

(2014) 04 P&amp;H CK 0242

**High Court Of Punjab And Haryana At Chandigarh****Case No:** CRA-S No. 1269-SB of 2004

Rajinder Parshad Kansal

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** April 9, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Prevention of Corruption Act, 1988 - Section 13(2), 20, 7

**Citation:** (2014) 3 RCR(Criminal) 460**Hon'ble Judges:** Bharat Bhushan Parsoon, J**Bench:** Single Bench**Advocate:** H.S. Gill, Sr. Advocate and Vivek Goel, Advocate for the Appellant; Gurvinder Singh Sandhu, AAG, Advocate for the Respondent

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**Judgement**

Bharat Bhushan Parsoon, J.

Dr. Bharat Bhushan Parsoon, J.-This appeal is directed against judgment of conviction and order of sentence, both dated 3.6.2004 passed by Special Judge, Kaithal, vide which accused-appellant Rajinder Parshad Kansal was held guilty in case FIR No. 21 dated 14.9.2000 registered at Police Station, State Vigilance Bureau, Ambala for commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter mentioned as the Act) and was sentenced as under:-

However, both the sentences were ordered to run concurrently.

Briefly stated the prosecution case is as under:-

The accused was a Junior Engineer with Haryana State Electricity Board and was posted at Siwan. Complainant Gurnam Singh as also his father Wasan Singh were agriculturists of village Chaku Ladana falling within the official area of the accused. Electric connection No. JH 1410 had been ordered to be disconnected by the

Electricity Board. Matter was taken to the Civil Court wherein a direction was given by the Court to deposit Rs. 6,898/- as estimated charges for reconnection and Rs. 1,140/- as security with the Electricity Board. When the complainant approached the accused for implementation of the Court order and showed his willingness to deposit the amount for restoration of electricity connection, demand of illegal gratification of Rs. 30,000/- which was later reduced to Rs. 25,000/- was made. The complainant borrowed Rs. 15,000/- from his commission agent and paid the said amount to the accused. He was issued receipt for payment of Rs. 6,898 + Rs. 1,140/- but the accused kept on demanding balance amount of Rs. 10,000/- which the complainant was not willing to pay.

2. When the demand from the accused became persistent, the matter was taken by the complainant to the Vigilance Bureau. A raid was organized, trap was laid and the accused was caught red handed.

3. After spot investigations where hands as also pocket of shirt of accused were separately dipped in sodium carbonate solution, the same had turned to pink, the said hand wash and pocket wash solutions were shifted to separate nips, which were sealed and later were sent for analysis. After scientific investigations i.e. report from FSL, report was furnished u/s 173 Cr.P.C. The accused faced trial where the prosecution had led ocular as well as documentary evidence.

4. The trial Court was not convinced with the defence version to the effect that he had been falsely implicated and that the complainant was bearing a grudge against him as he had penalized the complainant party for stealing electricity and for paying less electricity consumption bill. Rather, the trial Court had found the prosecution case fully established against the accused and thus had convicted him whereafter the order of sentence had followed.

5. In appeal before this Court, the appellant (hereinafter referred to as accused) has taken multifold stand. It is claimed that neither there is any evidence of "demand" of bribe nor there is "acceptance" of the same but even then applying Section 20 of the Act, the trial Court had wrongly convicted him. It is claimed that instead of taking shadow witness of independent nature from the public, the Investigating Officer had put Inspector of Police Arun Kumar, his immediate subordinate, as a shadow witness who has also clearly stated that he could neither hear any conversation between the complainant and the accused nor had seen passing of money as bribe from the complainant to the accused.

