
(1999) 12 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 78 of 1999

Vimal Kishore

APPELLANT

Vs

D.D. Gautam and Another

RESPONDENT

Date of Decision : 29-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 397, 401
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20(1), 27, 7

Citation : (2000) CriLJ 1864 : (2000) 2 ShimLC 6

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Kuldip Singh and Jyotika, for the Appellant; G.D. Verma Romesh Verma and K.D. Batish, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This Revision Petition under Sections 397, 401 of the Code of Criminal Procedure, 1973, read with Section 27 of the Prevention of Corruption Act, 1988, is directed against the judgment dated 6-12-1997 passed by the learned Special Judge, Solan whereby the accused-respondent No. 1 (hereinafter referred to as the accused) has been acquitted of the charge u/s 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Case of the prosecution, in brief, is that Vimal Kishore (PW-12) was a registered class-D Contractor with the Himachal Pradesh Public Works Department, Division Solan, since 1990. He was awarded work order 31-3-94 for Rs. 5000/- for supplying grit to HPPWD, Sub-Division, Kasauli pursuant to which he supplied 19 cubic meter grit and also supplied additional grit to the said Sub-Division. However, payments were not made to him. He met the accused who has then posted as Executive Engineer at Kasauli for releasing the payment but the accused demanded a sum of Rs. 1000/- as illegal gratification for clearing the payments. The demand for Rs. 1000/- was repeated by the accused when the complainant again met him on 25-5-1995. The complainant who did not want to

pay any illegal gratification lodged the F.I.R. Ex. PG against the accused. Thereafter PW-15 Jai Ram the then D.S.P. (Vigilance) at Solan who had recorded the FIR Ext. PG on 26-5-1995 constituted a raiding party consisting of Vimal Kishore (PW-12), Ram Kishore (PW-13), Sashi Bhushan, Lalit Sharma (PW-14) and S.I. Kashmiru Ram and Constable Tak Chand and Balbir Singh. The party so constituted went to Wireless Station at Kasauli. There PW-12 Vimal Kishore produced 10 currency notes of the denomination of Rs. 100/- each. The numbers of the currency notes were noted and thereafter said notes were treated with phenolphthalein powder and demonstration was given. After taking the personal search of PW Vimal Kishore the treated currency notes were inserted in his pocket, and he was directed to handover the currency notes to the accused on his demand for passing his outstanding bills and not to shake hand with the accused. PW-13 Ram Kishore was sent as a Shadow witness to listen the conversation between Vimal Kishore and the accused and to signal the raiding party after the receipt of gratification by the accused by placing his right hand on his head. The decoy witness Vimal Kishore and shadow witness Ram Kishore proceeded, to the office room of the accused at 3 p.m. and the remaining members of the raiding party positioned themselves in separate places outside the office of the accused. On receipt of signal from the shadow witness at 5.15 p.m., PW-15 Jai Ram along with other members of the raiding party rushed to the office room of the accused. The accused was apprehended from his arms. PW-15 Jai Ram disclosed his identity as D.S.P. Thereafter, hands of the accused were got washed in the solution of sodium carbonate, the hand wash turned light pink. The solution was sealed in a nip. Currency notes worth Rs. 1000/- were recovered from the pocket of the shirt of the accused. The shirt of the accused was also washed with the solution of sodium carbonate and the wash turned light pink. This wash was also preserved in a bottle and was sealed. The numbers of the currency notes as recovered from the pocket of the shirt of the accused tallied with the numbers of the currency notes as mentioned in the memo prepared earlier. The hand wash and the pocket wash aforesaid were sent to State Forensic Science Laboratory, Shimla. As per the report Ex. PD received from the State Forensic Science Laboratory the shirt wash and hand wash were found to contain phenolphthalein and sodium carbonate. During the course of investigation it was further found that the grit supplied by the complainant (PW-12) was measured by Junior Engineer Ashok Kumar on 7-11-1994. A bill dated 24-12-1994 for Rs. 4,968/- was thereafter prepared against work order No. 31/93-94. Vide bill dated 30-1-1995 the complainant was found to have supplied grit worth Rs. 9823/-. It was also found that the predecessor-in-office of the accused had awarded another order dated 21-5-1994 to the accused for supply of grit worth Rs. 1,20,938/- out of which grit worth Rs. 12,504/- was supplied by the complainant vide bill dated 24-11-1994. All the aforesaid three bills were presented to the accused for releasing the payment but he did not pass the bills with the intention to secure gratification of Rs. 1000/- from the complainant.

