
(2005) 02 P&H CK 0177

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 618-SB of 1996

Paramjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(2), 7

Citation : (2005) 15 CriminalCC 113

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : Sanjay Majithia and Mr. Shailendra Sharma, for the Appellant;
Poonam Josan, Asstt. Advocate General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Appellant Paramjit Singh stands convicted under Sections 7 and 13(2) of the Prevention of Corruption Act (for short the Act), vie impugned judgment of learned Special Judge, Faridkot dated 29.8.1996 and has been sentenced to undergo RI for two years and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for three months u/s 7 of the Act; to undergo RI for one year and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for three months u/s 13(2) of the Act. Both the sentenced, however, have been ordered to run concurrently.

2. Aggrieved by the impugned judgment of conviction and sentence, the appellant has preferred the instant appeal.

3. The allegation against the appellant, as per the charge-sheet, is that on 9.2.1993, while he was posted as Head Clerk in the office of SDM Moga demanded and accepted Rs.4,000/- from Hakam Singh and Amarjit Kaur of village Daudhar for himself as illegal gratification for issuing a cheque of Rs.20,000/- as compensation on account or murder of their son by the terrorists.

4. The facts of the prosecution case in short are that one Jasvir Singh son of

Hakam Singh and Amarjit Kaur was killed by terrorists in August 1991. They had applied for ex gratia grant on account of murder of their son. The allegation further is that the appellant told them that he could help them to get their case cleared for receiving ex gratia grant for which he demanded Rs.4,000/-. A cheque for Rs.20,000/- dated 31.8.1991 was delivered to Hakam Singh on 31.8.1992. It was drawn at Union Bank of India, Moga. Amarjit Kaur opened an account in the said bank and it was got encashed on the same day. It is further alleged that on the same day, Hakam Singh and Amarjit Kaur had gone to the office of SDO (Civil) Moga and paid a sum of Rs.4,000/- to the appellant. The second installment of the ex gratia grant was of Rs.30,000/- which was still to be released. The appellant was not clearing his release on one pretext or the other and as such Hakam Singh and Amarjit Kaur made a complaint to Sh. V.K.Janjua, SDO (Civil) Moga PW-3 on 9.2.1993. Their statements Ex.PA and PB respectively were recorded by Sh.Janjua and thereafter he addressed a letter Ex.PC to DSP Moga for the registration of the formal FIR. On receipt of the letter, Sh.Bachan Singh Randhawa, DSP Moga PW-6 directed SHO, Police Station City Moga to register the FIR. Consequently, the formal FIR Ex.PC/2 was recorded.

5. After the completion of the investigation, the appellant was challaned to face trial. As stated above, he was charged under Sections 7 and 13(2) of the Act. After the conclusion of the trial, he now stands convicted.

6. The prosecution has examined six witnesses in order to substantiate the charge against the appellant. There is no need to delve into unnecessary details and the relevant evidence will be discussed at its proper place.

7. The stand taken by the appellant as emerges from his statement u/s 313 Cr.P.C. is that he has been implicated by Sh. V.K.Janjua, SDM, Moga who was inimical towards him and got him transferred from Moga to Faridkot and also made a false complaint against him to the Deputy Commissioner, Faridkot in which he was ultimately found innocent. It is then pleaded by the appellant that he was not dealing with the cases of ex gratia grant and the said job was being handled by one Charanjit Sharma Clerk and at the instance of aforesaid Mr.Janjua, he has been implicated in this case. The appellant did not, however, lead any defence.

8. I have heard Mr.Sanjay Majithia and Mr.Shailendra Sharma, learned counsel for the appellant and Ms.Poonam Joshan, learned Assistant Advocate General, Punjab. With their assistance, I have also gone through the entire record.

9. The main argument advanced by Mr.Sharma is that the prosecution has not been able to prove the basic ingredients of the offence to bring the present case within the mischief of Section 7 or Section 13(2) of the Act. Developing his arguments, the learned counsel contends that there is no evidence at all with regard to any recovery and that the present case has been registered only on the bald statement of Hakam Singh and his wife Amarjit Kaur, that too after the lapse of more than five months. The learned counsel then contends that the

testimony of Hakam Singh or his wife is not corroborated by any independent witness and that the false implication of the appellant at the instance of Mr. Janjua is writ large on its face as he recorded statements of Hakam Singh PW-1 and his wife Amarjit Kaur PW-2 and thereafter formed his opinion and sent the case for the registration of the FIR without even verifying the facts or even joining the appellant in holding any inquiry. The learned counsel further contends that had the appellant accepted Rs.4,000/-, as alleged way back in August 1992, it is not believable that Hakam Singh would remain silent for a considerable time (five months). These infirmities taken collectively speak volumes of the false implication of the appellant in this case, the learned counsel so contends.

10. Another infirmity as pointed out by Mr. Sharma is that the case now set up by Hakam Singh is that the appellant was not releasing another cheque of Rs.30,000/- of ex gratia grant as remaining amount on one pretext or the other; that the other cheque of Rs.30,000/- was to be released in February 1993 whereas the appellant had already been transferred to Faridkot in November, 1992; if the appellant was not posted in the office of SDO (Civil) Moga in the month of February 1993 and was not the dealing official, the question of any delaying the delivery of cheque at the hands of the appellant does not arise. This rather reflects that Hakam Singh and his wife Amarjit Kaur have been instigated by some one to come up with the present allegation against the appellant for certain extraneous reasons. The learned counsel then contends that in the flash back of what is said herein, the defence of the appellant appears to be most probable and the case of the prosecution falls flat on the ground on material facts. The appellant, thus, deserves acquittal.

