

PHULA SINGH

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v.

STATE OF HIMACHAL PRADESH
(Criminal Appeal No. 2271 of 2011)

MARCH 3, 2014

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[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

ss.7 and 13(2) -- Demand and acceptance of illegal gratification -- Trap laid --Appellant caught red handed -- Acquittal by trial court -- Conviction by High Court and sentence of one year imprisonment with fine -- Held: Appellant has not denied his visit to house of complainant nor has he furnished any explanation in respect of recovery of chemically treated currency notes from his pocket and the test of his fingers being positive --There is no perversity in the judgment of High Court.

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CODE OF CRIMINAL PROCEDURE, 1973:

s.313-Power to examine accused -- Held: Accused has a duty to furnish an explanation in his statement u/s 313 regarding any incriminating material that has been produced against him, failing which court would be entitled to draw an adverse inference against him.

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APPEAL

Appeal against acquittal -- Power of appellate court -- Held: In exceptional cases where there are compelling circumstances and judgment under appeal is found to be perverse, appellate court can interfere with the order of acquittal.

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The appellant a Kanungo, was prosecuted for

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A committing offences punishable u/ss 7 and 13(2) of the Prevention of Corruption Act, 1988, as he was caught red handed in a trap laid at the instance of the complainant. The trial court acquitted him, but the High Court convicted him of the offences charged and sentenced him to one
 B year RI with a fine of Rs. 10,000/-.

Dismissing the appeal, the Court

HELD: 1. The accused has a duty to furnish an explanation in his statement u/s 313 Cr.P.C. regarding any
 C incriminating material that has been produced against him. If he chooses to maintain silence or even remain in complete denial, the court would be entitled to draw an adverse inference against him as may be permissible under the law. In the instant case, the appellant could not
 D have maintained complete silence particularly, with regard to his visit to the house of the complainant, his fingers test being positive and recovery of chemically treated currency notes of Rs.1,000/- from the pocket of his pant. [para 6, 8 and 9] [555-G-H; 556-E-F, G-H]

E *Ramnaresh & Ors. v. State of Chhattisgarh, 2012 (3) SCR 630 = AIR 2012 SC 1357; Munish Mubar v. State of Haryana, 2012 (9) SCR 193 = AIR 2013 SC 912; and Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan, AIR 2013 SC 3150 - relied on.*
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2. In exceptional cases where there are compelling circumstances and judgment under appeal is found to be perverse, appellate court can interfere with the order of acquittal. In the instant case, it cannot be said that it was
 G not a fit case where the High Court ought to have reversed the judgment of acquittal. There is no perversity in the judgment of the High Court. [para 9-11] [557-A-C, D]

Case Law Reference:

H 2012 (3) SCR 630 relied on para 8

2012 (9) SCR 193 relied on para 8 A

AIR 2013 SC 3150 relied on para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2271 of 2011.

From the Judgment & Order dated 24.08.2011/07.09.2011
of the High Court of Himachal Pradesh at Shimla in Criminal
Appeal No. 358 of 2009. B

Dinesh Kumar Garg, M.S. Bakshi, L.S. Bakshi for the
Appellant. C

Promila for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. I. This appeal has been preferred D
against the impugned judgment and order dated 24.8.2011/
7.9.2011, passed by the High Court of Himachal Pradesh at
Shimla in Criminal Appeal No.358 of 2009 reversing the
judgment and order dated 19.2.2009, passed by Ld. Special E
Judge, Hamirpur in Corruption Case No.1 of 2008 acquitting
the appellant from the Charges under Sections 7 and 13(2) of
the Prevention of Corruption Act, 1988 (hereinafter referred to
as 'the Act'). The High Court has awarded the appellant
sentence of one year RI and a fine of Rs.10,000/- and in default F
of payment of fine to undergo further RI for a period of six
months.

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

A. That on 20.6.2007, the appellant was working as G
Kanungo of the particular area and one Vakil Chand filed a
complaint against the father of the complainant that he
encroached upon the land thus, asked for demarcation. The
appellant investigated the matter and found that one and half
kanals of the land of Vakil Chand had been encroached upon
by the complainant's father. H

A. B. The complainant raised the objection about this demarcation and at that time the appellant met the complainant at village Kheri and demanded "Chai Pani" to cancel the demarcation report. It was in view thereof that the complainant contacted the appellant on 10.7.2007 on his mobile and the
B appellant demanded the bribe of Rs.5,000/- from the complainant. The complainant Prabhat Chand lodged an FIR with the Police Station of State Vigilance and Anti-Corruption Department, Hamirpur alleging demand of bribe by the appellant.

