

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 792 OF 2006

State of Punjab ... Appellant

Versus

Sohan Singh Respondent

JUDGMENT

S.B. SINHA, J.

1. This appeal is directed against the judgment and order dated 29th October, 2003 passed by a learned Single Judge of the High Court of Punjab and Haryana whereby a judgment acquitting the respondent from the charges under Section 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') passed by the learned Special Judge, Faridkot dated 25th September, 1990 was reversed.

2. The prosecution case in brief as under is :-

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Jasdev Pal Singh (PW-5), complainant, applied for grant an electric connection for a 5 H.P. Motor pump. On receipt of demand notice in July, 1987, he deposited the necessary fees and the test report. The site was inspected by the respondent, who was Junior Engineer with Punjab State Electricity Board alongwith the S.D.O. They approved the installation and sent the case to the Executive Engineer, Bhatinda. The connection was sanctioned within two months. It was case of the prosecution that whenever complainant went to see the respondent in connection with the release of the electric connection, the latter kept on putting him off.

It was further case of prosecution that on 22nd December, 1988 the Complainant along with Sarwan Singh (PW-6) went to Kotkapura and met the respondent, who demanded a sum of Rs.500/- for release of the connection. On request of the Complainant, respondent agreed to receive Rs.200/-. The Complainant and Sarwan Singh told the respondent that they would again come at 2.30 or 3.00 p.m. It was further case of the prosecution that the Complainant and Sarwan Singh visited the office of the Vigilance at Faridkot and narrated the whole incident to the concerned officer, whereafter his statement was recorded. On the basis
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of an endorsement made by Inspector Gurbachan Singh, a First Information Report No.119 dated 22nd December, 1988 under Section 13(2) of the Act was recorded. It was further case of the prosecution that the complainant produced two currency notes of the denomination of Rs.100/- each. The number of the notes were noted down and phenolphthalein powder was applied thereto and nothing remained in the pocket of the complainant. The complainant was asked to hand over the amount to the respondent on his demand. Sarwan Singh (PW-6) was directed to watch and listen to the conversation between the respondent and the Complainant and if and when the money is passed to the respondent, he should give a signal to the raiding party. One Inderjit Singh, Assistant in the Treasury Office also joined the raiding party. As per the prosecution, notes were handed over to the accused on demand, at the tea shop to which the parties had proceeded to take tea having been offered by the respondent. The raiding party was then signaled whereupon the raid was conducted and recovery of a sum of Rs.200/- was made

Respondent was charged for commission of an offence under Section 13(1) read with Section 13(2) of the Act.

3. Before the learned Special Judge besides the Complainant Jasdev Pal Singh (PW-5), his friend Sarwan Singh (PW-6) was examined to prove the alleged demand and acceptance of the bribe and the recovery thereof. They supported the prosecution case. Hardial Singh (PW-7), is also a witness to the recovery of the currency notes.

4. We may, however, notice that the prosecution examined one Gurcharan Singh (PW-9), UD.C. working in the Punjab State Electricity Board, Faridkot. He produced the records in regard to the order of grant of Service Connection to the Complainant Jasdev Pal Singh. According to him, the electrical connection was given to him on 30th March, 1989. The prosecution sought to bring on record that whereas one Suckchain Singh, who was at serial number 38 in the seniority list had been granted connection on 25th January, 1989, the complainant Jasdev Pal Singh, who was at serial number 36, was given connection on 30th March, 1989. PW 9, however, in his cross-examination accepted that whereas Jasdev Pal Singh's seniority was in the High Tension connection list, the names of said Suckchan Singh and another Surain Singh were in the Low Tension seniority list. He further admitted that the seniority positions in the High Tension List and the Low Tension List are not inter-connected.

We may furthermore notice the relevant portion of his deposition, which is in the following terms :-

"Surain Singh was Ex-Serviceman and there was a priority for his connection. The seniority list cannot be modified by the JE, S.D.O. or by the Executive Engineer. It is maintained i.e. the Seniority List are maintained by the Secretary of the Board of Patiala. The accused could not give connection to any one before his turn. The consumer can go either to the JE or the SDO to enquire about his turn of connection. But no purpose can be served by the consumer to go the JE or SDO before the turn of his connection."

5. The complainant PW-5 was given a suggestion that before giving electric connection a transformer was required to be installed which fact he admitted as also that the same having been installed on 30th March, 1989, he got the connection on the same date. The Complainant admitted that the connection was to be released only after the installation of transformer as per the sanction order.

6. We may place on record that one Inderjit Singh was an independent witness. On the purported ground that he had been won over, he was not examined, in support of

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material was brought on record. On what basis the said finding of fact was arrived at is not known.

7. The learned Special Judge relying on or on the basis of the evidence adduced by the prosecution and in particular the deposition of Jasdev Pal Singh (PW-5) and Sarwan Singh (PW-6) found the respondent guilty of commission of the said offence.

On an appeal having been preferred by the respondent the High Court by reason of the impugned judgment reversed the said decision.

8. Mr. Gagandeep Sharma learned counsel appearing on behalf of the State upon taking us through the depositions of the prosecution witnesses would contend that the High Court committed a serious error in passing the impugned judgment in so far it failed to take into consideration that the prosecution has not only able to prove demand and acceptance of the bribe but also recovery of the sum of Rs.200/- and, thus, the onus of proof was on the accused to discharge the burden that the amount recovered from him was not by way of illegal gratification.

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9. Mr. Rajiv Dutta, learned senior counsel appearing on behalf of the respondent, however, would support the impugned judgment.

