
(2011) 01 P&H CK 0457

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 528-MA of 2007 (O and M)

State of Punjab and Others

APPELLANT

Vs

Balwinder Singh Patwari

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Prevention of Corruption Act, 1988 — Section 13(2), 7

Citation : (2012) 1 RCR(Criminal) 266

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—State of Punjab has preferred this petition for leave to appeal as the accused-respondent has been acquitted by the learned Special Judge, Moga vide judgment dated 10.3.2007.

2. The factual matrix of the prosecution case is that on 20.2.2004 Surjit Singh Khosa, DSP Vigilance Bureau, Moga was present in his house where Jagjit Singh along with Mohinder Singh came. Jagjit Singh got recorded his statement that he is running shop of spare parts at Gulabi Bagh, Moga near Punjab and Sind Bank, Moga. His friend Kuldeep Kumar had purchased land measuring 3 marlas 3 saraahies in the area of Bedi Nagar, Moga on 27.11.2003. Complainant has been given Power of Attorney by Kuldeep Kumar to get the mutation sanctioned in his favour after execution of the sale deed. Complainant visited Balwinder Singh, Revenue Patwari of Area Moga Mehal Singh-II and handed over to him photostat copy of the sale deed and requested him to get the mutation entered and sanctioned. Balwinder Singh, Patwari had kept the photostat copy of the sale deed with him and assured complainant that he will done his work soon. After that complainant visited the office of Balwinder Singh, Patwari so many times and ultimately it was on 4.2.2004 that mutation was entered but it was not sanctioned. On 17.2.2004., again complainant visited Balwinder Singh, Patwari

and asked him to sanction the mutation, who demanded Rs. 1000/- for sanctioning the mutation. Complainant asked him that he is poor person and is unable to pay that huge amount, then accused Balwinder Singh told that he would not accept less than Rs. 700/- and asked the complainant to give Rs. 700/- on 20.2.2004 and he would get the mutation sanctioned by then. Complainant made false promise with the accused but he was not willing to pay the bribe to the accused. Complainant met Mohinder Singh son of Pala Singh resident of Nanak Nagar, Moga who was earlier known to the complainant. Complainant narrated the whole story of demanding bribe by accused to Mohinder Singh who suggested that such corrupt person should be caught from Vigilance Bureau. Complainant produced currency notes of Rs. 700/- before the DSP. Statement of the complainant was read over and explained to him who signed the same after admitting the same to be true. Those currency notes were applied phenolphthalein powder and were handed over to complainant after making it sure that he was not having any other currency notes. DSP advised the complainant to hand over those currency notes to Balwinder Singh Patwari as and when he demands the same. Complainant was further advised not to shake hands before or after handing over the tainted money to the accused. Mohinder Singh was made as shadow witness and he was asked to accompany complainant and when Balwinder Singh Patwari will accept the money after demanding the same, he (shadow witness) should make a signal to the raiding party. Devinder Singh, ADO and Shri Karnail Singh Sub Inspector, Punjab Roadways, Moga were joined as official witnesses and were introduced with the complainant and the shadow witness. Ruqa was sent to the police station through HC Rachhpal Singh on the basis of which formal FIR was registered against the accused. DSP along with Constable Hardev Singh, Constable Jaswinder Singh, Constable Balwinder Singh, gunmen, Complainant Jagjit Singh, Shadow witness Mohinder Singh and the official witnesses proceeded for raid in the official jeep. When the raiding party reached near the office of the accused, all the members of the raiding party alighted from the jeep. Complainant and the shadow witness were asked to go to the office of the accused and the other raiding party stood near the office of accused Balwinder Singh Patwari for waiting the signal of the shadow witness. After some time, they received signal from Mohinder Singh shadow witness. On receiving such signal, DSP along with other police officials apprehended the accused and he disclosed his identity as DSP, Vigilance Bureau and asked the accused regarding the illegal gratification of Rs. 700/- received from the complainant-Jagjit Singh, who got the tainted currency notes recovered lying underneath the mutation register on the table. The number of the tainted currency notes were got tallied through the official witness and they tallied and these tainted currency notes were taken into possession vide recovery memo which was attested by the witnesses. On personal search of the accused, currency notes of the denomination of Rs. 1600/- along with wrist watch make Million were recovered which were taken into possession vide separate memo. Then mutation register and photostat copy of the sale deed which were lying on the table were recovered and these were taken into police possession. Then DSP

conducted the search of the office of the accused but nothing incriminating was recovered from there. Then house search of the accused was conducted but nothing incriminating was also recovered from there. Wife of the accused namely Jasbir Kaur was made aware of the arrest of the accused. DSP inspected the spot, recorded the statements of the witnesses and arrested the accused in this case after disclosing him the grounds of arrest. After obtaining sanction from the learned District Magistrate, on receipt of report of Forensic Science Laboratory and after completion of the investigation the challan against the accused was presented before the trial.

3. On presentation of the challan, copies of documents relied upon by the prosecution were furnished to the accused free of costs. Charge under Sections 7, 13(2) of the Prevention of Corruption Act was framed against the accused. The accused pleaded not guilty and claimed trial.

4. In order to prove the charge against the accused, prosecution examined PW-1 Sukhdev Singh Sadar Kanungo, PW2 Jagjit Singh complainant, PW3 Mohinder Singh, PW4 Devender Singh official witness, PW5 Sub Inspector Karnail Singh Punjab Roadways, Moga another official witness, PW6 Surjit Singh Khosa, Investigating Officer and PW7 HC Harjinder Singh.

5. After close of the prosecution evidence, statement of the accused u/s 313 Cr.P.C was recorded in which he has denied the allegations of the prosecution and pleaded innocence and false implication. He further pleaded that he neither demanded any bribe money from complainant Jagjit Singh to place the money on the table rather Jagjit Singh put the money underneath the register. He also pleaded that he did not pick up the money from the table.

6. The learned trial Court after hearing the learned counsel for the parties acquitted the accused/respondent vide judgment dated 10.3.2007, as aforesaid.

7. Feeling dissatisfied with the aforesaid judgment, the petitioner complainant has preferred the present petition.

8. I have heard learned counsel for the petitioner and have also gone through the records of the case file.

9. In this case, the shadow witness has turned hostile and has not supported the case of the prosecution. The complainant has no personal interest in the property who is stated to be power of attorney holder of Kuldeep Kumar. The factum of receipt of currency notes from the accused also has not been proved in the present case, in as much as, no test of Phenolphthalein Powder was conducted. The recovery of currency notes has taken place from underneath the register, but there is nothing on the file that the accused has held those currency notes. The learned Special Judge, has rightly held that there could be a chance of planting the currency notes in the absence of test of phenolphthalein powder.

So, in these circumstances, no ground for grant of leave to appeal is made out.

Consequently, the application u/s 378(3) Cr.P.C. and leave to appeal stands declined. Accordingly, the appeal also stands dismissed.