IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2469-SB of 2004
Date of Decision: 17th October, 2022

Parveen Kumar

Appellant

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nikhil Ghai, Advocate for the appellant.
Mr. Gurmeet Singh, Assistant Advocate General, Haryana.

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AVNEESH JHINGAN, J (Oral):

1. This appeal is directed against conviction and sentence of Parveen Kumar (appellant) vide judgment and order dated 29.11.2004, in case of FIR No. 76 dated 10.3.2002, under Sections, 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station Hasanpur.

Facts

2. As per the case of the prosecution, Zile Singh (complainant) gave an application on 10.3.2002. The allegations were that the appellant demanded bribe of Rs.2500/- for correction of Khasra Girdawari regarding redemption of the mortgaged land of the father of the complainant. A trap was laid, five notes each of denomination Rs.500/- were initialled and laced with Phenolphthalein power. SI-Krishan Kumar was deputed as

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shadow witness. He was instructed to accompany the complainant and to give signal to the raiding party on passing of the bribe to the appellant. On signal from the shadow witness at about 2.15 P.M., the appellant was apprehended sitting on a motor cycle. From a purse kept in pocket of his pant, laced currency notes were recovered. On washing the hand and pocket of pant of the appellant, the colour of solution turned pink. After grant of sanction the challan was filed, charges framed, the appellant pleaded not guilty and claimed trial.

3. The prosecution to support its case examined sixteen witnesses.

4. In statement under Section 313 Cr.P.C., the appellant stated that it is a case of false implication. He was forcibly lifted from his residence along with motor cycle and the case was foisted upon him while sitting in the police station.

5. In defence, the appellant examined five witnesses.

6. The trial court taking into consideration that:-

(1) The Jamabandi Ex.PM for the year 1995-96 produced showed land of Duli Chand recorded as mortgaged in favour of Bhajan Lal and Gobind Singh and it continued till October, 2001 whereas mortgage was redeemed on 1.6.1989;

(2) the complaiant approached the appellant for correction of Khasra Girdawari cannot be doubted;

(3) as per deposition of Rohtas Singh-DSP illegal gratification was demanded by the appellant for correcting the revenue entries;

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(4) tainted currency was recovered from the appellant;

(5) non supporting of the case of prosecution by the complainant was not fatal, as his presence was proved from his signatures on memos Ex.PG and Ex.PH by which the complainant gave notes and those were returned after applying Phenolphthalein Powder;

(6) presumption under Section 20 of the Act was drawn against the appellant

and there was valid sanction to prosecute, convicted the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act vide judgment dated 29.11.2004 and vide order of even date was sentenced as under:

Under Section	Punishment	Fine	In default of payment of fine
7 of the Act	Rigorous imprisonment for three years	Rs.3,000/-	Rigorous imprisonment for nine months
13(1)(d) read with Section 13(2) of the Act	Rigorous imprisonment for three years	Rs.3,000/-	Rigorous imprisonment for nine months

Contentions

7. Learned counsel for the appellant submits that the complainant has not supported the version of prosecution. The submission is that the shadow witness had not heard the conversation between the complainant and the appellant. He further submits that there was no evidence of demand and acceptance of bribe by the appellant. The contention is that the appellant was picked from home and he was falsely implicated.

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8. Learned counsel for the State defends the impugned judgment. He submits that the official witnesses supported the case of the prosecution. He further submits that the defence put forth by the appellant was not believable and reliance was placed upon the statements made by DW2-Poonam (wife of the appellant) who is an interested witness.

9. Heard learned counsel for the parties and perused the record of the court below.

Legal position

10. It is settled legal position that for conviction under Section 7 of the Act, demand and acceptance has to be proved. Recovery of the tainted currency in itself is not enough for conviction under Section 7 of the Act. The presumption under Section 20 of the Act can be drawn if the acceptance of the amount is proved and for proving the acceptance, demand is pre-requisite. It is also settled that presumption under Section 20 of the Act can be inferred for conviction under Section 7 of the Act and not under Section 13(1)(d) of the Act. The defence taken by the appellant has to be tested on probabilities of preponderance. The onus is not as heavy on the accused as on the prosecution to prove its case beyond reasonable doubt.