C C. The appellant informed the complainant that he would visit his residence and he should pay the said amount. In the negotiation the deal was struck to the tune of Rs.1,000/-. The appellant came to the residence of the complainant on
D 10.7.2007 and demanded the bribe. In view of the complaint already lodged by Prabhat Chand, the trap was laid and the appellant was arrested and after investigating the matter the chargesheet was filed which ultimately culminated into
E Corruption Case No.1 of 2008 under Sections 7 and 13(2) of the Act. After conclusion of the trial by judgment and order dated 19.2.2009 the Ld. Sessions Judge, Hamirpur acquitted the appellant of all the charges.

F D. Aggrieved, the State of Himachal Pradesh filed an appeal which has been allowed vide impugned judgment and order.

Hence, this appeal.

G 3. Shri D.K. Garg, learned counsel appearing for the appellant has submitted that demarcation had already been made and the report had been submitted before the Tahsildar, therefore, there was no occasion for the appellant to demand any amount. As the complainant's father had encroached upon the land of Vakil Chand to the tune of one and half kanals and the appellant had shown this fact in his report the complainant

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was having the grudge against him. Therefore, he has falsely been enroped. The High Court failed to appreciate that there are different parameters to reverse the judgment of acquittal and in this respect failed to apply the law laid down by this Court in a catena of judgments. There is no evidence of demand or acceptance of the bribe. Hence, the appeal deserves to be allowed.

4. Per contra, Ms. Shikha Bhardwaj, learned counsel for the respondent has opposed the appeal contending that there was sufficient material against the appellant on the basis of which the High Court has rightly reversed the acquittal though there was no direct evidence of demand of bribe. The appellant visited the house of the complainant though there was no relationship between the two. He removed his shirt and hanged in the house of the complainant though the money was recovered from the pocket of the pant. After recovery when the hands of the appellant were washed, the same turned pink. Therefore, there was a duty cast upon the appellant to explain all the circumstances while his statement under Section 313 Cr.P.C. was being recorded. The appellant kept mum and did not lead any evidence in defence. The High Court was justified to draw the adverse inference against the appellant in view of the presumption enshrined under Section 20 of the Act. Hence, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The admitted facts remain that the appellant had no relationship or acquaintance with the complainant whatsoever and the appellant failed to furnish any explanation about his visit and staying in the house of the complainant. The appellant has not denied visit to the house of the complainant. More so, he did not furnish any explanation in respect of recovery of Rs.1,000/- from the pocket of his pant nor he could furnish any information as how his fingers turned pink on being washed, with sodium carbonate solution as the currency notes already

A found in pocket of his pant had been treated with phenolphthalein. On being washed, part of his pant also turned pink.

B Even in the statement under Section 313 Cr.P.C., the appellant answered every question saying "I do not know" or "it is incorrect" but when he was asked as to whether he wanted to say anything else, he answered as under:-

C "I am innocent and Prabhat Chand had lodged a false case against him, because he had encroached the land of Shri Vakil Chand as per his demarcation".

D 7. We do not find any force in the submission advanced by Shri D.K. Garg that it is the prosecution which has to establish each and every fact and the accused has a right only to maintain silence.

E 8. The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide: *Ramnaresh & Ors. v. State of Chhattisgarh*, AIR 2012 SC 1357; *Munish Mubar v. State of Haryana*, AIR 2013 SC 912; and *Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan*, AIR 2013 SC 3150).

G 9. In the instant case, we fail to understand as under what circumstances the appellant could maintain complete silence particularly, in view of the fact that he did not deny his visit to the house of the complainant or that his shirt was found hanging on the peg in the wall and that his hands turned pink on being

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washed with sodium carbonate water. We do not find any force in the submission advanced by Shri D.K. Garg that it was not a fit case where the High Court ought to have reversed the well reasoned judgment of acquittal as it was based on evidence on record.

10. We are fully aware of limitations of the appellate court to interfere with an order of acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

11. In the instant case, there is no perversity in the judgment of the High Court as it cannot be said that the judgment is not based on evidence or the evidence on record has not properly been re-appreciated by the appellate court, which may warrant interference by this court.

12. In view of the above, the appeal is dismissed. The appellant has been enlarged on bail. The bail bonds are cancelled. He must surrender before the Ld. Special Judge, Hamirpur, Shimla within a period of four weeks, failing which the said Court shall secure his presence and send him to jail to serve the remaining part of the sentence.

A copy of the judgment be sent to the aforesaid learned Court for information and compliance.

R.P.

Appeal dismissed.