Harjit Singh Vs State of U.T.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 9, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Prevention of Corruption Act, 1988 â€" Section 11, 12, 13, 13(1)(d), 13(2)

Citation: (2015) 1 Crimes 186 : (2014) 4 RCR(Criminal) 519

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Advocate: Bipan Ghai, Senior Advocate and Vishavjit S. Virk, Advocate for the Appellant; Sumeet Goel, Special Public Prosecutor, Advocate for the Respondent

Judgement

Daya Chaudhary, J.
The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 14.7.2001

passed by Special Judge, Chandigarh, vide which, the appellant has been convicted for offence punishable under Sections 7, 13(1)(d) read with

Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") and sentenced to undergo RI for a period of one

year with fine of Rs. 750/- and in default of payment of fine to further undergo RI for a period of three months under Section 7 of the Act. He was

further sentenced to undergo RI for a period of two years with fine of Rs. 750/- and in default of payment of fine to further undergo RI for a period

of three months under Section 13(1)(d) read with Section 13(2) of the Act. Both the sentences were ordered to run concurrently. Briefly, the facts

of the case are that the appellant while working as Patwari Circle, Dhanas demanded Rs. 1,500/- from complainant-S.K. Saini as bribe for

entering the mutation regarding the change of ownership of 11 marlas of the land purchased by his wife in the area of village Sarangpur as that

village falls in Dhanas circle. The complainant visited the accused on 2.6.1998 and on asking the accused-appellant demanded Rs. 1,500/- for

doing the work and ultimately an amount of Rs. 1,000/- was agreed upon to be paid on 3.6.1998. On 3.6.1998, the complainant made a written

complaint to the Superintendent of Police, CBI, Chandigarh for taking legal action against the appellant for demanding bribe of Rs. 1,000/- from

him. On the basis of complaint made by complainant, a raiding party was constituted by Sh. S.S. Gurm, Inspector CBI, Chandigarh. The

complaint made by the complainant was registered against the accused. Pawan Kumar and Bikram Singh, postal Assistants were also associated

with the raiding party. Before laying trap, shadow witness-Pawan Kumar and complainant went to the office of accused. Two currency notes of

the denomination of Rs. 500/- each were asked to be paid to the accused. Solution of Sodium Carbonate was also prepared in a glass. Shadow

witness was directed to remain close to the complainant so as to hear the conversation for demand of bribe and to see passing of bribe amount to

the accused. The remaining members of the party were standing outside the office of the accused. The amount was accepted by the accused-

appellant from the complainant and thereafter after disclosing the identity by S.S. Gurm as Inspector of CBI, asked the accused about acceptance

of bribe of Rs. 1,000/-. The accused was asked to put his hands in the solution of sodium carbonate and its colour on doing so turned pink. The

solution was transferred in another water bottle and the same was sealed and was taken into possession. The independent witness, namely, Bikram

Singh was asked to conduct personal search of the accused. Two currency notes worth Rs. 500/- each were recovered from the pocket of the

accused, which were taken into possession. Front pocket of shirt of accused was also washed in the solution of sodium carbonate and the colour

of same also turned into pink.

2. After completing all formalities, the challan was presented against the appellant and thereafter charge under Section 7 and 13(1)(d) read with

Section 13(2) of the Act was framed against him, to which, he pleaded not guilty and claimed trial.

3. The prosecution in order to prove its case examined as many as 10 witnesses.

4. Thereafter statement of accused under Section 313 Cr.P.C. was recorded, wherein, he denied all incriminating circumstances alleged against

him and pleaded that a false case has been planted upon him, however, no evidence was led in his defence.

5. After hearing counsel for the accused-appellant as well as public prosecutor and on appreciation of evidence, the accused-appellant was

convicted and sentenced by Special Judge, Chandigarh as mentioned above.

6. The aforesaid judgment of conviction and order of sentence is subject matter of challenge in the present appeal.

Learned senior counsel for the appellant contends that Pawan Kumar (PW-5), who was shadow witness and Bikram Singh (PW-6) who was

member of the raiding party have not supported the case of the prosecution. It has come in the statements of aforesaid PWs that no recovery was

effected from the pocket of the appellant and currency notes were recovered from the store room. Learned senior counsel further contends that it

has not been proved on record that money was accepted by the accused-appellant or it was left by complainant-S.K. Saini (PW-4) in the store

room. Learned senior counsel also contends that sanction was granted in a mechanical manner without any application of mind. Even Pawan

Kumar (PW-5) has denied in his statement that he accompanied complainant-S.K. Saini (PW-4) for confirming the demand of money by the

appellant. It is also the argument of learned senior counsel that there are several contradictions/discrepancies in the statements of the witnesses.

Neither any demand for illegal gratification nor any acceptance has been proved from the statements of the witnesses and the onus, therefore, lies

on the prosecution to prove that the bribe was accepted by the accused and the amount recovered was bribe.

