

Dilbagh Singh Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Apr-03-2014

Appellant : Dilbagh Singh

Respondent : State of Punjab

Judgement :

CRA-S-1606-SB of 2005 -:

1. :- IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH CRA-S-1606-SB of 2005 Date of decision: April 03, 2014. Dilbagh Singh ... Appellant v. State of Punjab ... Respondent CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON Argued by: Shri Arshdeep Singh Bhullar, Advocate, for the appellant. Shri Nikhil K. Chopra, Deputy Advocate General, Punjab. Dr. Bharat Bhushan Parsoon, J.

Having been convicted for commission of the offence under Section 7 as also under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called the Act) and thereafter having been sentenced to undergo RI for a period of three years with payment of fine of Rs.5,000/- for the offence under Section 7 and RI for a period of 5 years along with fine of Rs.5,000/- for the offence under Section 13(2) of the Act respectively, in default of payment of fine, the appellant having been ordered to undergo further RI for a period of three months on each count, Patwari Dilbash Singh is now in appeal.

2. The prosecution case put in a narrow compass is reproduced as below. 2.1 Satnam Singh, a bachelor, had died on 20.8.1991. His estate Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

2. :- was to be inherited by his mother Smt. Pritam Kaur. Gurnam Singh (complainant) is younger brother of the deceased. On 18.2.2000, Gurnam Singh (complainant) had moved an application for sanction of mutation with regard inheritance of Satnam Singh in favour of Smt. Pritam Kaur. After getting necessary orders of Tehsildar, Phillaur and on completion of other necessary formalities, the said application was handed over to Patwari Dilbagh, now appellant-convict. Many rounds around Patwari Dilbagh Singh were made by the complainant. He had even submitted death certificate of Satnam Singh but things did not move. On one pretext or the other, the matter was being delayed. Ultimately, accused demanded Rs.5,000/- as illegal gratification, which on persuasion was reduced to Rs.4,000/-.

2.2 The complainant had decided to report the matter to the Vigilance Department. He along with his associate Piara Singh approached Vigilance Bureau, Kapurthala. Eight currency notes of the denomination of Rs.500/- each were handed over to the DSP by the complainant. A memo was prepared noting down the details of currency notes. These currency notes then were treated with phenolphthalein powder (hereinafter mentioned as P powder). Raiding party was organized. Piara Singh was given the role of a shadow witness. He was to listen to the conversation between the accused and the complainant and on passing over of the bribe money on demand from the complainant to the accused, he was to give pre-determined signal to the Investigating Officer for them to arrive. Dr. Hari Singh and Pawan Kumar public servant were joined in the raiding party. 2.3 As planned, the complainant and the shadow witness had gone to the accused. On demand, the currency notes were paid by the complainant to the accused. The shadow witness had passed on the necessary signal to the Investigating Officer. The accused was caught red handed. His hands were got washed in a solution of sodium carbonate when Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

3. :- colour of the solution turned from white to pink. Said solution was sealed in a nip (Ex.PI) and was taken into possession vide memo (Ex.PJ). Spot investigations were conducted. Left pocket of trousers of the accused was also washed in the solution of sodium carbonate and colour of the solution even in this case had also turned from white to pink. Record of the case with regard to mutation was taken in possession vide memo (Ex.PM). Site plan was prepared and the nips were sent to FSL. On receipt of report (Ex.PF) of chemical examiner a report under Section 173 Cr.P.C. was presented. The accused faced trial under Sections 7 and 13(1)(d) read with Section 13(2) of the Act.

3. To substantiate its case, the prosecution examined Varinder Kumar PW1, Suresh Kumar, Bill Clerk PW2, Jagir Singh Tehsil Assistant PW3, Gurnam Singh complainant PW4, Piara Singh, shadow witness, PW5, Constable Surjit Singh PW6, Dr. Hari Singh, Medical Officer, Civil Hospital, Phillaur PW7, Vipin Chaudhary, DSP Vigilance PW8 and Pushkar Sandal, DSP Vigilance Bureau, Jalandhar PW9.

