

(2014) 08 P&H CK 0290

High Court Of Punjab And Haryana At Chandigarh

Case No: Crl. Appeal No. 1013-SB of 2005 (O&M)

Rajpal Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Aug. 6, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 114, 4
- Prevention of Corruption Act, 1988 - Section 13, 20, 20(1), 7

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: R.S. Sihota, Senior Advocate and B.R. Rana, Advocate for the Appellant;
Abhilaksh Grover, AAG, Haryana, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sabina, J.

Appellant had faced trial in FIR No. 17 dated 17.5.2002 u/s 7 read with Section 13 of Prevention of Corruption Act, 1988 ("Act" for short), registered at Police Station SVB(H), Gurgaon.

2. Prosecution story, in brief, is that appellant was working as a Clerk in Government High School, Sector-7, Faridabad. Secondary examination was to be held in the school in question. Complainant Maharaj Singh was to appear in the examination on 17.5.2002 which was to be held from 2.00 P.M. to 5.00 P.M. Appellant demanded Rs. 2000/- from the complainant to help him in his exam. Complainant approached the Vigilance authorities. Inspector Raghbir Singh (hereinafter referred as "Inspector") took the written complaint of the complainant. Complainant handed over 20 currency notes in the denomination of Rs. 100/- each to the Inspector, who returned the same to the complainant after application of phenolphthalein powder ("P-Powder" for short). Complainant was directed to hand over the said currency

notes to the appellant on demand. Ram Kumar, Naib Tehsildar and Head Constable Devender Singh were joined as witnesses. Pankaj Kumar was directed to act as a shadow witness and was instructed to give a signal to the raiding party after the bribe money was accepted by the appellant on demand. Thereafter, the raiding party left for the raid. Complainant handed over the tainted currency notes to the appellant on demand. On receipt of signal from the shadow witness, the raiding party reached the spot and appellant was caught red handed with the bribe money. When the fingers of the appellant were dipped in a solution of sodium carbonate, colour of the solution turned pink. The said solution was put in two nips and were made into sealed parcels and were taken in possession. The tainted currency notes were also taken in possession.

3. After completion of investigation and necessary formalities, challan was presented against the appellant.

4. Charge was framed against the appellant u/s 7 read with Section 13 of the Act.

5. In order to prove its case, prosecution examined 10 witnesses during trial.

6. Appellant when examined u/s 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), after the close of prosecution evidence, prayed as under:-

"I am innocent. I have been falsely implicated in this case. I never demanded any money from anyone in the shape of illegal gratification nor accepted the same at any point of time. No recovery of the tainted currency notes was effected from me. I was lifted from the school and was involved in this case merely on suspicion. I have had no concern with the affairs of the examination conducted by the board. There were staff from the outside in the said examination who were managing the affairs of the said examination."

7. Appellant did not examine any witness in his defence.

8. Trial Court vide judgment/order dated 9.5.2005 ordered the conviction and sentence of the appellant u/s 7 read with Section 13 of the Act. Hence, the present appeal by the appellant.

9. Learned senior counsel for the appellant has submitted that it was a case of no evidence. Complainant had not supported the prosecution case. Appellant had been falsely involved in the case merely on the basis of suspicion.

10. Learned State counsel, on the other hand, has opposed the appeal and has submitted that prosecution had been successful in proving its case. Although, the complainant had not supported the prosecution case but the other witnesses had duly established the guilt of the appellant.

11. Prosecution case was set in motion on the basis of the statement of complainant Maharaj Singh PW-10. The said witness did not support the prosecution case during trial.

12. PW-1 Constable Pankaj Kumar deposed that he was a member of the raiding party headed by Inspector Raghbir Singh. He had acted as a shadow witness. He was standing at a distance of 15 feet from the door of the room where the complainant had gone to give the bribe money to the appellant. Appellant was sitting in a corner. After receiving the signal from the complainant, he gave signal to the raiding party and the raiding party entered the office of the appellant. Appellant was caught by him when he was coming out of the room. The tainted currency notes were recovered from the hand of the appellant.

13. PW-2 Ram Kumar has deposed that on receipt of signal from Pankaj Kumar, they had entered the office of the appellant. The tainted currency notes were recovered from the hand of the appellant. When the hands of the appellant were dipped in a solution of sodium carbonate, colour of the solution turned pink. The said solution was put in two nips and the same were taken in possession.

14. Inspector Raghbir Singh while appearing in the witness box as PW-7, has deposed that on receipt of a complaint from the complainant, he had organized a raiding party. Complainant had handed over 20 currency notes in the denomination of Rs. 100/- each to him and he had returned the same to the complainant after application of P-Powder. Complainant was instructed to hand over the said currency notes to the appellant on demand. Pankaj Kumar PW was directed to act as a shadow witness. On receipt of signal from the shadow witness, they had entered the office of the appellant. The tainted currency notes were recovered from the hand of the appellant. 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 two nips and were made into sealed parcels and were taken in possession. The tainted currency notes were also taken in possession.

15. It has been held by the Apex Court in [M. Narsinga Rao Vs. State of Andhra Pradesh](#), as under:-

"13. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 20(1) of the Act it must have the same import of compulsion.

14. When the sub-section deals with legal presumption it is to be understood as in ter-rorum i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 20 is that during trial it should be proved that the accused has accepted or agreed to accept

any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

15. The word "proof" need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the Court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. 1911(1) K.B. 988 observed like this:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

x x x x x

22. In Raghbir Singh Vs. State of Haryana, V.R. Krishna Iyer, J, speaking for a three Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is "res ipsa loquitur". In this context the decision of a two Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, J) in Hazari Lal Vs. State (Delhi Administration), can usefully be referred to. A police constable was convicted u/s 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs. 60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The court found that phenolphthalein smeared

currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption u/s 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two-Judge Bench) observed as follows:

It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. u/s 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the chief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption u/s 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below."

23. The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein."

16. Thus, in the present case, appellant was caught red handed while accepting bribe. Although, the complainant has not supported the prosecution case, yet from the statements of PW-1, PW-2 and PW-7, it is evident that the tainted currency notes were recovered from the hand of the appellant. The plea taken by the appellant, when examined u/s 313 Cr.P.C. that he had been involved in this case merely on the basis of suspicion, fails to inspire confidence. The plea of the appellant that he had no concern with the examination in question, also fails to advance the case of the appellant. Appellant was working as a Clerk in the school where the examination was to be conducted. Complainant had to appear in the examination which was to be conducted from 2.00 P.M. to 5.00 P.M. on 17.5.2002. Ex. PM is the date sheet with regard to examination which was to be conducted in the school in question. There is nothing on record to suggest that the complainant might have been falsely involved

in this case at the instance of any of the prosecution witness. PW-1, PW-2 and PW-7 were cross-examined at length but their statements qua recovery of the tainted currency notes from the appellant, at the time of raid, could not be shaken. In these circumstances, the learned Special Judge had rightly ordered the conviction and sentence of the appellant u/s 7 read with Section 13 of the Act.

17. No ground for interference by this Court is made out.

18. Dismissed.