
(2015) 10 P&H CK 0190
In the Punjab And Haryana At Chandigarh
Case No : CRA-S-285-SB-2006

Satyawan Dahiya

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1)(d), 7

Citation : (2015) 10 P&H CK 0190

Hon'ble Judges : Shekher Dhawan, J.

Bench : Single Bench

Advocate : Baljit Kaur Mann, Advocate, for the Appellant; Naveen Sheoran, DAG, for the Respondent

Judgement

Dr. Shekher Dhawan, J.—Present appeal is directed against the judgment of conviction and order of sentence dated 1.02.2006 passed by learned Special Judge, Panipat whereby the appellant [Satyawan Dahiya] was convicted under Sections 7 and 13(1)(d) of Prevention of Corruption Act, 1988 (for short, "the Act") and was sentenced as under:--

2. Relevant facts of the case, that Satyawan Dahiya while working as Land Valuation Officer in Samalkha Primary Co. op. Agriculture and Rural Development Bank Ltd., Samalkha [hereinafter referred to as "the Bank"] demanded illegal gratification of Rs. 7,000/- from complainant - Dharampal for getting his loan of Rs. 1,20,000/- sanctioned. The complainant was not willing to give the bribe money and as such, reported the matter to the Police. On this, police party conducted raid on 7.7.2003 and the appellant-accused was found to be in possession of illegal gratification amount of Rs. 7,000/- consisting of 12 currency notes of denomination of Rs. 500/- each and 10 currency notes of denomination of Rs. 100/- each. The said currency notes were taken into police custody. The fact regarding demand of illegal gratification and conversation was over-heard by shadow witness - Dharamvir and the police party apprehended the appellant. The

formal investigation proceedings were completed on the spot and the accused was arrested.

3. After completion of investigation and obtaining sanction from the competent authority, challan was presented in the Court for trial.

4. During trial, learned Magistrate completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. Prosecution mainly relied upon the testimony of PW-9, Dharampal, complainant, PW-8, Dharamvir, a shadow witness and PW-4 Satish Sharma, Manager of the Bank. After considering the prosecution and the defence evidence on record, held the appellant guilty and convicted him for commission of offence under Section 7 and 13(1)(d) of the Act and sentenced him on 1.2.2006.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. Learned counsel for the appellant submitted that the prosecution case has not been proved at all because prosecution case was mainly based on the statement of Dharampal, complainant, who was examined at the trial stage as PW-9. Though, he supported the prosecution case in his examination-in-chief, but he had not supported the prosecution case at all in his cross-examination and if the entire statement of PW-9 is taken into consideration, he has not deposed any thing against the accused in terms of written complaint Ex. PB before the police. Prosecution met with the same fate when it examined PW-8 - Dharamvir, shadow witness. According to her, since the prosecution has not been able to prove the demand of illegal gratification money from the possession of the accused, he is entitled to be acquitted. On this point, she has placed reliance upon the decision of Hon''ble Supreme Court in Banarsi Dass Vs. State of Haryana, , Subash Parbt Sonvane v. State of Gujarat 2002[3] RCR [Criminal] 188 , Suraj Mal Vs. State (Delhi Administration), . Reliance was also placed on the decisions of co-ordinate Benches of this Court in Gian Parkash Sharma v. Central Bureau of Investigation, Chandigarh, 2004 (3) R.C.R. [Criminal] 842 , Karnail Singh Vs. State of Punjab, and Ramesh Kumar v. State of Haryana, 2010 (2) RCR [Criminal] 677.

7. Learned counsel for the appellant while arguing further took the plea that it has been proved on record that Dharamvir, shadow witness was defaulter and arrest warrants were issued against him. This fact was so stated by D.W.-1, Mahinder Singh Clerk from the Bank, who made statement on the basis of record that Dharavir, shadow witness of this case was a defaulter of the bank and warrants of arrest were issued against him and same were valid till 31.8.2003. Raid in the present case was conducted on 7.7.2003. So, that way he was inimical to the accused-appellant and other officials of the bank and he had every reason to depose falsely against the appellant. Such a statement was also made by PW-4, Satish Sharma, the then Manager of the Bank.

