

PUNJAB AND HARYANA HIGH COURT

Dara Singh

Vs

State of Punjab

(Sabina, J.)

30.01.2013

JUDGMENT

Sabina, J.

1. Appellant had faced trial for commission of offence punishable under Section 7, 13(2) of the Prevention of Corruption Act, 1988 ('Act' for short) in FIR No. 12 Dated 27.3.2003, registered at Police Station Vigilance Bureau, Jalandhar. The learned Special Judge vide impugned judgment/order dated 21.9.2005/24.9.2005 ordered the conviction and sentence of the appellant under Section 7 and 13(2) of the Act. Hence, the present appeal by the appellant. Prosecution story, in brief, is that Ram Lal complainant owned 6 acres of land. Ram Lal purchased the said land in the year 1973-74. The case with regard to the said land was pending in the Court of Chief Judicial magistrate. For the said purpose, complainant required copy of the jamabandi. On 26.3.2003, complainant met the appellant for the purpose of obtaining the copy of jamabandi in his house at village Boolpur. When the complainant requested the appellant to supply him copy of the jamabandi, the appellant raised a demand of ` 1500/-. The matter was settled at ` 1000/-. Complainant approached the Vigilance Crl. Appeal No. S-1727-SB of 2005 (O&M) -2- Department along with Dalbir Singh on 27.3.2003 in this regard. Harkamal, Pritpal Singh and Balbir Singh were joined as independent witnesses. Complainant handed over two currency notes in the denomination of ` 500/- each to Deputy Superintendent of Police, who, in turn, returned the same to the complainant after application of phenolphthalein powder ('P- Powder' for short) to the said currency notes. Complainant was directed to hand over the said currency notes to the appellant on demand. Demonstration with regard to working of P-Powder was shown to the witnesses. Dalbir Singh was directed to act as a shadow witness and was directed to give a signal to the raiding party after the tainted currency notes were accepted by the appellant on demand. Thereafter, the raiding party left for the raid. Complainant and shadow witness went inside the office of the appellant. Complainant handed over the tainted currency notes to the appellant on demand. On receipt of signal from the shadow witness, remaining raiding party reached the spot. When the fingers of the appellant were dipped in the solution of sodium carbonate, the colour of the solution turned pink. The tainted currency notes were recovered from the left shirt pocket of

the appellant. When the shirt pocket of the appellant was dipped in a solution of sodium carbonate, the colour of the solution turned pink.

Prosecution, in order to prove its case, led its evidence. Appellant when examined under Section 313 of the Code of Criminal Procedure, 1973, pleaded as under:

"I have been falsely involved in this case. Smt. Sant Kaur @ Chet Kaur r/o vill. Ucha had 14 kanals 14 marlas of Crl. Appeal No. S-1727-SB of 2005 (O&M) -3- land in that village. She mortgaged 7 kanals and 7 marlas of land with Ram Lal complainant for Rs. 3500/- in the year 1974. Smt. Sant Kaur died in the year 1978. The complainant fraudulently executed a sale deed in favour of his brother Darshan Kumar, of the whole land comprising 14 kanal 14 marlas of said Smt. Sant Kaur. In the year 1991, Darshan Kumar brother of the complainant applied for mutation of the land in his favour, which was not sanctioned. Harbans Kaur d/o Sant Kaur @ Chet Kaur also applied for mutation of the land in her name being heir of the deceased. The complainant and his brother resisted that mutation but I as per rules made entry of mutation, of land in favour of Harbans Kaur, and on that score the complainant nursed grudge against me. On 18.3.2003 at about 12.00 midnight the complainant along with his two sons and 5/6 other persons armed with dangs and sotas criminally trespass into the land which had been mutated by me, in the name of Harbans Kaur and in which she had sown the wheat crop. The complainant and his companions criminally and forcibly ploughed the land with a tractor and destroyed the wheat crop. In connection with that event case FIR No. 28 dated 19.3.2003 under Section 427, 440, 506, 148, 149 IPC, P.S. Kotwali, Kapurthala was registered. The complainant in order to prepare his defence approached me to enter the girdavari of that land, in his name, but I expressed my inability to oblige him. On that score he quarreled and became angry with me.