7. Learned counsel for the respondent-State submits that minor discrepancies are there in the statements of the witnesses, which may occur with

the long lapse of time and there was no motive to falsely implicate the accused-appellant. Learned counsel further contends that it was for the

accused to prove as to why the money was paid. Learned counsel has also relied upon the judgments of Hon"ble the Apex Court in the case of

State of U.P. Vs. Dr. G.K. Ghosh, , T. Shankar Prasad Vs. State of Andhra Pradesh, , Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and

Another, and Phula Singh Vs. State of Himachal Pradesh, , in support of his contentions.

8. Heard the arguments advanced by learned counsel for the appellant as well as CBI and have also gone through the relevant record of the trial

Court.

9. Complainant-S.K. Saini while appearing as PW-4 has reiterated the averments made in the complaint. He has stated in his statement that he

along with one witness, whose name was probably Bikram and who was posted as Assistant, went to the accused. He told the accused that he has

brought the amount for sanction of the mutation and thereafter the accused took him inside the store and on demand both the notes were handed

over to the accused. On giving signal by the shadow witness, the appellant was apprehended. It has further been stated that both the hands of the

accused were dipped simultaneously and on personal search some amount, telephone diary and identity card were recovered from his pocket. An

amount of Rs. 5,000/- was also found in the drawer of the accused. However, the complainant has admitted in cross-examination that after filing of

the complaint with the SP, one witness from Postal Department was sent with him to verify the allegations and even in his presence the accused

had told that without money the work would not be done. It has also been admitted by him that he was having original sale deed in his possession

on that day and the accused had directed to hand over the photo copy of the same. He has further admitted in cross-examination that some other

senior officer of the accused was also sitting in the office. The copy of the sale deed was handed over to the accused in the presence of that officer.

He has also admitted in his cross-examination that the application was given by him to the CBI on 1.6.1998 and in his presence Sh. S.S. Gurm did

not record any statement for planning of the raid on 2.6.1998 and directed him to come on 3.6.1998.

10. Pawan Kumar while appearing as PW-5 has stated in his cross-examination that he was instructed to give signal only after handing over of the

currency notes but he remained seated. He has denied that he followed the accused as well as complainant to the store. The recovery of amount of

Rs. 1,000/- from the accused was also denied. He has also stated that he remained in the office of CBI for about one hour and during this period

no person from his group including Sh. S.S. Gurm or Sh. Bikram Singh went anywhere. Further it has been stated that nobody asked complainant

to locate the money and subsequently the money was found in the registers lying in the store room but he did not tell the details and descriptions of

the registers.

11. Bikram Singh, who was also member of the raiding party, while appearing as PW-6 has also denied regarding recovery of any amount from

the pocket of the accused. He further stated that recovery was effected from the books lying in the store room. He also stated that he saw CBI

officers having caught hold of the accused from his hands and there was no public men in the room at the time of their arrival. Inspector S.S. Gurm

while appearing as PW-7 has stated that bribe money was recovered from the front pocket of the shirt of the accused. He has stated in cross-

examination that he was not aware whether the mutation can be entered without producing of the sale deed or certified copy thereof. He has also

stated that the certified copy of Ex. PW-4/3 was not signed by the accused and his signatures were obtained simply to show that the proceedings

were conducted in his presence.

12. On perusal of the statements of prosecution witnesses shows that serious contradictions/discrepancies are there. Even PWs 5 and 6 have not

supported the case of the prosecution as they have denied all the allegations levelled against the appellant. There is inconsistency with regard to

recovery of the amount as it has not been proved from the statements of prosecution witnesses as to whether the amount was recovered from the

pocket of the accused or from the store room. In case the amount was recovered from the store it cannot be said that the amount of bribe was

accepted by the accused. Neither the recovery nor the acceptance of the amount has been proved on record. PW-5 has stated that the notes were

recovered from the store room and not from the pocket of the accused. Bikram Singh (PW-6) has even denied having recovered the amount in his

presence.

13. The factum of mere recovery of tainted amount is not sufficient to prove the offence as has been held in the case of Suresh Kumar Vs. State of

Haryana, .

14. Hon''ble the Apex Court in the case of C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, , has observed as under:-

16. In Suraj Mal Vs. State (Delhi Administration), , this court took the view that mere recovery of tainted money divorced from the circumstances

under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself

cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused

voluntarily accepted the money knowing it to be bribe.