4. When incriminating material and evidence appearing against the accused were put to him, he took up a defence which, in his own words, reads as under:- I am innocent. The mother of the complainant Gurnam Singh had made an application for entering the mutation in her name in respect of the estate of her. On receipt of the application from the Tehsildar, I had entered the mutation in the mutation register. Tehsildar came to the village on 27.3.2000 and on that date the mutation was presented before the Tehsildar along with the complainant and Numberdar for being sanctioned but on that date, the Tehsildar had sanctioned only three mutations and then had to leave for some urgent work. As such the mutation of the complainant could not be sanctioned. The complainant was told that the same would be got sanctioned on the next visit of the Tehsildar but the complainant was insisting that it be got sanctioned by producing the same before the Tehsildar at Jalandhar. Thereafter, I told to Gurnam Singh that it is not possible to produce the mutation before Tehsildar at Jalandhar. Thus, he got annoyed with me. On the date of raid, the complainant Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

4. :- came to my office and called me outside the office and when I went out of my office, the complainant forcibly put some money in my side pocket despite resistance by me and immediately thereafter, I was over powered by the vigilance police. I was then taken inside my office and was falsely implicated in this case. The police concocted the evidence regard hand wash and pocket wash. I had neither demanded nor had accepted any illegal gratification from the complainant..

5. To substantiate his claim, the defence examined Major Singh DW1, Avtar Chand DW2 and Paramjit Kumar DW3.

6. Challenging verdict against him, the appellant has claimed that entire exercise of the trial court lacks analysis and evaluation. It is claimed that had the appellant sought illegal gratification, he would have done so before making of the entries and of putting the case for sanction which is of 27.3.2000. It is claimed that it was only as a matter of chance that Naib Tehsildar concerned had finalized three cases and no other case was taken up on that day as he had left. Had the said mutation case been put up before him on the said date, the matter of mutation in the name of the mother of the complainant would have been done completely, leaving no scope for further action. The alleged occurrence took place on 11.4.2000.

7. It is urged that presumption against the accused can be drawn only when demand of bribe as also acceptance thereof without any ifs and buts is proved. It is pleaded that presumption, if any, has to be drawn in favour of the accused as there was no occasion or opportunity with the accused to demand gratification. It is further pleaded that the complainant misused his connection and process of law merely to overawe him. The shadow witness Piara Singh is alleged to be highly interested. Referring to defence evidence, it is contended that DWs are of equal value to create a dent in the prosecution case. It is claimed that there are missing links and gaping holes in the prosecution case. Acquittal by way of acceptance of appeal has been sought. Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

5. :- 8. Counsel for the appellant-accused has contended that role as also powers of the appellant as Patwari qua sanctioning of mutation were limited and he had

already accomplished the task and sequelly had discharged his duty without any demand or receipt of the bribe amount and, thus, there was nothing more to be done by him and, thus, there was no question of demand much less acceptance of the bribe amount from the complainant. It is further contended that the trial court ignored the fact of proven animosity of shadow witness against him as Patwari Halqa . The accused patwari had gone to execute a warrant of delivery of possession where he had found resistance from Piara Singh and had sequelly reported about such resistance and had sought police help against Piara Singh, now shadow witness. It is also contended that the complainant as also shadow witness were nurturing a grudge against him and taking help of Investigating Officer, had ganged up to harm him and the complainant had even made efforts to thrust currency notes in his pocket when he all along had been resisting such attempt of the complainant.

9. On the other hand, counsel for the respondent has urged that it is a proven case of demand and acceptance as also of recovery of bribe money and thus there is no escape for the appellant from the findings of guilt. It is claimed that no fault can be found with the impugned judgment of conviction and order of sentence.

10. Counsel for the parties have been heard while going through the impugned judgment, order of sentence as also record of the trial court.

11. The appellant-accused is a revenue patwari. Satnam Singh, unmarried brother of the complainant had died and his estate was to be mutated in the name of his mother. Jagir Singh PW3, an official of Tehsildar, Phillaur, has testified from record that in this behalf an Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

6. :- application dated 18.2.2012 (Ex.PF) was made by the complainant to Tehsildar, Phillaur in his presence and said Tehsildar had made his endorsement thereon to the Patwari under his signatures for doing the needful. This witness has explained the procedure of sanctioning mutation. Relevant part of statement of this witness is as below:- ... The mutation after completion of all the formalities is then produced before Tehsildar through Kanungo for attestation. The Lamberdar also appears before the Tehsildar at the time of sanctioning of mutation along with