10. The High Court in support of its judgment inter alia opined :-

- i) The prosecution is required to establish the demand of bribe by the accused; acceptance whereof as also the amount in question from his possession and having regard to the fact that there exists serious discrepancies in the statements of the witnesses in regard to the events immediately prior to the payment of the amount of bribe, the prosecution cannot be said to have proved its case.
- ii) No reason has been assigned by the prosecution as to why the independent witness Inderjit Singh, who was a government employee, had been given up by the prosecution.
- iii) The circumstantial evidence in regard to the alleged commission of the offence by the respondent was not sufficient to establish the case

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of bribery in the light of the ingredients thereof.

11. Indisputably the complainant PW-5 and Sarwan Singh PW-6 are friends. The complainant had applied for grant of the electric connection for running a 5 H.P. motor. It was a High Tension connection. Indisputably again, in view of the categorical statement made by Gurcharan Singh, PW-9, the High Tension connection could be granted in terms of the seniority list only and after installation of the transformer. Respondent, who was a Junior Engineer, according to PW-9 had no role to play in the matter. Priority in the matter of

grant of connection only could be granted by the higher authorities in the Board.

12. It was in the aforementioned factual scenario, the defence of the respondent must be considered.

He in his statement under Section 313 of the Code of Civil Procedure inter alia stated :-

"I am innocent. Some days prior to 22.12.1988 Jasdev Pal Singh came to me and inquired about his turn of connection. I

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told him that probably it would be on 30.3.1989. He insisted to give him connection out of turn which I refused. This led to altercation between me and Jasdev Pal Singh. He told me to teach me a lesson. All this happened in the presence of Lakhbir Singh. On the alleged day of occurrence alongwith Ram Badhan Peon and some customers were present at the tea shop of Janakraj at Kotkapura where Jasdev Singh came and he tried to forcibly thrust the currency notes in my pocket, which I tried to push with my hands and I raised alarm. The notes remained with Jasdev Pal Singh and the police came and they took the currency notes from Jasdev Pal Singh. Sarwan Singh and Hardial Singh ASI were not present. Janak Raj owner of the tea shop was present throughout. The police took me to the police station and they concocted the case against me on 23.12.1998 and the documents were anti-dated."

13. It is also necessary to place on record that the respondent in support of his case examined two defence witnesses. DW-1 Janak Raj is the owner of the tea shop where the trap was said to have been laid. We have noticed hereinbefore that PWs. 5 and 6 visited the respondent in his office whenever he offered them tea and they came out from the office to the tea shop. In his deposition Janak Raj stated :-

"My shop is just in front of the power house. About 1 year and 9 months back, it was

about 11 or 11.30 A.M. I was at my shop. There were some customers. Accused was also there. One person came there who has his hairs cut but was having a turban on the head. He was forcibly putting the currency notes in the pocket of pant of Sohan Singh accused and the accused was resisting, with his both hands. In the meanwhile the police came there in plain cloths. The currency notes were in the hands of that sikh gentleman. The police took the accused with them along with that man. The notes were taken by the police from that sikh gentleman."

Strangely enough he was not cross-examined on the correctness of the said statements. Only three suggestions were given to him (i) that he had not narrated the incident to any respectable person till that day; (ii) that he had not made any complaint about the high handedness of the police; and (iii) that he was falsely deposing.

14. Another defence witness who was examined on behalf of the respondent was Lakhbir Singh. He was a witness to the occurrence which is said to have taken place in the morning of 22nd November, 1988. According to the said witness when the respondent refused to grant electric connection out of turn, he heard exchanges of hot words and a threat was made to the accused by a person that he would teach him a lesson.

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15. Complainant, PW-5, in his evidence categorically stated that although he had visited the office of the Board at Kotkapura, which is at a distance of 34-35 kms,, and met the respondent number of times but the demand of money was made for the first time on 22nd December,1988. He accepted that Sarwan Singh was not with him on earlier occasions.. Sarwan Singh is not a resident of the same village. His village is situated at a distance of 1 ½ kms. from his village. Although he sought to offer an explanation that both he and Sarwan Singh had gone to enquire about the price of Narma crop, he could not name the commission agent through whom he sells the agricultural product. No plausible explanation had

been furnished as to why PW-6 Sarwan Singh had accompanied the complainant in the afternoon.

16. We have noticed hereinbefore that in the matter of grant of electric connection on out of turn where a seniority list has been prepared, the respondent had no role to play. Moreover, connection could have been granted only after installation of transfer, which was within the exclusive domain of the higher authorities of the Board.

17. It is in that view of the matter the evidence of an
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independent witness was crucial. Indrajit Singh was an officer working in the Treasury Department. It is ordinarily not expected that a government servant would be won over so easily.

The High Court, as noticed hereinbefore, upon consideration of the materials brought by the prosecution has also found serious discrepancies in regard to the events taken place prior to the raid. Furthermore the learned Special Judge failed to take into consideration the effect of deposition of PW-9 Gurcharan Singh as also the defence witnesses. We have noticed hereinbefore that DW-1 Janak Raj had not been cross-examined at all. Except giving him some suggestions, as noticed above, no question was put to him to discredit his evidence. The prosecution has also not been able to establish that any demand had been made by the respondent. Evidence of PW-9, Gurcharan Singh, to the effect that the respondent had no role to play in the matter, thus assumes significance.

The view taken by the High Court, therefore, in our opinion, was a plausible view. It is now well settled that if two views are possible, this court, ordinarily, in exercise of its
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jurisdiction under Article 136 of the Constitution of India,