3. On completion of the investigation and on being satisfied of the commission of offence the Deputy Superintendent of Police, Anti-corruption Zone, Solan, submitted a charge-sheet against the accused under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.
4. The accused then came to be tried by the learned Special Judge, Solan on a charge u/s 13(1)(d) of the Prevention of Corruption Act, 1988.
5. To prove the charge against the accused prosecution examined as many as 15 witnesses.
6. The accused in his statement u/s 313, Cr.P.C. denied the incriminating evidence as led by the prosecution and claimed that some works were awarded to the complainant during 1994 but the execution thereof was not started by him till March, 1995. Therefore, final notices were given to him for 9 works on 25-3-1995 but nothing was done. The complainant and his father Ram Lal, D.A. (Vigilance) used to pressurise the accused and his staff for wrong measurements. The Awards for works made in favour of the complainant were therefore rescinded on 19-5-1995 and 23-5-1995 and he was further debarred from taking any tender on 24-5-1995. Even on 25-5-1995 tenders were invited when Vimal Kishore complainant and his father Ram Lal came to the office of the accused at 10.30 a.m. and asked for issue of tender form. However, the same were refused and they were informed that the complainant has been debarred. On 26-5-1995 the complainant and his father again apprehended the accused and repeated their requests for tender form which was declined. In turn complainant and his father Ram Lal threatened the accused and his staff with dire consequences and as a consequence conspired a false trap against the accused on the basis of influence of Ram Lal. The accused thus claimed to be innocent.
7. The accused led defence and examined D.W. 1 Bhagwan Dass, D.W. 2 Narayan Singh and D.W. 3 Dayal Singh.
8. Finally the case ended in acquittal of the accused. The State admittedly did not prefer any appeal against the acquittal. Hence, the present revision petition by the Complainant Vimal Kishore.
9. I have heard the learned counsel for the parties and have also gone through the records.
10. The learned trial Judge acquitted the accused on the ground that the prosecution story was doubtful and the charge against the accused was not proved beyond doubt.
11. Be it stated at the very outset that revisional powers of this Court are discretionary and are normally to be exercised only in exceptional cases when there is any glaring defect in the procedure or a manifest error on point of law leading to grave miscarriage of justice. The powers of revision are to be exercised only for correcting the injustice and not mere irregularity which does

not go to the root of the case. Merely because a view other than the one taken by the Court below is possible, the findings recorded by such Court are not to be interfered with. (See Criminal Revision No. 10 of 1998 decided by this Court on 15-9-1999). It is in view of the above well settled law that the matter in hand calls for examination.

12. One of the aspects of this case as admitted by the petitioner in his statement is that in the year 1995 his father Ram Lal was Public Prosecutor Enforcement and in May, 1995 was holding the office of the Deputy Director, Prosecution. The case against the accused was registered and investigated by Anti-Corruption Unit, Solan. It is ease of the accused that he had rescinded some work orders of the petitioner on 19-5-1995 and 22-5-1995, therefore, the petitioner along with his father came to his office twice and asked for issue of tender form which was refused on the ground that petitioner was debarred and on this the petitioner and his father threatened him and his staff with dire consequences and as a result a false case had been engineered against him with the influence of said Ram Lal, Public Prosecutor.

13. There are circumstances which make the above defence of the accused most probable. Firstly the case against the accused is that to clear payments against three bills raised by the petitioner, the accused demanded payment of Rs. 1,000/- from the petitioner. According to the petitioner, those three bills are Exs. PB/2, PB/3 and Ex. PB/4 respectively for Rs. 4,968/-, Rs. 12,504/and Rs. 9,823/-. The petitioner (P.W. 12), however, has not stated as to when these were prepared and submitted. However, he has stated that the accused demanded Rs. 1,000/- for passing these bills in the month of December, 1994. Therefore, his version about the accused demanding illegal gratification for passing these bills can be acceptable only if it is proved that these bills had been prepared and submitted prior to the demand made by the accused in December, 1994.

14. The prosecution examined P.W. 3, Ranjeet Singh, a senior clerk in the office of the accused at the relevant time to prove as to when the bills in question were prepared and how these were dealt with after such preparation. P.W. 3 has clearly and unambiguously stated in his examination-in-chief that he had processed the bills Ex. PB/2, PB/3 and PB/4, which were prepared by him on 31-3-1995 and then handed over to the peon for being placed before the divisional accountant. This statement of the witness is not challenged by the prosecution by cross-examination him or in any other manner. Thus, there was no occasion for the accused to demand Rs. 1,000/- as illegal gratification for passing these bills in December, 1994 when these are not in existence.

