

NARINDER SINGH

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v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 1564 f 2014)

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JULY 25, 2014

[RANJAN GOGOI AND M. Y. EQBAL, JJ.]

Prevention of Corruption Act, 1988 – s.12 – Allegation that appellant attempted to give bribe to ADM, Bharmour for inducing him, a public servant, to exercise his influence to give appellant supply orders for the supply of double-decker beds by corrupt or illegal means – Trial Court acquitted the appellant by giving him benefit of doubt – High Court set aside the judgment of trial Court, and convicted appellant u/ s.12 – Propriety of – Held: On facts, proper, as charges made against the appellant were proved by the prosecution – High Court discussed the evidence of PWs as also DWs and recorded a conclusive finding about the guilt of the appellant/ accused on analyzing the entire evidence – Even if part of investigation was carried out by an ASI (PW-7), it cannot be said to be illegal – No serious prejudice was caused to appellant by reason of the investigation carried out – High Court rightly pointed out that Bharmour being a tribal area, there is a single line administration and lot of power is vested with the Resident Commissioner since the heads of various departments or competent authorities are not available in Bharmour, and at that time the ADM-complainant was also the Resident Commissioner, Bharmour – Trial Court did not consider the gravity of the offence as contemplated under the 1988 Act.

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A The prosecution case was that the accused-
appellant attempted to give a bribe of Rs.10,000/- to the
complainant – PW-8, the then Additional District
Magistrate, Bharmour for inducing him, a public servant,
B for the supply of double-decker beds by corrupt or illegal
means. The Trial Court acquitted the appellant of the
charge by giving him the benefit of doubt. In appeal filed
by the State under Section 378 CrPC, the High Court set
C aside the judgment of the trial Court, and convicted the
appellant under Section 12 of the Prevention of
Corruption Act, 1988 and imposed upon him sentence
of six months. Hence, the present appeal.

 Dismissing the appeal, the Court

D HELD:1. The impugned judgment reveals that the
High Court discussed the evidence of the prosecution
witnesses as also the evidence of the defence
witnesses. On analyzing the entire evidence, the High
E Court recorded a conclusive finding about the guilt of
the appellant/accused. It is evident that PW-7 who was
posted as ASI/IO in the Bharmour Police Station
requested the SHO to depute a gazette officer to
investigate the matter. Even if the part of investigation
F had been carried out by PW-7, it cannot be said to be
illegal. Nothing has been said from the side of the
defence that serious prejudice was caused to the
accused by reason of the investigation carried out. The
G High Court rightly pointed out that Bharmour being a
tribal area, there is a single line administration and lot of
power is vested with the Resident Commissioner since
the heads of various departments or competent
authorities are not available in Bharmour, and at that time
the ADM-complainant was also the Resident
H Commissioner, Bharmour. [Para 11][615-G-H; 616-A-C]

2. The prosecution proved charges made against the appellant. The provisions of law considered by the High Court ought to have been followed by the Trial Court. The Trial Court decided the matter as if the offence has been committed by the appellant under the provisions of Penal code and did not consider the gravity of the offence as contemplated under the Prevention of Corruption Act, 1988. In the facts and circumstances of the case and seriousness of the offence, the view taken by the High Court needs no interference. [Paras 12, 13] [616-C-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1564 of 2014.

From the Judgment and Order dated 13/06/2012 in CRLA No. 169/2008, 09/07/2012 in CRLA No. 169/2008 passed by the High Court of Himachal Pradesh at Shimla.

Tarun Gupta, S.L. Gupta, Virender Singh and Upendra Singh, Advocates, for the Appellant.

Surya Narain Singh, AAG, Ms. Pragati Neekhara and Ms. Tulika Prakash, Advs., for the Respondent.

The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Leave granted.

