**(2014) 11 P&H CK 0010**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Appeal Nos. 1888-SB and 1916-SB of 2006

Vinod Kumar and Others APPELLANT

Vs

State of Haryana RESPONDENT

**Date of Decision :** 05-11-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173 313
Penal Code, 1860 (IPC) — Section 120-B
Prevention of Corruption Act, 1988 — Section 13 13(1)(d) 13(2) 20 7

**Citation :** (2015) 2 Crimes 567

**Hon'ble Judges :** Ashutosh Mohunta, Acting C.J

**Bench :** Single Bench

**Advocate :** N.P.S. Kohli, Advocate for the Appellant; Shalini Attri, Deputy Advocate General, Advocate for the Respondent;

**Final Decision :** Allowed

# Judgement

Ashutosh Mohunta, Actg. C.J.

1. The present judgment will dispose of two criminal appeals bearing CRA No. 1888-SB of 2006 titled as Vinod Kumar Versus State of Haryana and CRA No. 1916-SB of 2006 titled as Hoshiar Singh Versus State of Haryana arising out of common judgment and order dated 12/09/2006 passed by special Judge, Ambala vide which the appellant-Vinod Kumar [CRA No. 1888-SB of 2006] has been convicted for the offence punishable under section 7 of the Prevention of Corruption Act, 1988 (for short ''the Act'') and has been sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1000/- and in default of payment of fine, to further undergo imprisonment for one month. He has also been convicted under section 13(2) of the act and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs. 2000/- and in default of payment of the same, to further undergo imprisonment for 2 months. Appellant-Hoshiar Singh [CRA No. 1916-SB of 2006] has been convicted for the offence punishable under section 8 of the Prevention of Corruption Act,

1988 and has been sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs. 1000/- and in default of payment of fine, to further undergo imprisonment for one month. All the sentences have been ordered to run concurrently. Brief facts of the present case when unfolded by complainant Ram Kumar are that, on 15/06/2001, electricity connection installed in his shop, namely, M/s. Pooja Frames, near railway Phatak, Jandli was disconnected due to non-payment of dues. He deposited the dues on 29/05/2001, 05/06/2001 and 12/06/2001 but despite the same, electricity supply was not restored. Accordingly, he contacted appellant Vinod Kumar UDC and JL Sharma, JE who demanded a sum of Rs. 1500/- as bribe for restoration of the electricity supply of which Rs. 1000/- was for the JE and Rs. 500/- was for him. Accordingly, a written complaint (Ex. P-52) was made by the complainant to Superintendent of police, vigilance bureau, Ambala City whereupon the vigilance officer (Investigating Officer) prepared a list of currency notes (Ex. PE) and after applying phenolphthalein powder on the currency notes and getting the same initialled by Inder Singh (PW 6) and Inspector Ramphal Singh, SVB Ambala (PW 11) were handed over to the complainant for being handed over to accused Vinod Kumar UDC and JL Sharma, JE. Shadow witness Joginder Singh (PW 10) was instructed to give signal after acceptance of the bribe and FIR No. 19 dated 15/03/2003 under Sections 7/13 of the Prevention of Corruption Act, 1988 and under Section 120-B IPC was registered at Police Station, State Vigilance Bureau, Ambala.

2. On raid being conducted by the police officials upon signal by PW 10, 8 currency notes of Rs. 100/- were recovered from the left pocket of the pant of Hoshiar Singh while 7 currency notes of Rs. 100/- were recovered vide recovery memo from pocket of the complainant Ram Kumar. On the said recovery of tainted money, Vinod Kumar UDC was arrested at the spot alongwith Hoshiar Singh while JL Sharma, JE escaped from the spot. On completion of the formalities and after recording the statement of the witnesses, final report under Section 173 Cr.P.C. dated 22/10/2001 was prepared against all the aforesaid accused and was presented before the competent Court whereupon the appellants were charge sheeted for the offence punishable under Section 7, 13(1)(d) of the Prevention of Corruption Act, 1988 while JL Sharma, JE was discharged by the learned Special Judge, Ambala vide order dated 19/02/2003 for want of sanction for prosecution.

3. In support of its case, prosecution examined DSP Om Parkash as PW 1, TL Gupta, PA to Chief Engineer Operations UHBVN, Panchkula as PW 2, Prem Kumar Draftsman as PW 3, Constable Ajit Singh as PW 4, HC Moses John as PW 5, Inder Singh Rajan, Tehsildar, Nelokheri as PW 6, Inspector Ram Saran as PW 7, Kartar Singh UDC as PW 8, Complainant Ram Kumar as PW 9, Joginder Singh-Shadow Witness as PW 10, DSP Ramphal Singh-Investigating Officer as PW 11 and thereafter closed the evidence.