6. Claiming investigations to be deficient and lopsided reference has been made to statement of recovery witness DRO Prithvi Singh (PW9). It is averred that when there were 2-3 persons working in the chaubara where construction was going on and where the bribe money had allegedly been taken by the accused, it is highly improbable that in presence of number of persons the accused was to accept the bribe amount. It is claimed that Investigating Officer had initiated the currency

notes in question while noting down details in the pre-trap memo after smearing such currency notes with phenolphthalein powder (hereinafter referred to as P. Powder). Refer ring to statement of DRO Pirthi Singh PW9, it is mentioned that he could not identify the currency notes to be the same as were recorded in pre-trap memo, thus smashing the case of the prosecution. Continuing his tirade against the slipshod investigations, it is canvassed that if Inspector Arun Kumar was member of the raiding team as a shadow witness, his signatures were bound to be there on the recovery memo but absence of signatures thereon raises doubt on his joining of the investigations as also of the genuineness of the prosecution version.

7. Targeting his guns against the very foundation of the prosecution case, it is claimed that neither the complainant was in any way connected with the restoration of the electric connection nor his plea that he had borrowed Rs. 15,000/- from his commission agent had been corroborated. It is claimed that statement of Surinder Singh Dhull (PW13) as also of S.L. Katyal (DW4) is categorical that the accused detected theft of electric energy by many villagers including by Wasan Singh (father of the complainant) and that Wasan Singh was imposed a penalty of Rs. 40,425/- and thus the complainant and his family had been bearing a grouse against him. In short, it is claimed that case of the prosecution is false and fabricated and thus the conviction as also order of sentence recorded by the trial Court against him, could not have been made on the basis of such evidence of the prosecution.

8. Whereas, the accused has claimed that the impugned judgment of conviction and order of sentence were passed completely overlooking statement of complainant Gurnam Singh PW1, shadow witness Inspector Arun Kumar (PW14) and Surinder Singh Dhull (PW13) and thus the accused is liable to be acquitted, the prosecution has urged that neither on facts nor in law, the impugned judgment and order of sentence require any interference.

9. Hearing has been provided to the learned counsel for the parties.

10. Before rival claims of the parties are examined, it would be appropriate to briefly recapitulate the facts about which there is no dispute. Civil suit regarding restoration of electricity connection i.e. JH-1410 in village Chaku Ladana falling in the jurisdiction of the appellant had been filed by Piara Singh son of Budha Singh against the Electricity Board. The land, however was being cultivated by the complainant without any objection from any quarters. He was thus beneficiary of the order (Ex. PA) and was pursuing for restoration of electricity connection. Defence version that appellant had nothing to do with the electricity connection, thus is of no merit.

11. The complainant had set up a case that he had borrowed of Rs. 15,000/- from his commission agent Ramesh Kumar who had entered the witness-box as PW4. Though he has conceded that complainant Gurnam Singh's father Wasan Singh used to sell his agriculture produce at his shop, but has not been able to

substantiate the plea of lending of Rs. 15,000/- to the complainant from any documentary evidence. Lending of huge amount of Rs. 15,000/- without any documentary evidence, is difficult to accept. Relevant portion of statement of Ramesh Kumar (PW4) destroying the case of the prosecution in this behalf is to the following effect :-

"It is correct that name of the person who take money is entered in the rokar and khata of that person having received amount and that there is no name of Gurnam Singh having received any amount from me in any account books."

12. Acceptance of any amount ipso facto would not raise any presumption that such acceptance was of bribe amount and was taken pursuant to demand made by the accused. At this stage, it is important to demarcate the legal era within which this controversy, is to be examined and evaluated :-

(i) Onus of proving charge against an accused always is on the prosecution;

(ii) Prosecution is to prove its case beyond any reasonable doubt whereas the defence is to create a dent in the prosecution case by preponderance of evidence. In short test of proof beyond any doubt is not applicable in case of the defence. In this respect [M.K. Harshan Vs. State of Kerala](#), and [Ganapathi Sanya Naik Vs. State of Karnataka](#), are being referred to;

(iii) Mere recovery of tainted currency notes from accused is not sufficient to connect the accused when substantive evidence in the case is not reliable. Reliance is being placed on *Amrik Singh v. State of Punjab* 2005 (4) R.C.R. (Criminal) 310, [Anand Parkash and Another Vs. State of Haryana](#), , [Shiv Narain Sharma Vs. State of Haryana](#), , [Raghu Nath Bansal Vs. State of Punjab](#) *Harnek Singh v. State of Punjab* 2000 (2) R.C.R.(Criminal) 403(P&H) and on Criminal Appeal No. 1619-SB of 2013 titled *Jagdish Chander v. State of Haryana* decided by this Court on 30.1.2013;