17. The learned counsel for the CBI submitted that the onus of proof was upon the appellant to explain as to how he came into possession of the

amount recovered from him during the trap. The argument of the learned counsel is obviously based on Section 20 of the Prevention of Corruption

Act, 1988 which reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration. - (1) Where, in any trial of an offence punishable under

Section 7 of Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained

or has agreed to accept or attempted to obtain for himself, or for any other person, or any gratification (other than legal remuneration) any valuable

thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain

that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without

consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of section 14, it is proved that any gratification (other than

legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be

presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case

may be, as a motive or reward such as is mentioned in Section 7, or as the case may be without consideration or for a consideration which he

knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1)(2), the court may decline to draw the presumption referred to in either of the said

subsections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

18. A three-Judge Bench in M. Narsinga Rao Vs. State of Andhra Pradesh, while dealing with the contention that it is not enough that some

currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what

was paid amounted to gratification, observed:

.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with

at length. (Vide Madhukur Bhaskarrao Joshi v. State of Maharashtra). The following statement made by us in the said decision would be the

answer to the aforesaid contention raised by the learned counsel: (SCC p. 577, para. 12)

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted ''as motive or reward'' for doing or forbearing to do any

official act. So the word ''gratification'' need not be stretched to mean reward because reward is the outcome of the presumption which the court

has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two

expressions adjacent to each other like ''gratification or any valuable thing''. If acceptance of any valuable thing can help to draw the presumption

that it was accepted as motive or reward for doing or forbearing to do an official act, the word ''gratification'' must be treated in the context to

mean any payment for giving satisfaction to the public servant who received it.

19. xxx xxx xxx xxx xxx

20. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of

the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. ""It is well established that where the

burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable

doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the

same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of

Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary

for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused

person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has

to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."" (See

V.D. Jhangan Vs. State of Uttar Pradesh, .

(Emphasis supplied)

15. Similarly, Hon''ble the Apex Court in Smt. Meena Hemke Vs. The State of Maharashtra, held that mere recovery of currency notes and

positive result of the phenolphthalein test is not enough to establish the guilty of the appellant in the nature of perfunctory nature of materials and

prevaricating type of evidence.

16. In Anand Parkash and Another Vs. State of Haryana, , tainted money was recovered from the almirah and not from the personal search of the

accused. The prosecution version was not corroborated by independent witness. It was held by me that neither the demand, nor acceptance of

currency notes Ex. P1 to P-26 by accused from Sube Singh complainant is established.

17. In Ganapathi Sanya Naik Vs. State of Karnataka, the prosecution case was that the accused had demanded money from the complainant for

effecting entry of mutation in the revenue record. A trap was laid. The currency notes were recovered from table of the accused beneath office

files. The defence version that no demand was made and currency notes had been surreptitiously put on the table, while the appellant was

otherwise engaged in some activity was held plausible by the Apex Court. To my mind, the factual situation in the case at hand is somewhat

identical with Ganapathi Sanya''s case (supra).

18. Hon''ble the Apex Court in V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., has held that in absence of proof of

demand, the question of raising the presumption would not arise as Section 20 of the Act provides for raising of a presumption only if a demand is

proved.

19. In M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , Hon''ble the Apex Court has held as under:

Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding.

In Union of India (UOI) thr. Inspector, CBI Vs. Purnandu Biswas, , it was opined:

In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the

respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act.

20. A three-Judge Bench in M. Narsinga Rao Vs. State of Andhra Pradesh, while dealing with the contention that it is not enough that some

currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what

was paid amounted to gratification, observed:

24.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt

with at length. (Vide Madhukar Bhaskarrao Joshi Vs. State of Maharashtra, . The following statement made by us in the said decision would be

the answer to the aforesaid contention raised by the learned counsel: (SCC p. 577 (P.p. 150-151 of AIR), (para. 12)

12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said

premise is established the inference to be drawn is that the said gratification was accepted ''as motive or reward'' for doing or forbearing to do any

official act. So the word ''gratification'' need not be stretched to mean reward because reward is the outcome of the presumption which the court

has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two

expressions adjacent to each other like ''gratification or any valuable thing''. If acceptance of any valuable thing can help to draw the presumption

that it was accepted as motive or reward for doing or forbearing to do an official act, the word ''gratification'' must be treated in the context to

mean any payment for giving satisfaction to the public servant who received it.

21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut

it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the

presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount

towards gratification.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of

the Act is not akin to that of burden placed upon the prosecution to prove the case beyond a reasonable doubt.

4.....It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence

of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to

prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him

under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in

favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The

onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the

burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the

accused beyond a reasonable doubt."" (Emphasis supplied) (See V.D. Jhangan Vs. State of Uttar Pradesh, .

In view of the facts as mentioned above, it can safely be said that the judgment of the trial Court is not based on proper appreciation of evidence

and the prosecution has failed to prove its case beyond reasonable doubt, which goes in favour of the appellant. The appeal is allowed. The

appellant is acquitted of the charge. The impugned judgment of conviction and order of sentence dated 14.7.2001 passed by the Special Judge,

Chandigarh is set aside. The appellant is discharged from the bail/surety bonds furnished by him. The appellant is already on bail as his sentence

was suspended by this Court during the pendency of the appeal.