11. The learned State counsel has, however, controverted the submissions made on behalf of the appellant and submitted that even if no recovery was effected from the appellant in this case, yet it would not make any difference as the appellant at one stage made a demand of Rs.4,000/- for getting particular job done as a public servant and had also accepted the same from Hakam Singh and his wife on 31.8.1992. The learned State counsel then contends that there is no reason to disbelieve Sh.V.K. Janjua, a Senior Officer of the department who had no animosity against the appellant and whatever is pleaded by the appellant in defence cannot be taken to be true on the face of it, in the absence of cogent evidence. The conviction as recorded by the learned trial Court, thus, deserves to be maintained, the learned State counsel so contends.

12. After hearing the rival contentions of either side and rescanning the entire evidence carefully, I am of the view that the prosecution has not been able to prove its case against the appellant beyond the shadow of reasonable doubt and as such he deserves acquittal. The reasons for arriving at the said conclusion are set down as under:-

13. Admittedly, there is no recovery of bribe money from the possession of the appellant. This infirmity in itself knocks out the bottom of the case.

14. Admittedly, Hakam Singh and his wife Amarjit Kaur had received ex gratia payment of Rs.20,000/- by a cheque on 31.8.1992. This has again come in their substantive statement and even in their initial complaint that the money was got released from the bank on the same day. As per the allegations, they had paid a sum of Rs.4,000/- to the appellant on that very day. This indicates that after they had made the payment to the appellant, they had no grouse in their bosom. The second phase is that another cheque of Rs.30,000/- was to be given to them for the remaining, ex gratia payment. But who had to prepare that cheque, has not been stated anywhere. The grouse now projected is that the appellant was not releasing the cheque on one pretext or the other. In my considered view, this all is against the actual facts placed on judicial file. The letter dated 18.2.1993 sent by Sub-Divisional Magistrate, Moga to DSP Moga for the registration of the case against the appellant indicates that the appellant had been transferred from Moga to Faridkot on 13.11.1992. Even from the document Ex.PE, the factum of his transfer is clear.

15. In the flash back of the aforesaid facts, it is sparkingly clear that the appellant had no connection with the office of SDM Moga. Therefore, by no stretch of imagination, can it be said that any demand was made by him with regard to second cheque.

16. The main controversy now boils down to the first demand of Rs.4,000/- and its acceptance for releasing the cheque of Rs.20,000/-. For this the delay in lodging the complaint by Hakam Singh and his wife uproots the case of the prosecution. The delay is not just of a few days. Precisely it is five months and 18 days. There is no explanation worth the name with the prosecution for his long delay. In my considered view, this is fatal to the prosecution.

17. The case of the prosecution is doubtful yet from another angle too. The statement of Hakam Singh and his wife, the two main star witnesses, is not corroborated by any independent witness on the point of demand or acceptance. As already said there is no recovery of bribe money in this case, therefore, it can be comfortably concluded that all the main ingredients bringing to the instant case within the mischief of the charge framed against the appellant are conspicuously missing.

18. The insidious approach by Mr.Vijay Kumar Janjua, PW-3 is also not above reproach. He is an IAS Officer and was not expected to deal with the complaint in a very casual manner. The service career of the government official was obviously at stake. He without verifying the allegations which were stale on the face of it took the complaint as a gospel truth and jumped to the conclusion that the appellant has committed an offence u/s 7 of the Act. This tantamounts to by-passing the settled principles of a fair trial. The appellant was not working in the office of SDM, Moga in the month of February, 1993 when Hakam Singh and his wife Amarjit Kaur approached this witness. A perusal of the record shows that the statements Ex.PA and PB are recorded by Shri Janjua himself. From this, it can be safely said that this witness became the complainant, the prosecutor and

then a Judge also. He may have been guided by good intentions to stall the growing menace of corruption but the method adopted by him is arbitrary and against the principles of natural justice. Law gives protection to all civil servants at all rungs. It appears that mind of this witness was loaded against the appellant. To my mind, the controversy in this case is between an officer and an official. He even admits in his cross-examination that he had written a D.O. letter to D.C.Faridkot to the effect that the appellant had contracted a second marriage. If the defence of the appellant is assessed in the flash back of the aforesaid facts, it turns out to be probable on the face of it.

19. From the evidence discussed hereinabove, it can be safely said that the case of the prosecution is not free from doubts. No doubt the evil of corruption has persistently crept into various levels despite the stringent history of the Act from 1947. The hydra headed dragon of corruption has got to be lynched, yet for practical purposes and/or arriving at a just conclusion, each case has to be tested on the touch stone of judicial scrutiny. While applying the same, I conclude that the prosecution has not been able to prove the charge(s) against the appellant to the hilt. As such, he deserves acquittal.

20. Resultantly, the present appeal is allowed. The impugned judgment of conviction is set aside and the appellant stand acquitted.

21. As the appellant has furnished bail/surety bonds during the pendency of the instant appeal, he shall be discharged of the said bonds forthwith.