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STATE OF PUNJAB

v.

MADAN MOHAN LAL VERMA
(Criminal Appeal No. 2052 of 2010)

B

AUGUST 12, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

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ss. 7 and 13(1)(d) read with s.13(2) - Conviction by trial court, set aside by High Court - Held: Demand of illegal gratification is sine qua non for constituting an offence under the Act - Mere recovery of tainted money is not sufficient to convict the accused, unless there is evidence to prove payment of bribe or that the money was taken voluntarily as a bribe - High Court accepted the defence version made u/s 313Cr.PC that possibility of Phenolphthalein powder appearing on the hands of-accused when he shook hands with the complainant, cannot be ruled out -Executive Magistrate, who had been associated with the trap party, deposed only about recovery and not about accepting the bribe money -- This statement alone made it evident that the prosecution has not disclosed the genesis of the case correctly - There is, therefore, no cogent reason to interfere with the conclusion reached by High Court - Appeal against acquittal.

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s. 20 - Statutory presumption - Rebuttal of - Discussed.

EVIDENCE:

Evidence of complainant in a bribe case - Nature of - Discussed.

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The respondent was alleged to have demanded illegal gratification from the complainant for not to reopen his income tax assessment. The complainant approached the DSP (Vigilance). A trap was laid. The complainant and

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the shadow witness reached the house of the respondent with chemically treated currency notes. On receiving the signal, the raiding party, which included a DSP and an Executive Magistrate, recovered the chemically treated currency notes that were kept on a table covered in a newspaper. The chemical examination of the respondent's hands was positive. The trial court convicted the respondent of the charges and awarded him sentence of one year each under the two counts. However, the High Court set aside the conviction and sentence.

Dismissing the appeal, the Court

HELD: 1.1 Demand of illegal gratification is sine qua non for constituting an offence under the Prevention of Corruption Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. While invoking the provision of statutory presumption u/s 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness, concerned with the success of the trap, and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused. [para 7] [1136-D-E, G-H; 1137-A-B]

Ram Prakash Arora v. The State of Punjab AIR 1973 SC 498; *T. Subramanian v. The State of T.N.*, 2006 (1) SCR 180 = AIR 2006 SC 836; *State of Kerala & Anr. v. C.P. Rao* 2011

A (6) SCR 864 = (2011) 6 SCC 450; and *Mukut Bihari & Anr. v. State of Rajasthan*, (2012) 11 SCC 642 - referred to.

B 1.2 So far as the recovery in the instant case is concerned, the High Court accepted the defence version made u/s 313 of Code of Criminal Procedure, 1973 and recorded the finding that the possibility of Phenolphthalein powder appearing on the hands of the respondent-accused when he shook hands with the complainant cannot be ruled out. [para 8-9] [1137-C, F]

C 1.4 The courts below have not taken note of the statement made by PW.2 who is an Executive Magistrate and had been associated with the trap party. He must be treated to be the most reliable and independent person. PW.2 is a witness only of recovery and not of accepting the bribe money. This statement alone made it evident that the prosecution has not disclosed the genesis of the case correctly. The subsequent cases against the accused for having disproportionate assets cannot be co-related with the incident of trap case. The incident in which the respondent had been arrested for taking illegal gratification has to be examined on its own merit. [para 10] [1138-B-D, F-G]

F 2.The appellate court, in exceptional circumstances and for compelling reasons, should not hesitate to reverse a judgment of acquittal. However, while doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence. In the facts and circumstances of the case, there is no cogent reason to interfere with the conclusion reached by the High Court. [para 6 and 11] [1135-H; 1136-A-C; 1138-G-H]

H *Abrar v. State of U.P.*, 2010 (13) SCR 1217 = AIR 2011 SC 354; *Rukia Begum v. State of Karnataka*, AIR 2011 SC 1585; and *State of Madhya Pradesh v. Dal Singh & Ors.*, AIR 2013 SC 2059 - relied on.

Case Law Reference:

2010 (13) SCR 1217	relied on	para 6	A
AIR 2013 SC 2059	relied on	para 6	
AIR 1973 SC 498	referred to	Para 7	
2006 (1) SCR 180	referred to	Para 7	B
2011 (6) SCR 864	referred to	Para 7	
(2012) 11 SCC 642	referred to	Para 7	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2052 of 2010.

From the Judgment and Order dated 03.03.2009 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 414-SB of 1996.

Ashok Kumar Panda, Lingaraj Sarangi, Rajiv Nanda, Syed Tanweer Ahmad, B.V. Balram Das, Arvind Kumar Sharma for the Appellant.