Patwari and Kanungo. These mutations are attested by the Tehsildar on his visit to the halqa of the Patwari.. 12. Complainant Gurnam Singh PW4 in his pointed cross examination has made clear admission in favour of accused which for ready reference is reproduced as below:- ... When I took lambardar to the accused he entered my mutation. It is correct that the Tehsildar was to visit this office on 27.3.2000. The statement of lambardar was also recorded by the accused after entry of mutation and his signature were also obtained. The tehsildar visited Partappur on 27.3.2K. I myself, lambardar and patwari reached the place where the tehsildar was to come. It is correct that the accused presented the mutation, myself and lambardar before the tehsildar for sanctioning of that mutation. I do not know if the tehsildar did not record the statement of lambardar nor sanctioned the mutation and left that place. ... 13. This important aspect of accomplishment of his task by the accused was completely ignored by DSP Pushkar Sandal, Investigating Officer (PW9) despite this fact having come to notice of Investigating Officer on taking of mutation register in possession during the course of investigations. Rather, no further investigations were conducted in this regard. Relevant portion of statement of DSP Pushkar Sandal, Investigating Officer, PW9 is as under:- ... When I took the record into possession on the day of raid i.e., the mutation register, it was noticed by me that the mutation in respect of estate of brother of the complainant had already been entered in the mutation register. Volunteered it was incomplete. I did not record the Kadyan Vinod Kumar

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7. :- statement of any of the revenue officer to know as to what was the shortcoming in the mutation entry pertaining to the complainant. It is correct that the mutation in question had been entered by the accused on 1.3.2000. It is correct that after entering the mutation in the mutation register the same is produced before Naib Tehsildar or Tehsildar to the concerned village for sanctioning the mutation. Mutation stands completed only when it is sanctioned by the Naib Tehsildar or the Tehsildar and till then it is treated as incomplete. At the time of presenting the mutation entered by the patwari in his register, numberdar of the village also appears before him to identity the legal heirs of the deceased in respect of which the mutation is entered. 14. Thus, from conjoint reading of

statement of complainant and of the Investigating Officer, there does not remain any dispute that whatever was within the domain and power of the accused as Patwari, he had already completed it without any demand or acceptance of the bribe. It is strange that when there is categorical statement of the complainant himself that record of mutation was presented to the visiting Tehsildar on 27.2.2000 and that relevant official records who were to testify about correctness of the sanctioning of mutation in favour of mother of the deceased were also readily available, the IO is quite blank on this aspect. Relevant portion of statement of the Investigating Officer is to the following effect:- ... It did not come to my notice during investigation that Tehsildar had visited the village on 27.3.2000 for sanctioning of the mutation. The complainant also did not bring this fact to my notice. I did not try to enquire as to whether the Tehsildar or Naib Tehsildar had come to the village for sanctioning of mutation from 1.3.2000 to 11.4.2000. ... 15. From this part of statement of Investigating Officer it is abundantly clear that the Investigating Officer was feigning ignorance on this aspect and in fact, he had not conducted the investigations impartially.

16. It is clear by now that whatsoever was to be done after entering of mutation with record and all essential details in the mutation register on 1.3.2000 was to be done by Teshildar on his next visit to the Patwar Circle for which the itinerary and programme was to be settled by the Tehsildar Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

8. :- and the accused had no role therein.

17. It is an admitted case that when till 10.4.2000 the mutation could not be sanctioned as Tehsildar had not paid visit to the village of the complainant, the complainant had become hyper-active and in consultation with Piara Singh PW5 had decided to settle the scores with the accused and had made statement (Ex.PG/2) to the DSP Vigilance that bribe of Rs.4,000/- had been demanded from him by the accused.

18. At this stage, it is necessary to know about credentials of shadow witness Piara Singh PW5. This Piara Singh was in possession of some land. He was in

litigation against one Smt. Gurbax Kaur. Piara Singh had lost the litigation. Smt. Gurbax Kaur in execution of the decree against Piara Singh had got warrant of possession issued against Piara Singh. These were taken for execution by the present accused as Patwari halqa but he had found resistance from said Piara Singh and thus had reported that police help was required against the accused to enable execution of such warrants of possession. Piara Singh PW has not disputed this fact and rather relevant portion of his statement of statement of Piara Singh PW5 is to the following effect:- ... It is correct that warrant of possession was issued by the court for delivering the possession of that land to Gurbux Kaur. It is correct that the said warrant was marked to the accused for execution. It is correct that on 19.11.99 he visited the spot for execution of the warrant. It is correct that I did not deliver the possession in spite of that warrant. It is correct that the accused made a report to the effect that possession cannot be delivered without the help of police.. 19. From the conjoint reading of statement of complainant (PW4) and of shadow witness Piara Singh (PW5), it is evident that the complainant had found a helping hand in Piara Singh who had readily given Rs.4,000/- to the complainant to allow a trap to be laid against the accused through Vigilance Department and then both of them had approached DSP Vigilance Bureau on 11.4.2000. Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

