Hans Raj, A.L.M. was also joined from that office in the investigation. Solution of water and washing soda was prepared and hands of the accused were got washed in that solution. The colour of the solution became pink and it was put in a nip and made into a sealed parcel. On being enquired about the tainted money from the Appellant, which was received by him as illegal gratification, upon which, he opened the drawer of his table with the help of the key. The numbers of currency notes were got tallied with the entrustment memo. Exhibit PD. The DSP prepared rough site plan with correct marginal notes.

5. Statements of the witnesses were also recorded. After completion of the investigation, the Appellant was challaned to face trial.

6. The Appellant was charge sheeted for the offence under Sections 7 and 13(2) of the Act.

7. To prove its case, the prosecution examined as many as 11 witnesses, namely, Mrs. Amarjit Kaur, U.D.C.P.S.E.B as PW1; J.P. Singh, Executive Engineer, P.S.E.B., as PW2; HC Tarsem Lal as PW3; C. Harbans Singh as PW4; Hans Raj, Assistant Line-Man, as PW5; Rakesh Kumar (complainant), as PW6; Krishan Chand, Senior Assistant, as PW7; Ranbir Kaur, Superintendent, as PW8; H.C. Jagir Singh, as PW9, Jit Lal, as PW10 and Harish Kumar, SP, as PW11.

8. After completion of prosecution evidence, the accused/Appellant was examined u/s 313 of the Code of Criminal Procedure in which he denied all the incriminating circumstances appearing against him in the prosecution evidence and claimed to be innocent. However, in defence, the accused/Appellant did not lead any evidence.

9. After hearing the parties, the learned trial Court convicted and sentenced the accused/Appellants as noticed at para 1 of this judgment.

10. Feeling aggrieved by the judgment and order of trial Court, the Appellant has preferred the present appeal, which was admitted by this Court on 29.9.2000.

11. Learned Counsel for the Appellant has submitted that there is no evidence regarding the demand and acceptance of any bribe/gratification. The prosecution witnesses, who were present at the time of recovery, have not supported the case of prosecution and were declared hostiles. He has further submitted that as per the statement of the complainant and shadow witness, the Appellant did not make any demand from the complainant and some other employee in the office of the Appellant stated that the meter will be installed if the complainant will pay the bribe to the accused/Appellant. Learned Counsel has also submitted that the prosecution witnesses have categorically stated that the tainted currency notes were not handed over to accused/Appellant. Further, the Investigating Officer, PW11, was not present when the demand was alleged to have been made or when the Appellant alleged to have accepted the bribe. The evidence of Investigating Officer is only a hear-say evidence.

12. It has also been submitted that in the absence of demand of bribe or its acceptance, the prosecution case becomes doubtful. Learned Counsel has further submitted that mere recovery of tainted notes from the drawer of the table of the accused/Appellant is not sufficient to hold that the accused has accepted the bribe.

13. Learned Counsel has next contended that the Electric Meter was not available in the stock of the PSEB, which is proved from the statement of J.P. Singh, PW2, Executive Engineer, PSEB as well as information received through Right to Information Act.

14. On behalf of the State, it is submitted that the complainant has no motive to falsely implicate the, accused/Appellant. It is proved on record that the tainted money was recovered from the drawer of the Appellant and when the hands of the accused/Appellant were washed in the solution, the same were turned pink, which itself is sufficient for proving the guilt of the accused/Appellant.

15. I have heard the learned Counsel for the parties and perused the record with their able assistance.

16. The crux of the allegations appearing against the Appellant, as levelled by the prosecution is that the Appellant received a illegal gratification of Rs. 700/- for installation of Electric Meter.

17. Admittedly, Hans Raj, PW5, (colleague of Appellant), Rakesh Kumar, PW6, (complainant), Ranbir Singh, PW8 (independent witness) and Ajit Lal, PW10, (shadow witness) have not supported the prosecution case and were declared hostile. The Court shall now proceed to examine whether on the strength of the available material, the judgment/order passed by the learned trial Court can be sustained.

18. It is settled law that for proving a case of illegal gratification, received by a public servant in discharge of his official duties, three things are required to be proved. Firstly, the demand for illegal gratification is to be proved; secondly, the receipt/acceptance of the illegal gratification or bribe and thirdly, it also has to be proved that the public servant who demanded the bribe was actually in a position to render a favour to the bribe giver since in the absence of the public servant's ability to grant a favour, there would no logic behind giving of bribe to such an official.