11. It would be gainful to cite the following judgments:

11.1 In **K. Shanthamma v. State of Telangana, 2022(2) RCR (Criminal) 195,** the Supreme Court held as under:

> *7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal*

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gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SC 152,*** *and another, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:*

> *23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."*

11.2 In **B. Jayaraj v. State of A.P., 2014(2) R.C.R. (Criminal) 410,** the Supreme Court held as under:

> *"9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand.*

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As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

11.3 In **N. Sunkanna v. State of Andhra Pradesh, 2015(4) RCR (Criminal) 797,** the Supreme Court observed as under:

"The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be

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established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in ***B. Jayaraj v. State of Andhra Pradesh (2014(2) RCR (Criminal 410; 2014(2) Recent Apex Judgments (R. A. J.) 570; (2014) 13 SCC 55] and P. Satyanarayna Murthy v. The District Inspector of Police and another [2015(4) RCR (Criminal) 350; 2015(4) Recent*** **Apex Judgments (R.A. J.) 625: (2015(0) SCALE 724].**

11.4 In **State of Punjab v. Madan Mohan Lal Verma, (2013) 14 SCC 153,** the Supreme Court held as under:

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in

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> *the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide:* ***Ram Prakash Arora v. The State of Punjab AIR 1973 Supreme Court 498; T. Subramanian v. The State of T.N., 2006(1) Apex Criminal 159; State of Kerala and another v. C.P. Rao, 2011 (3) RCR (Criminal) 688; 2011(4) Recent Apex Judgments (R.A.J.) 183: (2011) 6 SCC 450; and Mukut Bihari and another v. State of Rajasthan, 2012(3) RCR (Criminal) 980: 2012(4) Recent Apex Judgments (R.A.J.) 206:(2012) 11 SCC 642.***
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> *[Emphasis supplied]*

12. The appellant was posted as Patwari. The allegations were that he demanded Rs.2500/- for correction of Khasra Girdawari regarding redemption of land of the father of the complainant. The laced currency notes along with driving licence and other documents were recovered from the purse of the appellant. The raiding party departed for conducting raid at 1.30 PM, after signal from the shadow witness, the appellant was apprehended at 2.15 PM. The complainant did not support the case of the prosecution and was declared hostile. The other evidence available is to be analysed for determining the demand and acceptance of illegal gratification. The deposition of PW14- SI Krishan Kumar (shadow witness) would be relevant. He had not stated that he heard the conversation between the complainant and the appellant. He stated "*I was also directed to follow the complainant. The complainant talked with the accused and passed on the bribe money to the accused while he was sitting on his motor-cycle Hero Honda*".

13. The testimonies of the official witnesses are on similar lines. They gave the details of the procedure for laying the trap and for recovery of the laced currency. It is not the case of the prosecution that members of the raiding party were privy to the conversation between the complainant

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and the appellant. There is no evidence to substantiate the demand of illegal gratification by the appellant.

14. The appellant had taken a defence that he was picked by the police from his house on 10.3.2002 at 1.00 PM. His wife deposed that her husband was picked from the house at 1.00 PM. Two Patwaris Jeewan Dass and Satish Kumar who are the witnesses to the arrest memo Ex.DX were examined as DW3 and DW4 respectively. As per them, they reached the police station on 10.3.2002 at 2.00 PM, the appellant was already sitting in the police station. They were made to sign on blank arrest memo and further that they received the information around 12.30 to 1.15 PM that the appellant has been taken by the police officials. It would be appropriate to mention here that as per prosecution the appellant was apprehended at 2.15 PM. The defence taken by the appellant was substantiated by the depositions of DW2 to DW4 and creates a dent on the story of the prosecution. The evidence in the shape of hand wash test and recovery of the laced currency notes from the purse of the appellant in such circumstances cannot be made sole basis for proving acceptance of bribe. On failure to prove acceptance of bribe, presumption under Section 20 of the Act cannot be drawn against the appellant.

15. On considering the facts and re-appreciating evidence, the judgment of conviction and order of quantum cannot be upheld on account of failure of the prosecution to prove the *sine qua non* for conviction i.e. demand and acceptance of the illegal gratification.