9. :- 20. When we go by the case of the prosecution, recovery of P powder treated currency notes of Rs.4,000/- was made from left pocket of shirt of the accused. There is consistent case of the accused that he was framed up at the behest of the complainant and shadow witness, whereas neither any bribe was demanded nor had been accepted much less the same was recovered from him. It is claimed that the complainant had tried to thrust currency notes in his pocket despite resistance. Defence of the accused in his own words was disclosed in his statement under Section 313 Cr.P.C. It has already been reproduced in earlier part of the judgment. Major Singh DW1 a cultivator and Avtar Chand DW2, another Patwari, have sustained and supported the version of the defence that currency notes were thrust upon the accused by the complainant.

21. Contention of the defence is that had money been received by the accused in normal course, he was to put the same in his right pocket and was not to keep in his left pocket. Neither during the course of arguments nor in the impugned judgment, there is any convincing discussion on this aspect.

22. Learned counsel for the respondent-State has made reference to statement of Dr. Hari Singh PW7 and to the statement Investigating Officer PW9, claiming, that they have categorically deposed about recovery of tainted currency notes of Rs.4,000/- from shirt of the accused. When veracity of these two witnesses is examined, there is much to be desired. Dr. Hari Singh has deposed about constitution of three trap parties which is nowhere the case of the prosecution. He has nowhere averred about receipt of any signal from the shadow witness. He has spoken about presence of another under-trainee lady Tehsildar in the room of the accused. There is no explanation emerging from the Investigating Officer as to why she was not associated in the trap. Even though she was present during the entire Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

10. :- proceedings, but she was not joined. Dr. Hari Singh is not sure whether she was joined or not?. Since to many of important questions, reply of Dr. Hari Singh PW is only reflective of ignorance, which make his presence in the trap party doubtful.

23. Counsel for the appellant has urged that mere recovery of P powder laced currency notes ipso facto is not a circumstance to be construed against the accused. Support has been sought from Anand Parkash v. State of Haryana, 2008(2) RCR (Criminal) 335. In this judgment, it was held that when the prosecution case regarding demand and acceptance of bribe amount has not been proved beyond doubt against the accused, no presumption of receipt can be raised against the accused. Even presumption under Section 20 of the Act, needs presence and proof of pre- requisites of demand and acceptance of the bribe amount.

24. Learned counsel for the appellant-accused has urged that when two views are possible, one which is in favour of the accused is to be adopted. In this behalf,

reference may be made to *Kuldip Raj v. State of Punjab*, 2002(2) RCR (Crl.) 781. It is further urged by him, relying upon *State (Delhi) v. Hari Chand*, 1988(2) CLJ278 that where the task is already accomplished, there is no scope with the accused to demand gratification. Since the task so far as the accused concerned had already been accomplished, there is no case made out against the accused.

25. From the totality of discussion as made earlier, defence version is probablised when the prosecution case is examined and as such the finding of guilt is required to be reversed and the case of the prosecution becomes highly doubtful.

26. In view of the above discussion, I am of the considered view that the prosecution has not been able to prove its case beyond shadow of Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh CRA-S-1606-SB of 2005 -:

11. :- doubt and benefit of doubt is given to the appellant-accused.

27. Consequently, this appeal is allowed and the appellant is acquitted of the charge. Bail/surety bonds stand discharged. [Dr. Bharat Bhushan Parsoon]. April 03 , 2014. Judge kadyan 1. Whether Reporters of local papers may be allowed to see the judgment ?.

2. Whether to be referred to the Reporters or not ?.

3. Whether the judgment should be reported in the Digest?. Kadyan Vinod Kumar 2014.04.05 11:22 I attest to the accuracy and integrity of this document Chandigarh

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