15. The second circumstance which creates great doubt about the prosecution version is the admission of the petitioner (P.W. 12) in his cross-examination that on March 28, 1995 he received a sum of Rs. 13,065/- from the accused. But it is not his case that at that time he repeated the outstanding demand for payment of Rs. 1,000/- initially raised in December, 1994. Had there been any truth in the allegations that accused had demanded Rs. 1000/- from the petitioner in

December, 1994 for passing the bills in question, he could repeat such a demand on 28-3-1995 while making payment of Rs. 13,065/- to the petitioner. The circumstance, therefore, creates grave doubts about the prosecution versions.

16. Thirdly it is admitted by the petitioner in his statement that the accused had rescinded his nine contracts. These contracts were closed (rescinded) and deposited earnest money in cash case was forfeited vide Exs. DA-1, DA-3, D-5, D-7, D-9, D-11, D-13, D-16 and D-18 respectively dated 22-5-1995, 22-5-1995, 19-5-1995, 19-5-1995, 19-5-1995, 19-5-1995, 22-5-1995, 22-5-1995 and 19-5-1995. It was contended for the petitioner that those orders could be and appears to have been manipulated by the accused at a latter stage to create defence in his own favour. The contention is not sustainable for the reason that such orders could not have come into being without notice to the petitioner. The processing of and issue of such notices, expiry of period of notices and then processing the matters take time and pass through various hands and entries/ notings have to be made in despatch register and the files. The petitioner though has stated that on 26-5-1995 he had no knowledge of the closure of his contracts, yet it is not his case that his contracts were rescinded without notice. On the contrary it clearly emerges from the records that before closing (rescinding) the contracts and forfeiting the earnest money in each case, notices Exs. DA, DA-2, DA-4, D-6, D-8, D-10, D-12, D-15 and D-17 all dated 25-3-1995 were issued to the petitioner to the effect that he had failed to start the work under the contract, therefore, he should start the work immediately and in case the intimation about starting of the work was not received within 7 days, action to terminate the contracts was to be taken. Thus, the process to rescind the contracts had started two months before and orders rescinding the same and forfeiting the earnest money though came into being in some cases on 19-5-1995 and in the remaining on 25-5-1995 and coming into being of these orders does not seem to be a case of manipulation.

17. The next circumstance which lends support to the defence set up by the accused is that said Ram Lal appears to have taken interest in the case. P.W. 13 Ram Kishore, who admits that petitioner is his good friend, has stated that on the date of recording of statement, he was accompanied by said Ram Lal. P.W. 15 Jai Ram the Investigating Officer, has also stated that on each date when he came to the Court said Ram Lal met him. These acts on his part cannot be without any purpose nor can be said to be coincidences.

18. The next circumstance in this regard is the recording of the F.I.R. Ex. PG is mysterious circumstances, Ex. PG on the face of it is shown to have been recorded on 26-5-1995 at 12.15 p.m. It means that P.W. 15 Jai Ram who recorded the F.I.R. Ex. PG came to know about the version of the petitioner (P.W. 12) at 12.15 p.m. on 26-5-1995. However, for the purpose of securing responsible witnesses he had written applications to the Deputy Commissioner, Solan, a copy whereof is Ex. DW-1/A requesting therein to depute some official of the rank of Tehsildar or some other officer to be present in his office at 10.00

a.m. on 26-5-1995 (referred to as "today"). This application does not contain any date. The officer making hand written noting on the applications though has given the date under his signature, but it is not possible to read this date with certainty though this date may be 26/5. Even if so, the Deputy Superintendent could not have requested for providing of some witness at 10.00 a.m. whereas the F.I.R. was recorded at 12.15 p.m. Before recording of the F.I.R. such a request could be made by him only if he had been duly instructed before 10.00 a.m. on 26-5-1995 that a case is going to be registered on that day at 12.15 p.m. and he should be ready with witnesses to start investigation. Another version in this regard which is available in the statement of the petitioner (P.W. 12) is that he had reported the matter to the Deputy Superintendent of Police (Vigilance), Solan on 25-5-1995, who reduced the same in writing which is Ex. PG. Thus, according to the petitioner F.I.R. Ex. PG had been recorded on 22-5-1995. However, from the contents of the F.I.R. Ex. PG which repeats the date of recording it in different context five times it cannot be said that it was recorded on 25-5-1995. The informant/petitioner appears to have received a copy of this F.I.R. on 26-5-1999. Probably he must have read it. Therefore, if it was recorded on 25-5-1995, copy would have been received by him on 25-5-1995 at the time of alleged recording of it or he would have pointed out that the dates in the F.I.R. were wrongly given. Prosecution is not able to clarify this confusion. What can be thus inferred from the combined reading of the contents of the F.I.R. Ex. PG and application Ex. DW-1/A is that the Investigating Officer had decided about the raid before recording of the F.I.R. and he could do so only after deliberating the matter with the interested persons. The investigation in this case, therefore, cannot be said to be fair and above board.

