
(2009) 02 RAJ CK 0012
In the Rajasthan High Court

State of Rajasthan

APPELLANT

Vs

Puran Singh

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 7

Citation : (2009) 2 WLN 200

Hon'ble Judges : Satya Prakash Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Pathak, J.—This criminal leave to appeal u/s 378(i)(iii) of the Code of Criminal Procedure has been filed by the State of Rajasthan against the judgment dt. 11.01.2002 passed by the learned Special Judge, Sessions Court, Prevention of Corruption Act cases, Kota in Sessions Case No. 31/2001 by which the accused-respondent has been acquitted from the offence u/s 7 and 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (here-in-after to be referred as, "the P.C. Act").

2. Briefly stated, the facts for the disposal of this leave to appeal are that PW-4 Vasudev Singh presented himself in the Ante-corruption Bureau office at Dholpur and stated that he being illiterate wanted to tell his grievance orally. PW-4 in his oral complaint Ex.P-8 made to Deputy Superintendent of Police stated that he was resident of village Pokharpura and on 16.09.1999 in the night Ramesh and other persons who were by caste Kachiyani cut the wood from his field and in this connection a report was lodged by him in the police station Kotwali. As a result of injuries sustained by him, he had to remain in Dholpur hospital for 2-3 days. He has also stated that the accused side of the above case had also lodged another criminal case against him and in this connection Puran Singh ASI, Police Station Dholpur who was conducting investigation of that matter came in the hospital on 17.02.1999 and demanded a sum of Rs. 3,000/- for not arresting him in the criminal case lodged against him. It is also stated that on 18.02.1999 he was

discharged from the hospital and at his house in the evening Puran Singh ASI came in a government jeep and asked him to come to police station along with money. On that day in the evening when the complainant reached at Kotwali, it was found that Puran Singh ASI was in his room and on contacting him he again made a demand but on his insistence he agreed to accept the sum of Rs. 2,000/- as bribe but also advised that the complainant should get himself bailed out from the Court and till bail is not granted, the complainant was assured that he will not be arrested. It was also orally stated that though his brother-in-law (looser) was not present at the time of incident which took place with Ramesh and others but they were involved in the incident and since the complainant never wanted to give bribe in the case, therefore, approached the A.C.B.. This oral report Ex.P-8 was reduced in writing and PW-4 Vasudev Singh was instructed to again contact the accused. A tape-recorder was also given to the complainant with the instruction to record the conversation. Constable Janki Nandan was also directed to accompany the complainant. On 22.02.1999, a trap was arranged. After arranging two independent witnesses namely PW-5 Devendra Kumar Gupta and PW-6 Subhash Chandra, the decoy brought a sum of Rs. 1,500/- for passing on the money to the accused. The independent witnesses were read over the oral complaint made by complainant PW-4 Vasudev Singh. The independent witnesses gave consent to become witnesses and agreed to accompany the raiding party. The complainant handed over 15 general currency notes of the denomination of Rs. 100/- each. On presenting the general currency notes, the Dy.S.P. put his initials on them after preparing a memo wherein number of general currency notes were mentioned. PW-1 Anwar Khan Clerk of the department was directed to put powder of phenolphthalein on the general currency notes. He, as per the instructions, dusted the powder of phenolphthalein on the general currency notes and personal search of complainant PW-4 Vasudev Singh was also taken. 15 notes of Rs. 100/- each were kept in the back-side pocket of the pant of the complainant. It was instructed to the complainant that after giving money on demand of bribe by the accused, the raiding party be signaled by removing the turban from his head. The complainant was asked to proceed first and thereafter other persons followed the complainant in a jeep. The complainant reached at Police Station and after some time came out from the police station followed by a person who was in the police dress went inside of a juice centre near the Police Station and remained inside for some time and thereafter complainant came outside and gave the signal. On receiving the signal, the Dy.S.P. rushed at the spot and accused was apprehended by the raiding party while he was going towards Kotwali. PW- 7 Chiranji Lal, Dy.S.P. disclosed his identity and asked about the money accepted by the accused as bribe. The accused on his asking about the money accepted as bribe from P.W. 4 Vasudeo got perplexed and denied having accepted any bribe and stated that it was return of the loan amount. At the spot in the water sodium carbonate powder was mixed. Fingers of both the hands were dipped into the water as a result of dipping fingers into the water, the colour of the water changed into pink which was kept in two different bottles and the bottles were sealed. Search of the accused was taken

and from the right hand side pocket of the shirt bribe amount was recovered. The numbers of the notes were tallied with the found. The shirt of the accused was also dipped into the water and when it came in contact with Sodium Carbonate mixed water, the colour of the water changed into pink which was also kept in bottles and was sealed. After completing necessary formalities at spot, accused was arrested. After returning to the police station seized and sealed material was deposited in Malkhana, un-registered FIR was sent to the head quarter for registering case on which FIR No. 97/1999 was registered and investigation commenced. During the course of investigation, the bottles were sent for examination to the FSL. After completion of investigation charge-sheet was filed in Special Judge, Sessions Court, Prevention of Corruption Act, Kota. Charge u/s 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act was framed against the accused on 21.3.2001 to which the accused denied and claimed trial. In support of its case, the prosecution examined as many as 9 witnesses. After close of prosecution evidence, in the statement recorded u/s 313 Cr.P.C., the accused stated that amount recovered from him was loan amount. No bribe was accepted by him. In the defence evidence, accused produced D.W. 1 Megh Raj and D.W. 2 Bhogi Ram. The learned trial Court after hearing final submissions made by both sides vide judgment and order dt. 11.01.2002 acquitted the accused. Hence the present leave to appeal has been filed.