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2. The complainant had obtained the copies of jamabandi on 10.2.2003, which were issued by me, for the years 1976-77, 1981-82, 1986-87, 1991-92 and 1996-97, which the complainant required, for producing the same in the Court. The complainant also deposited Rs. 90 (Rs. 90) as the copying fee. On 21.3.2003 i.e. to say after register/action of the case mentioned to above, the complainant obtained copies of Khasra girdawri and that of jamabandi and deposited Rs. 30/- as the copying fee but in jamabandi ownership and possession was not shown that of the complainant. There was no occasion for me to make a demand for illegal gratification for issuing jamabandi on 26.3.2003 to the complainant, as the same had already been issued to him. Because of all dispute and enmity the complainant got me falsely implicated me in this case. Respectables of the illaqa including Charanjit Singh, Gurdial Singh, Kashmir Singh, Harbhajan Singh Nambardar and member panchayat of village Ucha, and Patwar Union represented before the D.C. Against the high handedness of vigilance police for falsely involving me in this case. The D.C. Marked enquiry to SDM, Sultanpur Lodhi. The SDM, after conducting a descreet and through probe into the matter held me to be innocent and concluded that the case against me was false. The police deceitfully concealed that report from the Deputy Commissioner at the time of

grant of sanction for the prosecution and illegally obtained the sanction.

Panchayats of Ucha Pind, Fattudhinga and Saiflabad Crl. Appeal No. S-1727-SB of 2005 (O&M) -5- passed unanimous resolution condemning that deceitful and criminal conduct of the complainant in getting this false case foisted upon me."

Appellant examined 10 witnesses in his defence.

Learned counsel for the appellant has submitted that the appellant had no reason to demand or accept the bribe money from the complainant as jamabandis in question (Ex. PG and Ex. PG/1) had been prepared on 21.3.2003 and had been handed over to the complainant on the same day. Thereafter, there was no occasion for the complainant to have met the appellant for supply of the copies of the jamabandis on 26.3.2003. Thus, it was apparent that the appellant had been falsely involved in this case by the complainant. Learned State counsel, on the other hand, has submitted that the prosecution witnesses had duly proved the prosecution case. Appellant had been caught red handed while accepting the bribe money from the complainant. Hence, the appeal was liable to be dismissed. Prosecution case was set in motion on the basis of the statement of the complainant. The categorical case of the complainant is that on 26.3.2003, he met the appellant with regard to supply of copy of jamabandi to him as he required the same in a case pending against him. On the said day, appellant had raised demand of bribe from him. The prosecution witnesses have duly supported the prosecution case while appearing in the witness box. However, the prosecution case is demolished from the documentary evidence on record. As per the investigating officer PW-12 Pushkar Sandal, the relevant documents Ex.PG and Ex.PG/1 were produced Crl. Appeal No. S-1727-SB of 2005 (O&M) -6- before him by the appellant from his register and the same were taken in possession. Similarly, the complainant, while appearing in the witness box as PW-4, has deposed that jamabandi Ex.PG was taken in possession. Thus, it is evident that the jamabandies in question, which were required by the complainant and had been prepared by the appellant on demand of bribe, are Ex.PG and Ex.PG/1. A perusal of the said documents reveals that the same had been prepared by the appellant on 21.3.2003. Since the said material documents had already been prepared by the appellant on 21.3.2003, the story put-forth by the complainant, while appearing in the witness box that he had approached the appellant on 23.3.2003 for the purpose of obtaining copy of the jamabandi, is belied. As per the complainant Ram Lal, the demand of bribe was made by the appellant from him on 23.3.2003. It is not the case of the complainant that earlier to the said date, he approached the appellant for supply of copy of the jamabandi and the appellant had asked him to again come to him on 23.3.2003. Rather, from the statement of the complainant, it transpires that he had met the appellant for the first time for supply of copy of the jamabandi on 23.3.2003. Since the copy of the jamabandi had already been prepared on 21.3.2003, the story put-forth by the complainant with regard to demand of bribe from him on 23.3.2003, stands demolished. This shows that the prosecution has not set up a true stand. PW-7 Palwinder Singh Patwari proved Ex. PT, Report No. 349 of Roznamcha Wakayati. The said report was also proved on record as Ex.D-7 by DW-3 Bal Krishan Patwari who deposed that as per their record, complainant Ram Lal was issued copy of the Crl. Appeal No. S-1727-SB of 2005 (O&M) -7- jamabandi on 21.3.2003. Thus, in view of the above evidence, the statements of prosecution witnesses are rendered doubtful. The statements of the

complainant and shadow witness, with regard to demand of bribe by the appellant, are rendered doubtful. In the present case, the prosecution story is, thus, not free from doubt. It is a settled proposition of law that whenever there is a doubt in the prosecution case, the benefit of the same has to be extended to the accused.

Accordingly, the appeal is allowed. Appellant is acquitted of the charges framed against him by giving him benefit of doubt. Consequently, the impugned judgment/order of conviction and sentence of the appellant dated 21.9.2005/24.9.2005, are set aside.

(SABINA) JUDGE January 30, 2013 Gurpreet