
(2014) 08 P&H CK 0288

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA-S No. 2223-SB of 2004

Rajnish Jindal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 6, 2014

Acts Referred:

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

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: Bipan Ghai, Sr. Advocate and Vishvajit Singh Virk, Advocate for the Appellant;
K.S. Aulakh, AAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

Sabina, J.

Appellant has preferred this appeal challenging his conviction and sentence for commission of offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") as ordered by the Special Judge vide judgment/order dated 3.11.2004/4.11.2004 in FIR No. 68 dated 10.9.1998 registered at Police Station Vigilance Bureau, Ferozepur.

2. Prosecution story, in brief, is that complainant Gurdev Singh had approached the appellant for grant of dis-ability certificate as right leg of the complainant was polio effected. Appellant, however, demanded Rs. 5,000/- from the complainant for doing the needful. The deal was settled at Rs. 4,000/-. Complainant met Deputy Superintendent of Police, Babu Singh on 10.9.1998. Statement of the complainant was recorded. Complainant handed over 4 currency notes in the denomination of Rs. 500/- each and 20 currency notes in the denomination of Rs. 100/- each to the Deputy Superintendent of Police, who, in turn, returned the same to the complainant after application of Phenol Phthalein Powder (P-Powder for short).

Complainant was directed to hand over the tainted currency notes to the appellant on demand. Bhagwan Dass was deputed to act as a shadow witness and was directed to hear the conversation between the complainant and the appellant and give a signal to the raiding party after the bribe money was accepted by the appellant on demand. The said witnesses were shown the demonstration of the working of the P-Powder. Baldev Singh was joined as an official witness. Thereafter, the raiding party reached the spot. Complainant and the shadow witness went inside the office of the appellant. Remaining raiding party, however, stayed behind. Complainant handed over the tainted currency notes to the appellant on demand and he kept the same in the left pocket of his pant. On receipt of signal from the shadow witness, the remaining raiding party reached the spot. When the fingers of the appellant were dipped in a solution of sodium carbonate, the colour of the solution turned pink. The said solution was put in a nip and was made into a sealed parcel and was taken in police possession. The tainted currency notes were recovered from the left pant pocket of the appellant. The numbers of the tainted currency notes were tallied with the numbers noted down in the memo and were taken in possession. When the left pant pocket of the appellant was dipped in a solution of sodium carbonate, the colour of the solution turned pink. The said solution was also put in a nip and was made into a sealed parcel and was taken in police possession.

3. After completion of investigation and necessary formalities, challan was presented against the appellant. Charge was framed against the appellant for commission of offence punishable under Sections 7 and 13(2) of the Act.

4. Prosecution, in order to prove its case, examined eleven witnesses.

5. Appellant, when examined u/s 313 of the Code of Criminal Procedure, 1973 after the close of prosecution evidence, pleaded as under:-

"I am innocent. It is a false case. DSP Babu Singh has fabricated this case in connivance with Gurdev Singh. Babu Singh DSP was inimical to me because his wife Balwinder Kaur was posted as a teacher in Govt. Primary school Godiwala and for her medical leave, DSP Babu Singh approached me for obtaining medical certificate of his wife w.e.f. 20.1.1998 to 6.2.1998, Relevant entry was made in the OPD register on 5.2.1998, Babu Singh DSP again came to me to obtain medical certificate for his wife and at that time Krishan Kumar Advocate was sitting. I refused to issue the medical certificate because her wife was not suffering from any illness. Babu Singh DSP threatened me and said to have to face consequence for it. Babu Singh DSP is follower of Sant Rania Wale and Gurdev Singh was also follower of said Sant and they are Gur Bhai. In order to take revenge from me and with the assistance of Gurdev Singh and Bhagwan Singh Pws implicated me in this false case. On the day of occurrence I was sitting in my room alongwith Dr. Sukhmander Singh and other patients were also present there when Gurdev Singh PW entered into my room and placed currency notes on the table and prior to that he shackled hand with