Madan Mohan Lal Verma, Respondent-In-Person.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 3.3.2009 in Criminal Appeal No. 414-SB/1996 passed by the High Court of Punjab and Haryana at Chandigarh, setting aside the judgment and order of the Trial Court dated 28.5.1996 by which the respondent stood convicted under the provisions of Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988') and had been awarded the sentence of one year on each count and a fine of Rs.2,500/- was imposed, in default of payment of fine, to further undergo RI for one month.

2. Facts and circumstances giving rise to this appeal are that:

A. The complainant - Naresh Kumar Kapoor was contacted by the respondent - the Income Tax Inspector who threatened him with reopening the assessment order, particularly in respect of the house owned and possessed by his wife Smt. Neeru Kapoor bearing No. 456, Model Town,

A Jalandhar and for purchasing the car which had not been disclosed by the complainant in his income tax return. The complainant and the respondent-accused had been in touch with each other and the respondent demanded a sum of Rs.25,000/- as illegal gratification for not reopening the said assessment.

B On 1.6.1994, the complainant - Naresh Kumar Kapoor (PW.7) alongwith Raj Kumar Sharma (PW.3) went to the house of respondent-accused i.e. 638, Mota Singh Nagar, Jalandhar to negotiate for not reopening the assessment. The respondent-accused asked for a sum of Rs.25,000/- as illegal gratification and the complainant expressed his inability. On this, respondent agreed to accept a sum of Rs.10,000/- as part payment of the illegal gratification to be paid on the same day, and a further sum of Rs.15,000/- on the next day. The complainant made a false promise of paying a sum of Rs. 10,000/- on the same day i.e. 1.6.1994. The complainant approached Harish Kumar (PW.12), DSP (Vigilance), Jalandhar and they prepared to lay a trap.

C The complainant arranged the money i.e. 20 notes in the denomination of Rs.500/- each. Phenolphthalein powder was applied on the notes and the same were given to the complainant. The number of those notes were noted separately on a piece of paper. The complainant and the shadow witness Raj Kumar Sharma (PW.3) washed their hands and approached the respondent-accused at his house. The complainant gave the money to the respondent-accused. He put it on the table and covered it with a newspaper. The shadow witness Raj Kumar (PW.3) gave the appointed signal to Harish Kumar Sharma (PW.12) DCP, Gurlebleen Singh (PW.2), the Executive Magistrate and other members of the raiding party and the money was recovered. Hands of the respondent-accused were washed in the sodium carbonate solution, which turned pink. In view thereof, the criminal prosecution started.

D After investigation, a charge sheet was filed against the respondent-accused. The prosecution examined 12 witnesses in support of its case and the defence also examined 9

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witnesses. On conclusion of the trial, the respondent was convicted and sentenced as referred to hereinabove.

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E. Aggrieved, the respondent preferred the criminal appeal before the High Court which has been allowed vide impugned judgment and order dated 3.3.2009.

Hence, this appeal.

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3. Shri Ashok Kumar Panda, learned senior counsel appearing for the appellant, has submitted that it was a fool-proof case. The Trial Court gave cogent reasons and there was no justification for the High Court to discard the case of the prosecution. All the witnesses including Gurlebleen Singh (PW.2), the Executive Magistrate, have fully supported the prosecution's case. The Trial Court found that there had been a demand of illegal gratification and the amount received by the respondent was duly recovered by the raiding party. Thus, all the ingredients to constitute the offences for which the respondent had been prosecuted had been fulfilled. Therefore, the appeal deserves to be allowed.

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4. Per contra, respondent-in-person has submitted that the complainant himself was an industrialist who evaded tax. The complainant was also running an NGO and was the chairman of an Anti-Corruption Society. The other office bearers of the said society had also raised a large number of complaints against the son of the respondent-accused. The complainant had been threatening him and even attacked him and caused injuries on 14.10.1994 in respect of which there had been complaints against him. The respondent had also filed a large number of cases in criminal courts which were settled by the officers of the CBI out of the court and in view thereof the cases were withdrawn. The parameters of interference against the order of acquittal as laid down by this Court have to be applied. Therefore, the appeal is liable to be rejected.

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5. We have considered the rival submissions made by learned counsel for the appellant as well as the respondent in-person.

6. It is a settled legal proposition that in exceptional

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A circumstances, the appellate court for compelling reasons
should not hesitate to reverse a judgment of acquittal passed
by the court below, if the findings so recorded by the court
below are found to be perverse, i.e. if the conclusions arrived
at by the court below are contrary to the evidence on record;
B or if the court's entire approach with respect to dealing with the
evidence is found to be patently illegal, leading to the
miscarriage of justice; or if its judgment is unreasonable and
is based on an erroneous understanding of the law and of the
facts of the case. While doing so, the appellate court must bear
C in mind the presumption of innocence in favour of the accused,
and also that an acquittal by the court below bolsters such
presumption of innocence. (Vide: *Abrar v. State of U.P.*, AIR
2011 SC 354; *Rukia Begum v. State of Karnataka*, AIR 2011
SC 1585; and *State of Madhya Pradesh v. Dal Singh & Ors.*,
D AIR 2013 SC 2059).