19. The only statement to prove the alleged demand by the accused is that of the petitioner (P.W. 12). In view of the circumstances as discussed heretofore, his statement is utterly unreliable. Thus, there is no reliable evidence to prove the alleged demand for illegal gratifications by the accused.

20. It was contended by the learned counsel for the petitioner that the prosecution need not prove the fact of "demand" of illegal gratification by independent witness, because the acceptance of illegal gratifications by the accused implies a "demand" on the part of the accused and enables the prosecution to seek his conviction on the ground that he had obtained/accepted illegal gratification.

21. It was further contended by the learned counsel that in view of the evidence led by the prosecution it is established on the record that the accused had accepted money which was not his legal remuneration, therefore, not only the "demand" is implicit in such acceptance but u/s 20(1) of the Prevention of Corruptions Act, 1988 it shall be presumed that the accused accepted the illegal gratification as a motive or reward rendering him liable to be convicted.

22. The propositions of law as propounded by the learned counsel for the petitioner and supported by a good member of authorities, which need not be

cited here, are correct. It is true that conscious acceptance of illegal gratification by the accused will imply the demand for illegal gratification. Similarly, once the acceptance of money other than his legal remuneration by the accused is proved, it shall be presumed within the scope of Section 20(1) of the Act that the accused accepted that gratifications as a "motive" or "reward." However, what is essential to draw such inference and the presumption is that prosecution has to prove that the accused has received a gratification other than the legal remuneration. Thus, before the prosecution can ask for drawing such inference or to presume as such the prosecution has to prove that the accused received the illegal gratification. In the case in hand the prosecution has failed to prove that the accused received the gratification, as alleged.

23. The evidence on record to prove the process of the raid and alleged recovery of "treated" currency notes worth Rs. 1,000/- from the pocket of the shirt of the accused is also not cogent, consistent and confidence inspiring more so in view of the circumstances already discussed above.

24. P.W. 13 Ram Kishore is the shadow witness of the raid organised by the Investigating Officer (P.W. 15). He has stated that the petitioner (P.W. 12), the decoy witness entered the office room of the accused, the door was closed and this witness remained outside. After some time P.W. 12 came out and informed him that the work had been done. Thereafter he signalled the other members of the raiding party. What happened thereafter is not known to him. He was declared hostile and cross-examined at length. Neither he has stated in his examination-in-chief nor it has been put to him in his cross-examination by the prosecution that the currency notes were recovered from the pocket of the shirt of the accused. P.W. 14 Lalit Sharma, the independent witness provided by the Deputy Commissioner, has stated that the money was taken out of the pocket by the accused himself and was left on the table and clearly stated that money was not taken out of the pocket of the accused by the Deputy Superintendent (P.W. 15). P.W. 12 has stated that after the accused had been over powered by the Deputy Superintendent (P.W. 15) and Kashmiru Ram, money was taken out of his pocket. He has, however, not stated as to who took out the money but it is clear from his statement that it was not taken out by the accused as stated by P.W. 14 Lalit Sharma. P.W. 15 Jai Ram, the Investigating Officer has stated that he recovered the currency notes and thereby has contradicted P.W. 14 Lalit Sharma. These material contradictions render the prosecution version highly suspicious. It was further contended by the learned counsel for the petitioner that by the impugned judgment the amount of Rs. 1,000/- recovered from the possession of the accused was ordered to be returned to the complainant which clearly shows that the Special Judge treated it to be the property of the complainant and not of the accused, therefore, this aspect also lends credibility to the version of the prosecution. Evidently the circumstance in no way proves that this amount was received by the accused as illegal gratification and was recovered from him.

25. The above discussion leads me to the conclusion that neither "demand" for

nor "acceptance" of illegal gratification by the accused, as alleged by the prosecution, is proved, and thus the charge against the accused is not proved.

26. After taking into account the facts and circumstances of the case the learned Special Judge has thus rightly concluded that the prosecution has failed to prove the case against the accused. The impugned order of acquittal, therefore, does not call for any interference.

27. As a result the revision petition merits dismissal and is accordingly dismissed.