19. As regards first requirement i.e. demand of bribe by the Appellant, there is no proof that the Appellant actually made a demand of Rs. 700/- for installation of the Electric Meter. In fact, the Appellant in his statement u/s 313 Code of Criminal Procedure has categorically submitted that the complainant had applied for electric connection, which was ordered to be released, but the electric meters were not available with the PSEB and as per rules, he informed the complainant to buy his own meter and to get the same tested from the Laboratory. However, the complainant insisted upon him time and again to supply the same from the store. On that account not providing the same, the complainant got annoyed with him. On the day when the raid was conducted, the complainant was present and was found sitting near his table and the complainant again enquired about the meter from him and he again reiterated his stand. The Appellant has also stated that when he entered in his office, the complainant had shaken hands with him and he was at once overpowered by the raiding party. However, no bribe money was recovered from his possession. Then the complainant told the raiding party that the money was lying in the drawer, which was lying open at that time. In my opinion, the statement of Appellant suffered from no infirmities, at least not of the kind that the same could be disbelieved altogether because it has also come on record through

the document obtained through Right to Information" that electric meters were not available due to shifting of the office and Appellant could install only if it is supplied by the Incharge of meters (M.E.I and M.E.II). It is admitted case of the prosecution that the Appellant did not raise any demand from them. It has also come in the statement of complainant and shadow witness that when they reached to the office of the Appellant, he was not present there and then they kept the amount of Rs. 700/- in the drawer of the table of the accused/Appellant. In the circumstances, there is no occasion for the Appellant to raise demand of bribe. Moreover, Hans Raj, PW5, (coemployee of Appellant), Rakesh Kumar, PW6, (complainant), Ranbir Singh, PW8 (independent witness) and Ajit Lal, PW10, (shadow witness) have not supported the case of prosecution and were declared hostile, the story of prosecution pertaining to the trap and recovery of the bribe from the accused/Appellant stands falsified.

20. As regard the second requirement, undoubtedly one hand of the Appellant when washed in the special solution turned pink. Also, the marked currency notes recovered from his drawer when washed in the special solution, turned pink. The same stands supported by the FSL report. However, for evaluating the veracity of the assertion by the prosecution regarding recovery of the bribe money from the drawer of the Appellant, a few other aspects also have to be judged. Firstly, it has also come in the evidence of complainant that he had shaken hands with the accused/Appellant which was bound to leave some phenolphthalein power upon his hands. As per the complainant himself, the amount of illegal gratification was kept in the drawer of the Appellant. No matter how corrupt or powerful a public servant might be, he would not dare to accept bribe in front of his colleagues in his own office. Therefore, keeping in view the facts of the case, I feel that the bribe was forcibly put in his drawer by the complainant and the same was not demanded or accepted by the Appellant himself.

21. The third important ingredient which is required to be proved, as outlined briefly above, is whether the accused-official was in fact in a position to extend some benefit or advantage to the complainant. It is categorical stand of the Appellant that the Electric Meter was not in stock, which is also proved from the statement of J.P. Singh, PW2 (co-employee of the Appellant). It is nowhere mentioned that the same would be provided to the complainant by the Appellant. The complainant himself has stated that the Appellant took the stand that the electric meters were not available in the stock, which itself suggests that there was no occasion for the Appellant to extend some gain or advantage to the complainant.

22. Apart from the above, there are material discrepancies in the prosecution case. The case property was not deposited and two currency notes out of seven, which were recovered, were not the same as mentioned in the FIR and the challan. The prosecution is silent about the key with which the drawer was opened.

23. In the circumstances, I feel that mere recovery of the currency notes from the drawer and positive result of phenolphthalein test is not enough to establish the guilt of the Appellant on the basis of perfunctory nature of material and prevaricating type of evidence. The Investigating Officer has also submitted that he recovered the tainted currency notes from the drawer of the accused/Appellant and he has nowhere stated that the same have been got recovered at the pointing out of the accused/Appellant. On the appreciation of evidence adduced, it seems more probable that the Appellant is the victim of displeasure earned by him in not providing the Electric Meter.

24. In view of the above, the prosecution has failed to establish the demand and acceptance of bribe by the Appellant. Therefore, I am of the considered opinion that the case against the Appellant cannot be said to have been proved beyond reasonable shadow of doubt. Merely because the amount was placed in the drawer of the Appellant does not mean that the same was demanded or accepted by the Appellant. The independent witness has also not supported the case of prosecution.

25. For the reasons mentioned above, the present appeal is allowed. The judgment and order dated 8.9.200 of conviction and sentence passed by the learned trial Court is set aside. Resultantly, the Appellant Rachlpal Singh Appellant is stated to be on bail. His bail bonds are discharged.