7. The law on the issue is well settled that demand of illegal
gratification is sine qua non for constituting an offence under
the Act 1988. Mere recovery of tainted money is not sufficient
to convict the accused when substantive evidence in the case
is not reliable, unless there is evidence to prove payment of
E bribe or to show that the money was taken voluntarily as a bribe.
Mere receipt of the amount by the accused is not sufficient to
fasten guilt, in the absence of any evidence with regard to
demand and acceptance of the amount as illegal gratification.
F Hence, the burden rests on the accused to displace the statutory
presumption raised under Section 20 of the Act 1988, by
bringing on record evidence, either direct or circumstantial, to
establish with reasonable probability, that the money was
accepted by him, other than as a motive or reward as referred
to in Section 7 of the Act 1988. While invoking the provisions
G of Section 20 of the Act, the court is required to consider the
explanation offered by the accused, if any, only on the
touchstone of preponderance of probability and not on the
touchstone of proof beyond all reasonable doubt. However,
before the accused is called upon to explain how the amount
H in question was found in his possession, the foundational facts

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must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.

(Vide: *Ram Prakash Arora v. The State of Punjab* AIR 1973 SC 498; *T. Subramanian v. The State of T.N.*, AIR 2006 SC 836; *State of Kerala & Anr. v. C.P. Rao*, (2011) 6 SCC 450; and *Mukut Bihari & Anr. v. State of Rajasthan*, (2012) 11 SCC 642).

8. The case is required to be examined in the light of the aforesaid settled legal propositions. So far as the recovery is concerned, the respondent-accused took a plea that he only had the duty to serve the notice on the complainant with regard to the tax evasion done by him and was not the authority for making an assessment order. It was his official duty to serve upon the complainant a notice under Section 148 of the Income Tax Act, 1961. The complainant came to his house and asked the respondent-accused to give him a glass of water as he had to take the medicine. He went inside the kitchen and came back with a glass of water and thereafter shook hands with the complainant and that is why when the hands of the respondent were washed, they turned pink.

9. The High Court also accepted the defence version made under Section 313 of Code of Criminal Procedure, 1973 and recorded the findings that the possibility of Phenolphthalein powder appearing on the hands of the respondent-accused when he shook hands with the complainant cannot be ruled out. The High Court further took note of various subsequent developments that certain complaints were filed against him by the CBI having dis-proportionate assets. The complainant Naresh Kumar Kapoor was a man having a criminal background. He was involved in a murder case as well as in a case of sale of shares in bogus names. The High Court further observed that in case two views are possible, the view favouring the accused has to be given preference, thus gave the benefit

A of doubt to the respondent accused and acquitted him.

10. Undoubtedly, the reasoning given by the High Court does not deserve to be accepted for the reason that even if the complainant had a criminal background, he can still be forced by the officer of the Income Tax Department to pay illegal gratification for not reopening the assessment of a particular year. The subsequent cases against the respondent-accused for having disproportionate assets cannot be co-related with the incident of trap case. The incident in which the respondent had been arrested for taking illegal gratification has to be examined on its own merit. The courts below have not taken note of the statement made by Gurlebleen Singh (PW.2) who is an Executive Magistrate and must be treated to be the most reliable and independent person and admittedly, he had been associated with the trap party.

D The case of the complainant was that on 1.6.1994 he went to the house of the respondent-accused and after bargaining, agreed to pay a sum of Rs.10,000/- on the same day as part payment of the illegal gratification of Rs.25,000/-. He immediately went alongwith Raj Kumar Sharma (PW.3), the shadow witness to Harish Kumar (PW.12), DCP and the plan for trap was prepared and the trap was laid. Gurlebleen Singh (PW.2), the Executive Magistrate has categorically stated that he had been directed by the Deputy Commissioner in writing on 31.5.1994 to join the trap party on 1.6.1994. Therefore, it is evident that in case the complainant himself had gone to Harish Kumar (PW.12) for having a trap on 1.6.1994, the question of receiving a direction from the Deputy Commissioner on 31.5.1994 could not arise. Gurlebleen Singh (PW.2) is a witness only of recovery and not of accepting the bribe money. This statement alone made it evident that the prosecution has not disclosed the genesis of the case correctly.

11. In view of the above, we do not find any cogent reason to interfere with the conclusion reached by the High Court. The appeal is accordingly dismissed.

H R.P.

Appeal dismissed.