16. The impugned judgment of the trial court convicting the appellant and the order of sentence consequent thereto, are hereby set aside.

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17. The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

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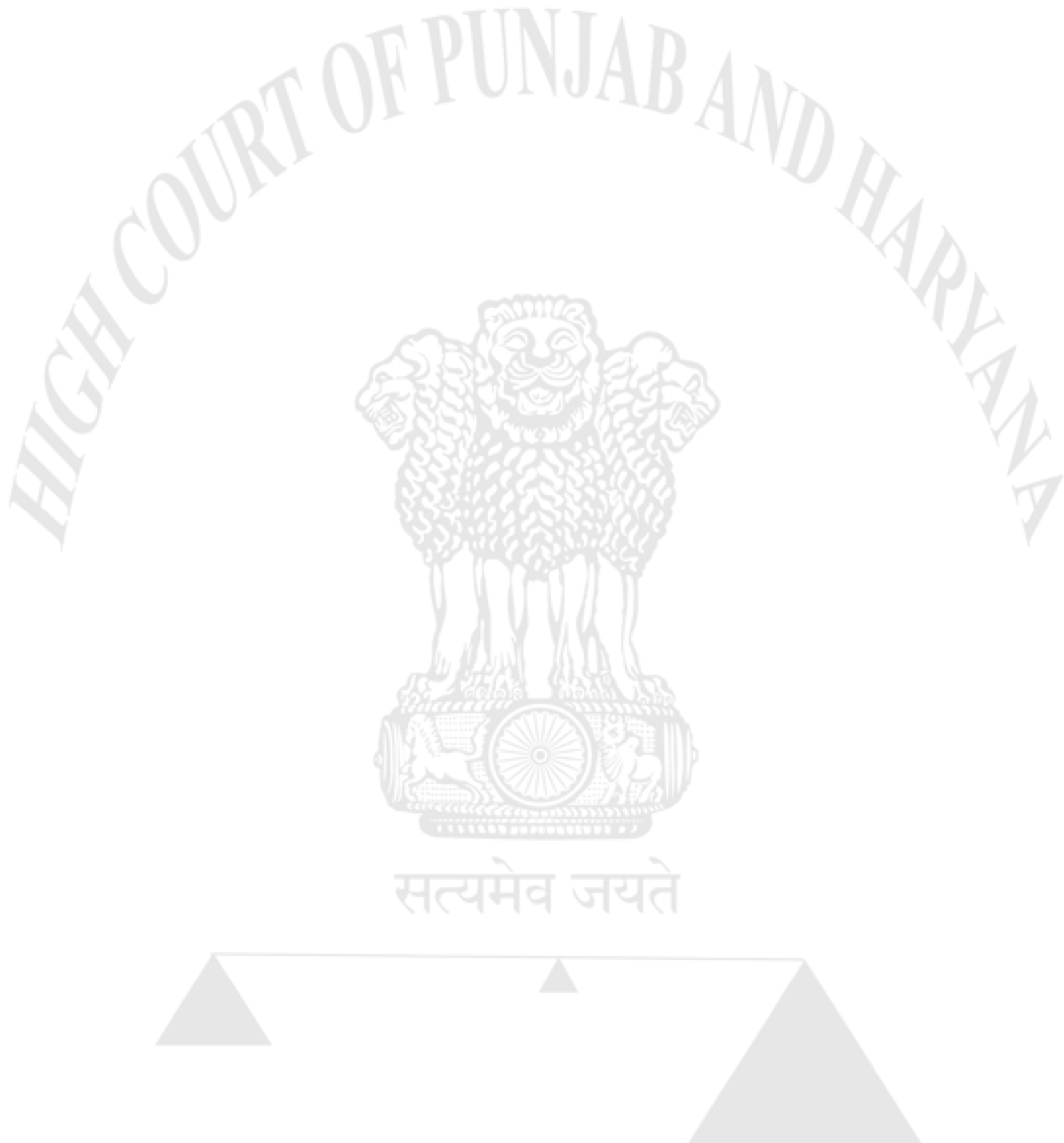
1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes



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