me and when the police party entered into my room. Gurdev Singh PW picked up the notes and tried to thrust the same into my pocket I resisted and threw the currency notes on the table and from where the police took these notes. In these circumstances, the case has come into existence. I applied to the Chief Director-cum D.I.G. Vigilance Bureau. Punjab. Chandigarh for reinvestigating the case and on my application. Shri Bhushan Kumar Garg S.P. Vigilance Range. Ludhiana verified the investigation and found me innocent and my version stated above was found correct by him. After verifying the investigation. Shri Bhushan Kumar Garg reported to the Chief Director-cum D.I.G. Vigilance Bureau, Chandigarh, who directed Vigilance Bureau. Ferozepur to submit cancellation report. Eventually cancellation report was submitted in the court by DSP Baljeet Singh. The proper procedure for obtaining handicap certificate is that desirous person submit his application in the office of the C.M.O. and the clerk of the office of the C.M.O. mark the number on the file, prepared by him. The file is again marked by Civil Surgeon to the Board of two doctors according to type of disability of the patient. Then the file is sent to the Board of doctors, who prepare the report of the handicap person. Then the handicap person is checked by Assistant Civil surgeon and if he found to be correct, then he sign the same. Then the certificate is sent to the Civil surgeon and he again check the handicap person and if he found correct, he sign the same. Only then the certificate is issued after paying the Govt. fee."

6. Appellant examined ten witnesses in his defence.

7. Learned senior counsel for the appellant has submitted that the appellant has been falsely involved in this case. Prosecution had miserably failed to prove its case. Complainant, while appearing in the witness box as PW-2, had not deposed with regard to the factum of demand of bribe from him by the appellant. Shadow witness had not supported the prosecution case. As per the official witness, the tainted currency notes were lying on the table of the appellant. In fact, the appellant had been falsely involved in this case at the instance of DSP Babu Singh as the complainant had refused to extend the medical certificate issued by him (appellant) to the wife of DSP Babu Singh, which would have entitled her to continue on medical leave. Appellant was found innocent during investigation and cancellation report was submitted. However, the Special Judge did not agree with the said report and took cognizance of the matter.

8. Learned State counsel, on the other hand, has submitted that the prosecution had been successful in proving its case. The complainant as well as the official witness had duly supported the prosecution case. The plea put forth by the appellant that he had been falsely involved in the case at the instance of DSP Babu Singh was an afterthought.

9. After hearing learned senior counsel for the appellant as well as the State counsel, I am of the opinion that the present appeal deserves to be allowed.

10. Prosecution case was set in motion on the basis of statement of complainant PW-2. The said witness, while appearing in the witness box, deposed that his right leg was polio effected and he had gone to the Civil Hospital, Moga for obtaining dis-ability certificate. He met a lady employee in the hospital, who advised him to meet the appellant. When he went to the room of the appellant, some person met him and told him that he could get his work done and demanded Rs. 5,000/-. When the complainant asked as to when he should bring the money, the said person told the complainant that he should bring the money on Thursday. The deal was settled at Rs. 4,000/-. Complainant met PW Bhagwan Dass and told him the demand of bribe made from him and they met vigilance officials. PW-2 further deposed that he gave Rs. 4,000/- to the DSP, who returned the same to him after application of P-Powder. He was shown the demonstration of working of P-Powder. DSP directed him to hand over the tainted currency notes to the appellant only on demand. Bhagwan Dass PW was directed to give signal to the raiding party after the bribe money was accepted by the appellant. Then they reached the Civil Hospital, Moga and he went into the office of the appellant. The appellant was sitting in the room with some patients. After shaking hands with the doctor, he (complainant) handed over the notes to the appellant by placing them on his table. The same were taken in possession by the appellant. Thereafter, the DSP along with other members of the raiding party reached the spot and apprehended the appellant. The said witness was declared hostile. In his cross-examination by the learned Public Prosecutor, he denied the fact that when the fingers of the appellant were dipped in the solution of sodium carbonate, the colour of the solution turned pink. He also denied the suggestion that when the pant pocket of the appellant was dipped in the solution of sodium carbonate, the colour of the solution turned pink. He also denied the fact that the concerned file was taken in possession by the police.

11. PW-3 Bhagwan Dass, shadow witness, has not supported the prosecution case with regard to the demand or acceptance of bribe by the appellant or its recovery from his pant pocket.

12. PW-7 Baldev Singh, official witness, deposed that he had joined the raiding party on 10.9.1998. They had gone Civil Hospital, Moga after receiving signal from PW Bhagwan Dass. They had entered the office of the appellant. Appellant was sitting on his chair. DSP introduced himself to the appellant. In a glass of water containing chemical, fingers of the appellant were dipped and the colour of the solution turned pink. The said solution was put in a nip and was taken in possession. Rs. 4,000/- were recovered from the left pant pocket of the appellant and their numbers were tallied by him with memo Ex. PE and recovered notes were taken in possession. When the left pant pocket of the appellant was dipped in a solution, the colour of the solution turned pink. However, the said witness, in his cross-examination, deposed that the currency notes amounting to Rs. 4,000/- were lying on the table and the further search of the appellant was taken in his presence.