2. This appeal by special leave is directed against the judgment dated 13.6.2012 and order dated 9.7.2012 pronounced by the High Court of Himachal Pradesh, in Criminal Appeal No.169 of 2008 preferred by the State, whereby learned Single Judge of the High Court setting aside the judgment and order of acquittal of the Trial Court convicted the appellant-accused guilty of the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced him to undergo six months imprisonment.

A 3. The prosecution case in brief is that on 10.12.2002 at
11 AM the accused-appellant attempted to give a bribe of
Rs.10,000/- to the complainant – the then Additional District
Magistrate, Bharmour for inducing him, a public servant, to
exercise his influence to give accused supply orders for the
B supply of double-decker beds by corrupt or illegal means.
Thereafter, complainant called police officials and lodged the
complaint. List of currency notes allegedly given by the accused
were prepared and the police officials recorded the statements
of other witnesses. The accused was charged with having
C committed the aforesaid offences, to which he pleaded not
guilty and claimed trial.

4. Complainant, who was in-charge of the administration
of Bharmour area and sanctioning authority, appeared as PW-
D 8 and stated that while he was sitting in his office accused
entered in his office and talked with regard to the complaints
of the quality of the furniture already supplied by him. Thereafter,
accused offered to supply double decker beds for the
Government Senior Secondary School, Holi. Upon which,
E complainant explained that there must be a rate contract of
those articles and these articles should be of good quality. In
the meantime, a senior assistant-PW2 came inside his office
and had a discussion with the complainant with regard to
purchase of some door mats and left office room. Thereafter,
F after using complainant's office bathroom with permission, the
accused did not sit on the chair but pulled out the drawer of the
table of the complainant and put some currency notes in the
drawer, which were immediately picked up by the complainant
raising objection on it. On this the accused replied that this
G was his right (hak). The complainant then reprimanded him
and informing the SHO Bharmour telephonically asked him to
come to his office.

5. The complainant also called his Statistical Assistant-
H PW1 and handed over the notes to him to prepare list of notes.

In the meantime some other officials came into the office of the complainant. Upon reaching of SHO Bharmour-PW7 within 15 minutes, the complainant made and handed over a written complaint along with 20 currency notes of the denomination of Rs.500/- each, duly signed and sealed in a parcel. According to the complainant he is not sure why the accused offered him Rs.10,000/-. Probably, it was with a view to procure further supply order. The cross-examination of this witness is to the effect that the accused had earlier supplied desks and benches for which payment had been made to the accused. The complainant has admitted that double-decker beds were required for the Govt. Girls Hostel at Holi and he could straight way call the tenders from the parties concerned but in this case he had still not invited tenders. He, however, stated that he had issued oral directions to the Principal of the hostel to be in touch with the contractors for supply of double decker beds.

6. On the other side, according to the defence, the complainant used to give supply orders to the manufacturers of furniture not belonging to Chamba district and in this connection complaint was made to the Deputy Commissioner, Chamba, and as such, a false case has been lodged by the complainant against the accused, who is cashier and spokesperson of Chamba Steel Furniture Manufacturing Association. The defence also led evidence by examining DW-1 Statistical Assistant, who stated that although complainant gave sanctions for purchase of various articles to various departments in Bharmour area but the record of such sanctions is not available with him as no such copies of sanction orders are retained by his office. DW-2, owner of a steel factory in Chamba, stated during examination that after transfer of complainant from Bharmour their units are getting supply orders.

7. Considering the respective contentions of both the parties and scrutinizing the records of the case, the Trial Court

A acquitted the accused of the charge by giving him the benefit
of doubt. According to the Special Judge Chamba, the case
had been initially investigated by the then ASI Prem Chand-
PW7 and the matter was not investigated by an authorized
officer and there had been miscarriage of justice especially
B when the statement of the complainant was recorded by more
than one investigating officer including PW-9 Dr. D.K.
Chaudhary, the then Dy. S.P., Chamba. The other ground which
weighed with the Trial Court was that there was no occasion
C for the accused to offer the bribe for getting the supply of double-
decker bed as no quotation had been invited by PW-8 and
there was no correspondence in this behalf. Therefore, there
was no motive to give the bribe. The Trial Court also came to
the conclusion that the defence version that the ADM
D (complainant) was annoyed with the accused was a plausible
and reliable version. Lastly, the Trial Court held that the
prosecution has failed to prove as to what conversation actually
transpired between the accused and the complainant.