4. In defence, statements of the accused under section 313 Cr.P.C. were recorded

 

wherein they denied all the allegations against them and stated that they have been falsely implicated in the case and accordingly claimed trial. However, no evidence to substantiate the said claim was led in defence by them.

5. Opening their arguments, learned counsel for the appellant-Hoshiar Singh has argued that the complainant himself has admitted in a statement that Hoshiar Singh was not an employee of the Electricity Department and that he did not know Hoshiar Singh prior to 15/06/2001 nor had talked with him regarding any matter. He further stated that accused Hoshiar Singh never demanded any amount from him on 15/06/2001 or even thereafter. Hoshiar Singh even did not know for what purpose, this amount had been given and therefore the basic ingredients of demand and acceptance having not been proved by the prosecution against accused Hoshiar Singh, he deserves to be acquitted in the present case. He further argued that it has come in the statement of the complainant, that reconnection of his electricity connection was ordered by SDO (OP) UHBVNL, model town, Ambala city on 15/06/2001 and thereafter the file was marked to do the needful to JL Sharma, JE and thus there was no question of demanding the amount as alleged for the said purpose which had already been done. He also argued that Joginder Singh-Shadow Witness (PW 10) stated that the complainant had told him that the money was to be paid to JL Sharma, JE for electricity reconnection but he did not know about anyone making any such demand in his presence. It was further argued by him, that Ramphal Singh DSP (PW 11) stated that JL Sharma, JE had the power to order connection or disconnection of the electricity and that is why no complaint was made to him against Hoshiar Singh by the complainant. Lastly, it has been argued by him, that appellant-Hoshiar Singh had no knowledge about the money being handed Over to him by the complainant on asking of JL Sharma, JE, as bribe money and hence by concluding his arguments, prayed for acquittal of the appellant-Hoshiar Singh.

6. Counsel for appellant-Vinod Kumar has argued that J.L. Sharma, JE who was in-charge for reconnection of the electricity connection of the complainant and on whose asking the alleged bribe money was paid by the complainant to Hoshiar Singh, had neither been arrested nor chargesheeted in the absence of sanction for prosecution, in the present case. Further it has been argued that the appellant has not been named either by the Investigating Officer, Tehsildar (PW 6) or by the shadow witness (PW 10) as having demanded or accepted any bribe money from the complainant. Lastly, it has been argued by him, that the appellant has solely been booked in the present case being an employee of the Electricity Department and thus accordingly prayed for his acquittal.

7. Per contra, it has been argued by the learned State Counsel that the appellants have rightly been convicted by the learned trial Court as the complainant alongwith the shadow witness has supported the case of the prosecution and tainted money having been recovered from the possession of the appellants, presumption under Section 20 of the Act, stands discharged. It

has further been argued, that recovery of the tainted amount has duly been corroborated and substantiated by the Forensic Science Laboratory report (Ex. PR) and since no motive has been attributed by the appellants to implicate them in the present case against the complainant, they have rightly been convicted and sentenced by the learned trial Court.

8. I have heard the learned counsel for the parties and with their assistance, perused the record of the cases.

9. The facts of the case are undisputed and culled out hereinabove and thus does not need any repetition for the sake of brevity. The star witness in the present case is the complainant-Ram Kumar (PW 9), who in his complaint (Ex. P-52) stated that demand was made by JL Sharma, JE and Vinod Kumar UDC. However, in his statement recorded in the Court, he stated that Rs. 1500/- was demanded as bribe by Vinod Kumar-appellant in CRA No. 1888-SB of 2006, out of which Rs. 1000/- was for JL Sharma, JE and Rs. 500/- was for himself, but according to PW 10-Joginder Singh (shadow witness), demand was made by JL Sharma, JE. From the said testimony, it becomes apparent that the complainant is in a fix as to who had demanded the money from him and to whom the same was to be paid. Once the essential and basic ingredient of demand is not proved and substantiated on record, the entire prosecution case fails and accused deserves acquittal as has been held by the Hon''ble Supreme Court of India in case of B. Jayaraj Versus State of AP 2014 (2) (Criminal) 410.

10. Even the acceptance in the present case is not proved on record inasmuch as per PW 9-com-plainant, money was accepted by Hoshiar Singh on directions of Vinod Kumar UDC but according to PW 10-shadow witness and PW 11-Investigating Officer, money was accepted by Hoshiar Singh on directions of JL Sharma, JE but in the cross examination of the complainant, he could not help but state the truth to the effect that "Hoshiar Singh is not an employee of the Electricity Department. I did not know Hoshiar prior to 15/06/2001. It is correct that prior to 15/06/2001, I never talked to Hoshiar regarding any matter. Accused Hoshiar never demanded any amount from me on 15/06/2001 or even thereafter. He did not know for what purpose, the amount had been given." From the said testimony of the complainant, it is apparent that neither Hoshiar Singh had ever demanded any such alleged amount from him nor he had any knowledge as to for what purpose, the said amount was being handed over to him as he was not an employee of the Electricity Board.