3. I have heard the learned Public Prosecutor as well as the learned Counsel for the accused respondent and also carefully perused the material available on record.

4. In the present case, following points requires consideration,

- (1) Whether the accused demanded a sum of Rs. 3000/- as bribe from the complainant P.W.4 Vasudev for not arresting him in a criminal case?
- (2) Whether initially demand of bribe was of Rs. 3000/-, which was reduced to Rs. 2000/- and ultimately accepted by accused respondent Rs. 1500/-?
- (3) Whether criminal leave to appeal is liable to be allowed?

5. Points No. 1 and 2 are inter-related to each other, therefore, the same are being decided together. It has to be seen that in the instant case, it is not the disputed position of fact that accused was a public servant. Therefore, the accused being a public servant and on the date of incident was A.S.I. in the Police Station accepted the bribe or not is the point for consideration. In this connection as far as evidence, which has been led in this case is concerned, P.W. 5 Devendra Kumar and P.W. 6 Satish Chandra are two witnesses produced by prosecution as independent witnesses in the case. But the above witnesses have not supported the prosecution case and in fact have accepted the defence version. In the cross examination, the witnesses have admitted that at the time when accused was apprehended by the police, he stated that amount recovered was loan amount. The prime witness of the prosecution is P.W.4 Vasudev the

complainant. He in his statement before the Court stated that amount, which was recovered from the accused was loan amount. He has given details about the amount. The witness has been declared hostile. In the cross examination done by the learned Public Prosecutor, he has stated that he disclosed the fact to the Incharge of the raiding party when accused was apprehended by the police that amount, which was found with the accused was the loan amount. He has denied completely his statement given to the police u/s 161 Cr.P.C. He has also denied the contents of oral statement Ex.P 8, which was reduced in writing before laying the trap. He has also stated that the accused was in his distant relation. Along with above evidence, the oral report, which was lodged by the complainant P.W.4 Vasudev, on perusal of it reveals that a demand was made from him by the accused but then the complainant P.W.4 Vasudev has stated that signatures were obtained on Ex.P 8 by the Dy.S.P. under threat and exerting pressure on him. The defence of the accused has been that it was a loan amount.

6. Another aspect, which also requires consideration in the case is that alleged motive was that Puran Singh accused assured him not to arrest him in a criminal case. It appears that in the instant case, as per the allegations of the complainant P.W.4 Vasudev in Ex.P 8 that a First Information Report was lodged by him in the Police Station against Ramesh and others and in that connection, the complainant party of that case also lodged F.I.R. against him and Puran Singh accused was demanding bribe for not arresting him in the case lodged against him. In the evidence, it has come as stated by P.W.9 Ram Lal, who was at the relevant time, Incharge of Police Station Kotwali, Dholpur that in relation to two criminal cases, investigation was being done by the accused. One case was against the complainant i.e. Cr. Case No. 49/1999 and other case was 48/1999. Thus, it appears that accused was investigating a criminal case which was lodged against him. In the above circumstance, there does appear a motive in this case, but that becomes doubtful in view of the fact that the oral statement, which was reduced in writing vide Ex.P.8 has not supported by the complainant and further the statement given to the police Ex.P 16 has also not been supported. The defence evidence, which has been led supports the stand of the accused respondent. It appears from the recovery memo Ex.P 9 that at the time when accused was apprehended by the police, he disclosed his defence which finds place in Ex.P 9. In the above discussed position of evidence, it cannot be said that the defence theory was an after thought. It appears from initial stage, the defence of the accused was that the loan amount was accepted by him, which was recovered by the raiding party. It is correct that in such type of matters, presumption is raised against accused when money is recovered from accused in connection with the allegation of demand of bribe, but that presumption is rebuttable. The accused in this case has been able to discharge his burden on the basis of evidence led in the case and the defence evidence produced.

7. The learned trial Court has also considered the entire evidence of the case in detail. I find that trial Court has properly appreciated the evidence in this case.

Therefore, unless it is found that the evidence is either misread or findings of acquittal recorded are perverse in nature till then the weightage is required to be given to the views of the trial Court. It is also doubtful as to what was the final demand of bribe made by the accused in this case whether it was Rs. 3000/-, Rs. 2000/- or Rs. 1500/-. Be that as it may, the evidence brought on record is not sufficient to hold the accused guilty in this case for the alleged offence committed by him u/s 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act,

8. In view of foregoing discussion, the answer to points No. 1 and 2 is that the prosecution in this case has not been able to prove demand of bribe by the accused and the evidence led in the case by the prosecution is not sufficient to hold guilty the accused beyond doubt. The defence version of the accused appears probable and the findings recorded by the trial Court appears to be based on proper appreciation of evidence.

9. In view of answer to points No. 1 and 2, the judgment and order dt. 11.1.2002 passed by the learned trial Court is required to be upheld and leave to appeal is liable to be rejected.

10. In the result, the leave to appeal stands rejected.