(iv) Though non-joining of some independent witnesses ipso facto is no ground to discard the prosecution case, but when witnesses of the prosecution are not trustworthy and are rather of shady and questionable moral fibre, their testimony would not be acceptable for proving guilt of the accused. Reliance is being placed on [Darshan Lal Vs. The Delhi Administration](#), [Sat Paul Vs. Delhi Administration](#), and [Harbans Singh Vs. State of Punjab](#),

(v) To raise a presumption u/s 20 of the Act, prerequisites of demand as also of acceptance of illegal gratification are to be proved by the prosecution. Reference may be made to [V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., Union of India \(UOI\) thr. Inspector, CBI Vs. Purnandu Biswas](#), and *CM. Girish Babu v. CBI, Cochin, High Court of Kerala*; and,

(vi) If on evidence and circumstances of a case two views are possible; one supporting innocence of the accused is to be followed. Reference is being made to [T. Subramanian Vs. State of Tamil Nadu](#),

13. Complainant Gurnam Singh appearing as PW1 though has deposed that on the asking of SDO Sewan, he had paid Rs. 15,000/- for restoration of electricity connection and has mentioned further that concerned Cleric had demanded Rs. 10,000/- more in the name of SDO but he had refused to pay the amount. Though he states that in pursuance to his application (Ex. PB) made to the State Vigilance Bureau, a trap was laid but he has explained further that when he reached Rest House, Kaithal on 14.9.2000 and was informed about the entire proceedings, he had found that the person arrested had never demanded bribe and in fact had wrongly been arrested.

14. Neither with regard to demand nor with regard to acceptance of the bribe amount, thus there is any support from the complainant to the prosecution case. Rather, this witness was declared hostile and was cross examined by the prosecution. Despite lengthy and probing cross-examination nothing supportive to the case of the prosecution, has emerged. Neither he has named the accused nor has spoken even a word against him and thus his statement does not involve the accused in any manner.

15. It is to be noticed that in the trap organized by the vigilance department, no one from the public was joined as a shadow or recovery witness. The Investigating Officer had put his own man i.e. Inspector Arun Kumar as a shadow witness. This Inspector Arun Kumar was examined as PW14. Relevant portion of his statement is as follows :-

"I did not hear any talk between Gurnam Singh and accused nor did I see anything of taking and receiving of money between Gurnam Singh and accused."

16. From his statement thus the prosecution has not been able to prove that there was any demand made by the accused and the money had passed hands from the complainant to the accused as bribe demanded by him. It is also noteworthy that this witness was not even clear as to who was being raided and what were the details thereof. In cross-examination he has conceded that he did not know the name of the accused, who was to be raided. Relevant portion of this witness in this regard is as under :-

"It is correct that in Ex. PJ name of the accused is not mentioned that he was to be raided. Accused and Gurnam Singh were not known to me earlier."

17. Despite the fact that Inspector Arun Kumar was a police officer himself and was to be of great support to the Investigating Officer by echoing his voice even then nothing legally sustainable to the prosecution case became available from his statement.

18. At this stage, it would be of relevance to have a close look of the case of the defence, which in own words of the accused as it appeared in his statement u/s 313 Cr.P.C., is referred to as below :-

"It is a false case. The witnesses have deposed falsely being official witnesses. I have been made scape go at. People have been nursing grudge against me including father of Diwan, who were detected by me committing theft of electricity. Huge amount of fine was imposed. I was going from District Courts after making a statement in a criminal case and was picked up on the way and was taken to Rest house where this case was falsely framed up on me to save the S.D.O. and his pet clerk."