11. Further, interestingly according to the testimony of complainant (PW 9), the alleged tainted recovery of Rs. 800/- has been effected from the pocket of the pant of Hoshiar Singh and the remaining amount of Rs. 700/- has been recovered from the pocket of the complainant and thus in view of the said material discrepancy in demand and acceptance, the alleged recovery fails and falls flat on the ground.

12. It has also come in the testimony of the complainant that his electricity

 

reconnection was ordered on 15/06/2001 by SDO (OP) UHBVN, Model Town, Ambala City and the file was made over to the JE, JL Sharma. Thus from the said admitted fact it is proved on record that the alleged amount which the complainant was being forced to pay for the work, had already been done and therefore there was no justification for him to pay the said amount either to the appellants or to JL Sharma, JE. This Court in the case of Amrik Singh Vs. State of Punjab, held that where the mutation of the land had already been sanctioned 4 months back and the complainant had no requirement of a copy of the same, the recovery of bribe money from the accused pales into insignificance as there was no motive or reward for doing or forbearing to any official act as the very purpose to demand such a bribe, had already been achieved.

13. Joginder Singh-Shadow Witness (PW 10), while deposing in Court stated that "he did not know about anyone making any demand in his presence, only that complainant Ram Kumar had told that money was to be paid to JL Sharma, JE for electricity reconnection". In his cross examination he admitted that "Ram Kumar had named only JL Sharma, JE as the person to whom money was to be paid and further that Ram Kumar on entering the electricity board had a talk with JL Sharma, JE who asked him to hand over money to Hoshiar Singh. He further admitted that Hoshiar Singh had told the police that he did not know money being paid was bribe and had received money only on the JE asking him to receive the money which was his personal money". Thus from the said deposition it becomes clear that the alleged money was to be paid by the complainant to JL Sharma, JE for electricity reconnection as he was the person incharge and authorised to do so and that appellant Hoshiar Singh had only accepted the alleged amount on asking of the JE. It is not the case of the prosecution that the appellant was a habitual go-between in facilitating the act and thus the same per-se does not constitute any offence under the Act as held by the Hon''ble Supreme Court of India in the case of Virendranath Vs. State of Maharashtra, .

14. According to PW 11, DSP Ramphal Singh, no complaint was made to him against Hoshiar Singh by the complainant. He in his cross examination stated that Hoshiar Singh accepted the amount on the directions of JL Sharma, JE. It has come in the testimony of the complainant that neither Hoshiar Singh demanded any such amount nor knew the reason for which the said amount was being given to him by the complainant. In the absence of any demand and the reason for accepting the same at the instance of another person does not prove his guilt beyond a shadow of reasonable doubt so as to warrant conviction under Section 8 of the Act.

15. As far as appellant Vinod Kumar is concerned, he being a clerk in the electricity Department has been implicated in the present case. He has neither been named by the Investigating Officer (PW 11), Tehsildar (PW 6) nor by the Shadow Witness (PW 10) and even no role qua demand and acceptance of the alleged bribe money from the complainant has been attributed to him by them. He was not even competent to order reconnection of the electricity connection of

 

the complainant and thus in my considered opinion the prosecution having miserably failed to prove its case against Vinod Kumar beyond a shadow of reasonable doubt, deserves to be acquitted in the present case.

16. The main kingpin behind entire occurrence i.e. JL Sharma, JE, who was the officer incharge and authorised for reconnection of the electricity connection of the complainant has neither been arrested nor chargesheeted in the present case for want of sanction, by the prosecution. It has come in evidence of PW 11 (DSP Ramphal Singh-Investigating Officer) that after asking Hoshiar Singh to accept money from the complainant, he by handing over slip to the police, ran away from the office. Thus, even if the offence in question is to be brought-within the four corners and ambit of the provisions of the Prevention of Corruption Act, 1988, the same would at the best be attracted against JL Sharma, JE but unfortunately he has been discharged from the case for want of sanction to prosecute by the prosecution. In view of the foregoing discussion, both the appeals are allowed, the impugned judgment and order dated 12/09/2006 passed by special Judge, Ambala is hereby set-aside and the appellants are acquitted of the charges framed against them. Both the appellants are on bail and accordingly their bail bonds stands discharged.

 