8. Learned counsel for the appellant has also submitted that sanction order [Ex. PA] was issued by the Sanctioning Authority in a routine manner and that was signed on the basis of draft presented by the police, which is Ex. DB on the file. That shows that the sanctioning authority had not applied its judicious mind while granting sanction. The requirement of law is that the sanctioning authority should not sign the sanction order in a routine manner as that is not just a mechanical process but the authority should apply judicious mind while granting or refuse to grant sanction. That has not been done in this case and as such, the entire trial is vitiated.

9. Learned State counsel has submitted that recovery of tainted money has been proved as per statements of the official witnesses, who had no enmity with the accused and there is no reason to dis-believe them. It was for the accused-appellant to prove that how he was found to be in possession of the tainted money. The defence is not plausible and learned trial Judge has rightly held the accused guilty and convicted and sentenced him. He prayed that the appeal be dismissed being without any merit.

10. Having considered the rival contentions of learned counsel for both the parties, this Court is of the considered view that in fact, there were two material witnesses of the case, namely, complainant - Dharampal [PW-9] and shadow witness - Dharamvir [PW-8]. These witnesses have not supported the prosecution case. Though, Dharampal, complainant [PW-9] supported the prosecution case in his examination-in-chief, but he had demolished the entire prosecution story in his cross-examination. It is settled law that statement of a witness is to be read as a whole and not his examination-in-chief only. If the statements of both these witnesses are not taken into consideration, the prosecution case cannot be said to be proved. Hon''ble Supreme Court of India in Banarsi Dass's case [supra] has held that if complainant and shadow witness turned hostile, demand and acceptance of illegal gratification is not proved then mere recovery of currency notes cannot prove the charge of prosecution against the accused. Such law was also laid down by Hon''ble Supreme Court of India and Coordinate Benches of this Court in Subash Parbt Sonvane's case, Suraj Mal's case, Gian Parkash Sharma's case, Karnail Singh's case and Ramesh Kumar's case [supra].

11. In C.B.I. Vs. Ashok Kumar Aggarwal, , Hon''ble Supreme Court has held that sanction in such like cases of corruption is the most relevant factor and if the sanctioning authority does not apply its mind while granting sanction, the said sanction cannot be construed to be legal one. In another similar case titled Romesh Lal Jain Vs. Naginder Singh Rana and Others, , the Apex Court has held in para No. 16 of the judgment as under:--

"16. It is also beyond any cavil of doubt that an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may

be called in question before competent Court of law..."

12. In the present case, a perusal of the document, Ex. PA i.e., the sanction order and the documents, Ex. DA and Ex. DB, which are forwarding letter signed by the Superintendent of Police, Rohtak Range, Rohtak and draft sanction letter submitted alongwith forwarding letter clearly reveals that the sanctioning authority had just got typed the name of the accused in the sanction order and signed the same. This shows total non-application of mind by the sanctioning authority. Thus, the prosecution case cannot be said to have been proved against the present appellant.

13. More so, it has come on the file that PW-8 - Dharamvir, shadow witness was a defaulter and arrest warrants were ordered to be issued against him which were valid till 31.8.2003 whereas raid was conducted on 7.7.2003. He had every reason to depose against the present appellant. It has come in the statement of PW-4, Satish Sharma, Manager of the Bank that as per policy of the bank, it was decided not to advance any loan to persons named in the Defaulters" list [EX-DE] and the name of Dharamvir, being a defaulter, was mentioned in the said list at Sr. No. 13. Dharamvir was aggrieved on that account. That way, the complainant and the shadow witness, a defaulter, were inimical to the accused. Hence, the prosecution case cannot be said to have been proved against the present appellant. However, learned trial Judge has not considered all these aspects while record the judgment of conviction.

14. In view of the fact that the material witnesses turned hostile in this case. The prosecution case is highly doubtful. It is also settled that benefit of doubt is to be given to the accused and in this case also, by giving benefit of doubt, the appellant-accused was entitled to acquittal. However, learned trial Judge has completely ignored this legal as well as factual position. Resultantly, the impugned judgment of conviction and order of sentence dated 1.2.2006 are set-aside and the appellant is acquitted of the charge. The bail/surety bonds shall stand discharged.