19. When we examine the defence version vis-a-vis case of the prosecution, test of proof as has already been noticed, is different. When the prosecution case is to be proved beyond any reasonable doubt, the accused is only to create a dent in the prosecution case, by resorting to preponderance of evidence in support of its cause. Learned counsel for the defence firstly has referred to the evidence of the prosecution itself for proving the defence version. SDO Surinder Singh Dhull (PW13) lends complete support to the prosecution case. It is a conceded fact that Wasan Singh (father of the complainant Gurnam Singh) was having electric connection. The accused was a crusader against theft of electric energy and had detected as many as 52 cases of theft of electric energy, including one of (Wasan Singh father of Gurnam Singh), who had been imposed a penalty of Rs. 40,425/-.

20. There is also testimony of S.L. Katyal (DW4) supporting version of the accused regarding detection of 52 cases of electric theft and imposing of penalty of Rs. 40,425/- on father of complainant Gurnam Singh and further that the villagers were annoyed with the accused as he used to report cases of theft. He has also mentioned that the accused had even been assaulted by the villagers and the matter had been reported to the Police Station, Guhla. It is also deposed by him that the complainant was one of the assailants and was inimical towards the accused. Relevant portion of statement of SDO Surinder Singh Dhull (PW13) is as under:-

"It is correct that prior to the present incident, the present accused has detected some theft of electricity at the tubewell connection of Vasan Singh, father of Gurnam Singh, PW, whose connection No. JH-1112 and a penalty of Rs. 40,425/- was imposed upon him. It is also correct that on that account Gurnam Singh's family and other villagers of that area have been bearing grudge against accused Rajinder Parshad because numerous cases of theft i.e. 52 cases were detected by him."

21. From this piece of evidence, it is clear that accused was being targeted not only by the complainant and his family but even by other residents of the village as he had been making whole sale detection of cases of theft of electric energy. Plea of the accused further is that he was falsely implicated in the case and was taken to the rest house where he was framed up. To support this part of version of the defence, reference has been made to cross-examination of PW14 who has conceded that shirt of the accused was got replaced in the rest house as all the members of the raiding party had moved there. There is statement of Anil Kumar (DW1) STD Booth owner as also of Hukam Chand Bansal (DW2) that no such raid as projected by the

prosecution had been conducted. Location of STD Booth at Dhand Road, Kaithal near the place of alleged raid, is not disputed.

22. In cross-examination of DSP Ram Kumar Aggarwal (PW10), it has been suggested to him that the target was Satyadev, Computer Clerk who used to demand bribe in the name of the SDO but as the accused was having opposition from the complainant and his family as well as from other villagers, he was wrongly and falsely implicated. Version of false implication gets boost from the fact that even DSP Ram Kumar Aggarwal (PW10) has mentioned that currency notes were lying scattered at the floor and were collected from there.

23. Construction was going on and there were some other people present but none was joined in the investigations by the Investigating Officer. He has not given any satisfactory reply but has sweepingly mentioned that they did not come to join the investigations. DRO Prithvi Singh, (PW9) who had also joined the investigations has supported the defence on this count. When these currency notes were found from the floor and had been thrown by the accused as is mentioned by DRO Prithvi Singh, (PW9) version of the defence is probalised that he was being targeted and tainted currency notes were trusted upon him and proceedings were completed in the Rest House.

24. When neither demand of the bribe nor acceptance thereof has been proved by the prosecution, Investigating Officer DSP Ram Kumar Aggarwal (PW10), DRO Pirthi Singh (PW9) and Inspector Arun Kumar (PW14) who have deposed about recovery of the currency notes, are of no legal significance. The defence has been able to create sufficient doubt in truthfulness of the prosecution case. Keeping in view the totality of facts and circumstances of the case, the prosecution has failed to prove its case beyond doubt. Therefore, giving benefit of doubt to the accused, the impugned judgment of conviction and order of sentence, both dated 3.6.2004 passed by the Special Judge, Kaithal are set aside. Resultantly, the appeal is allowed and the accused is acquitted of the charge levelled against him. His bail bonds and surety bonds are discharged. The case property, if any, be dealt with as per rules.