13. So far as PW-10 DSP Babu Singh is concerned, he had deposed that on 10.9.1998, he had organised the raid on receiving a complaint from PW-2 Gurdev Singh. Complainant had handed over to him Rs. 4,000/- i.e. four currency notes in the denomination of Rs. 500/- each and 20 currency notes in the denomination of Rs. 100/- each and he returned the same to the complainant after application of P-Powder. He had directed the complainant to hand over the said currency notes to the appellant on demand. Thereafter, they had reached the Civil Hospital, Moga. On receipt of signal from the shadow witness, they had entered the office of the appellant. Rs. 4,000/- were recovered from the left pant pocket of the appellant. When the fingers of the appellant as well as his left pant pocket were dipped in the solution of sodium carbonate, the colour of the solution turned pink. In his cross-examination, the said witness denied that he had got medical certificate of his wife from the appellant w.e.f. 20.1.1998 to 6.2.1998.

14. DW-1 B.K. Garg deposed that he had re-investigated the case and had found the appellant innocent.

15. DW-10 Baljit Singh Butter deposed that he had submitted un-traced report Ex. DF on recommendation of S.P. Vigilance Bureau, Punjab, Chief Director, Vigilance Bureau, Punjab.

16. DW-2 Sukhdev Singh deposed that as per service book of Balwinder Kaur, wife of Babu Singh, she had remained on medical leave from 20.1.1998 to 5.2.1998.

17. DW-4 Manju Sharma proved Ex. DE, wherein name of Balwinder Kaur was entered at Serial No. 4209.

18. In the present case, initially the matter was duly investigated by the investigating agency and it transpired that the allegations levelled against the appellant were false and consequently, un-traced report was submitted in the Court. Appellant, when examined u/s 313 Cr.P.C., has specifically stated that he has been falsely involved in this case as DSP Babu Singh was inimical to him. He further deposed that Babu Singh had met him for obtaining medical certificate of his wife so that she could get extension of medical leave. Since he had declined to do the needful, Babu Singh had involved him falsely in this case. The plea taken by the appellant in his statement recorded u/s 313 Cr.P.C., gains significance as the appellant was found innocent during investigation. Further the complainant had not stated in his statement that the appellant was demanding the bribe money from him. Complainant has also not specifically stated in his examination-in-chief that the appellant had kept the tainted currency notes in the pocket of his pant. Rather the case of the complainant is that some other person demanded bribe from him and he kept the currency notes on the table of the appellant on the day of raid and the same had been taken in possession by the appellant. So far as the shadow witness is concerned, he had not supported the prosecution case. The other material witness is the official witness PW-7. The said witness in his examination-in-chief deposed

that the tainted currency notes were recovered from the left pocket of the pant worn by the appellant. However, in his cross-examination, he deposed that the currency notes were lying on the table and further search of the appellant was conducted in his presence. So far as DSP Babu Singh is concerned, he denied the suggestion that his wife had obtained medical certificate from the accused w.e.f. 20.1.1998 to 6.2.1998. However, as per the service record of Balwinder Kaur, wife of DSP Babu Singh, Ex. DD, she had remained on medical leave from 20.1.1998 to 6.2.1998. The said entry was proved on record by DW-2 Sukhdev Singh. This shows that the DSP was also not coming out with true story.

19. In these circumstances, the fact that the complainant has not deposed with regard to demand of bribe raised by the appellant gains significance. Further the shadow witness has also not supported the prosecution case. The said fact also gains significance. The statement of PW-7, official witness, in his cross-examination, that the money was lying on the table when he reached the spot also gains significance. The complainant as well as the shadow witness have not supported the prosecution case with regard to the fact that the colour of the hand wash solution as well as the pocket wash solution of the appellant had changed colour. All these facts lead to the inference that the possibility that the appellant might have been falsely involved in this case cannot be ruled out.

20. It is a settled proposition of law that an accused is presumed to be innocent till proved guilty. In the present case, appellant is liable to be acquitted of the charges framed against him by giving him benefit of doubt.

21. Accordingly, the present appeal is allowed. Appellant is acquitted of the charges framed against him. Consequently, the judgment/order of conviction and sentence dated 3.11.2004/4.11.2004 passed by the trial Court are set aside.