8. Aggrieved by the decision of the Trial Court, the State
E preferred appeal under Section 378 of the Code of Criminal
Procedure contending that Trial Court did not take into
consideration the provisions of the Prevention of Corruption
Act especially Section 20(2) and if it is proved that some money
was offered then a presumption had to be raised that it was by
F way of illegal gratification.

9. After hearing learned Additional Advocate General for
the State and learned senior counsel appearing for the accused
and considering case law and provisions of the Act, learned
G Single Judge of the High Court opined that the judgment
delivered by the Trial Court is totally perverse and has been
passed without appreciating the evidence or the legal
provisions. Setting aside the judgment of the Trial Court, the
High Court convicted the accused for an offence punishable

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under Section 12 of the Act and imposed upon him minimum sentence of six months. Hence, the present appeal by special leave by the accused. A

10. Learned counsel appearing for the appellant-accused assailed the judgment passed in appeal on the ground, *inter alia*, that the High Court has not correctly appreciated and interpreted the provisions of Prevention of Corruption Act, 1988. According to the learned counsel the investigation was done by the police officer who was not an authorized officer in terms of Section 17 of the Act and thereby the entire investigation is vitiated in law. The High Court also erroneously drawn presumption under Section 20 of the said Act when the prosecution miserably failed to prove the demand or offer of any gratification. Learned counsel further submitted that the presumption as contemplated under Section 20(2) of the Act can be made applicable only when the public servant accepted the illegal gratification. Learned counsel submitted that all witnesses examined by the prosecution are subordinates of the complainant and no independent witness was examined to prove the charges. It was further contended that charge was framed by the Trial Court for the admitted bribe to the complainant for awarding the supply order of double decker beds, but as a matter of fact no such supply order was processed anywhere. Lastly, it was contended that no implicit reliance on the testimony of the complainant can be placed unless corroborated by independent witnesses. B
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11. The impugned judgment reveals that the High Court discussed the evidence of the prosecution witnesses as also the evidence of the defence witnesses. On analyzing the entire evidence, the High Court recorded a conclusive finding about the guilt of the appellant/accused. It is evident that PW-7 Prem Chand who was posted as ASI/IO in the Bharmour Police Station requested the SHO at Chamba to depute a gazette G

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A officer to investigate the matter. Even if the part of investigation had been carried out by PW-7, it cannot be said to be illegal. Nothing has been said from the side of the defence that serious prejudice was caused to the accused by reason of the investigation carried out. The High Court rightly pointed out that Bharmour being a tribal area, there is a single line administration and lot of power is vested with the Resident Commissioner since the heads of various departments or competent authorities are not available in Bharmour, and at that time the ADM-complainant was also the Resident Commissioner, Bharmour.

12. While taking note of the finding recorded by the High Court, we are fully in agreement that the prosecution has proved charges made against the appellant. The provisions of law considered by the High Court ought to have been followed by the Trial Court. The Trial Court decided the matter as if the offence has been committed by the appellant under the provisions of penal code. The Trial Court has not considered the gravity of the offence as contemplated under the Prevention of Corruption Act, 1988.

13. In the facts and circumstances of the case and seriousness of the offence, we fully agree with the view taken by the High Court. The impugned judgment, therefore, needs no interference. Hence this appeal has no merit and the same is dismissed.

14. The appellant-accused is accordingly directed to surrender within a period of one month from today to undergo the six months sentence awarded by the High Court, failing which the Trial Court shall take necessary steps. The Registry is directed to immediately communicate this order to the Trial Court.