

State of H.P. Vs. Krishan Chand.

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Court : Himachal Pradesh

Decided On : Mar-01-2011

Judge : Surjit Singh, J.

Acts : Prevention of Corruption Act - Sections 7, 13(2); Code of Criminal Procedure (CPC) - Section 173

Appeal No. : Criminal Appeal No.108 of 2006.

Appellant : State of H.P.

Respondent : Krishan Chand.

Advocate for Def. : Mr. Rajiv Jiwan, Adv.

Advocate for Pet/Ap. : Mr. Vikas Rathore; Mr. Ramesh Thakur, Adv.

Judgement :

1. Heard and gone through the record.
2. This appeal has been filed by the State, challenging acquittal of respondent Krishan Chand, by learned Special Judge, vide judgment dated 4 th January, 2006, in a case, under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988.
3. Respondent was employed as a Clerk in the Office of Regional Transport Officer, Kullu, in the year 2003. He had been assigned the work of dealing with

cases pertaining to registration of taxis and issue of route permits. PW-12 Sunder Singh purchased a vehicle and applied to the Regional Transport Officer, Kullu, for registering the vehicle as Taxi. His application was allowed and Registration No.HPK-01-0440 was allotted. This was done on 23rd September, 2003. On 26th September, 2003, PW-12 Sunder Singh went to the Office of Regional Transport Officer at Kullu to collect the route permit. Respondent, who was looking after the seat, pertaining to taxi permits, was approached by him (PW-12 Sunder Singh). Respondent allegedly demanded a bribe of `500/-, before handing over the permit to him.

4. PW-12 Sunder Singh apprised PW-4 Hira Singh of the illegal demand made by the respondent. On the next day, PW-12 Sunder Singh, accompanied by PW-4 Hira Singh, went to the Office of Deputy Superintendent of Police (Anti-Corruption), PW-9 Amar Nath, at Kullu. Sunder Singh (PW-12) lodged FIR Ex. PW-9/A. PW-9 Amar Nath then made preparation for laying trap. He asked PW-12 Sunder Singh to make available currency notes of `500/-. Ten currency notes of the denomination of `50/- each were made available by PW-12 Sunder Singh to PW-9 Amar Nath, Deputy Superintendent of Police. Those currency notes were treated with phenolphthalein powder and returned to PW-12 Sunder Singh, with a direction not to fiddle with them and to hand them over to the respondent, on demand. PW-4 Hira Singh was asked to act as shadow witness.

5. It was demonstrated to PW-12 Sunder Singh and PW-4 Hira Singh how solution of phenolphthalein powder, in water, turned pink, when mixed with solution of sodium carbonate, in water. Memo, with regard to tainting of currency notes, was prepared, which is Ex. PW- 9/C. In this Memo numbers of the currency notes were noted down. Deputy Superintendent of Police, PW-9 Amar Nath, then associated with him some Inspectors and other staff members of his office. Those included PW-8 Gajraj Singh. He directed PW-12 Sunder Singh and PW-4 Hira Singh to go to the office of the respondent and to hand over the bribe money to him, on demand. PW-4 Hira Singh was told to make a signal, on acceptance of money by the respondent, to the waiting Deputy Superintendent of Police and other members of the party, who were to be present at some distance.

6. Accordingly, PW-12 Sunder Singh and PW-4 Hira Singh proceeded to the office of the respondent. PW- 4 Hira Singh remained outside the office, from where he could see the respondent and PW-12 Sunder Singh. When Sunder Singh went to respondents office, the latter asked if the former had brought the money. PW-12 Sunder Singh handed over the currency notes to him, which the respondent placed in the left side pocket of the pants, which he was wearing. As soon as PW-12 Sunder Singh handed over the money to the respondent, PW-4 Hira Singh made the pre-fixed signal to the waiting Deputy Superintendent of Police and other members of the party. Deputy Superintendent of Police then rushed to the office of the respondent and caught hold of him by his wrists. Regional Transport Officer, who was available in his Office, in the adjoining room, was called. In his presence, respondent was made to wash his hands with solution of sodium carbonate, which turned pink. Sample of that hand-wash was taken in a nip, which was then sealed. Respondent was required to produce the currency notes, accepted from PW-12 Sunder Singh. He took out those currency notes from the pocket of his pants and handed over the same to PW-9 Amar Nath, Deputy Superintendent of Police. Numbers of those currency notes tallied with the numbers of the notes, which had been treated with phenolphthalein powder and which numbers had been noted down in the earlier memo.

7. Sample of hand-wash was sent to the Chemical Examiner, who reported that it contained traces of phenolphthalein powder and sodium carbonate. Appointing Authority of the respondent was approached to obtain sanction to prosecute him. On receipt of the sanction, report, under Section 173 of the Code of Criminal Procedure, was filed in the Court of Special Judge. Respondent was supplied with the copies of the report and other documents filed with it. On finding that a prima facie case was there, learned Special Judge, charged the respondent with offences, under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988, and on his pleading not guilty proceeded to try him.

8. Prosecution examined complainant Sunder Singh as PW-12, Hira Singh, shadow witness, as PW-4, RTO Shiv Lal Saini, who witnessed recovery of currency notes from the respondent, as PW-2 and one of the police Inspectors, accompanying PW-9 Amar Nath, namely Gajraj Singh as PW-8.

9. PW-12 Sunder Singh and PW-4 Hira Singh did not support the prosecution version. They were declared hostile and cross-examined by the prosecution, with the leave of the Court. Even in their cross-examination by the prosecution, they did not say that bribe was demanded by the respondent or it was paid to him.

10. PW-9 Amar Nath, PW-2 Shiv Lal Saini and PW-8 Gajraj Singh, however, testified about the recovery of tainted currency notes from one of the side pockets of the pants, which the respondent was wearing. They also testified that when the respondent was made to wash his hands with solution of sodium carbonate the same turned pink.

11. There are some contradictions in the testimony of PW-8 Gajraj Singh, PW-9 Amar Nath and PW- 2 Shiv Lal Saini, which though not very serious, but when seen in the light of the fact that the complainant and the shadow witness do not support the prosecution version, render the prosecution story doubtful. According to PW-8 Gajraj Singh and PW-9 Amar Nath, currency notes had been taken out from the pocket of his pants by the respondent himself, but PW-2 Shiv Lal Saini says that currency notes were recovered from the pocket of the pants by the police people, after the respondent had been made to change the pants. The contradiction renders the recovery of currency notes highly doubtful.

12. Also, there is no evidence in support of the prosecution version that the respondent had withheld the route permit, signed by the Regional Transport Officer PW-2 Shiv Lal Saini and refused to hand over the same to PW-12 Sunder Singh, until bribe money of `500/- had been paid by him. If the permit was with the respondent on 26 th September, 2003, when PW-12 Sunder Singh allegedly went to collect the same, it was supposed to be available with him, on his person or in the concerned file or in the drawer of his table. Investigating Officer took into possession the relevant file, which is Ex. P-14. Route permit is not available in the said file, though its office copy is there. Permit was not recovered from the respondent either, which fact indicates that it might have been collected by PW-12 Sunder Singh, earlier. In view of the above discussion, it cannot be said that the learned Special Judge has not appreciated the evidence correctly, while passing the judgment of acquittal. Consequently, the appeal is dismissed.

