

Before Dr. Bharat Bhushan Parsoon, J.

MAHABIR PARSHAD—*Petitioner*

versus

STATE OF HARYANA—*Respondents*

CRA-S-596-SB OF 2005

APRIL 9, 2014

Prevention of Corruption Act, 1988 - Ss. 7, 13 & 20 - Demand of bribe has to be proved - Recovery of tainted notes - Presumption under Section 20 - On complaint from a municipal contractor trap laid - Appellant apprehended - Tainted currency notes recovered from possession of appellant - Convicted by trial Court - Appeal against conviction allowed - Held, to sustain charge under Sections 7 & 13(2) and to raise presumption under Section 20, prosecution is required to prove demand of bribe and acceptance thereof pursuant to demand - Mere recovery of tainted notes from accused not sufficient to convict.

Held, that so far as further application of law to the facts of the case is concerned, the following points are also noteworthy:-

1. Onus of proving charge against an accused always is on the prosecution;
2. Prosecution is to prove its case beyond any reasonable doubt whereas the defence is to create a dent in the prosecution case by preponderance of evidence. In short test of proof beyond any doubt is not applicable in case of the defence. In this respect **M.K. Harshan v. State of Kerala AIR 1995 SC 2178** and **Garapathi Sanyua Naik v State of Karnataka 2007(4) RCR(Criminal) 184 (SC)** are being referred to;
3. Mere recovery of tainted currency notes from accused is not sufficient to connect the accused when substantive evidence in the case is not reliable. Reliance is being placed on **Amrik Singh v. State of Punjab 2005(4) RCR Criminal) 310**, **Anand Parkash v. State of**

Haryana 2008 (2) RCR (Criminal)335, Shiv Narain Sharma v. State of Haryana 2009(2) RCR (Criminal) 372, Raghunath Bansal v. State of Punjab, 2010(2) RCR (Cr.) 430 (P&H), and on Criminal Appeal No.1619-SB of 2013 titled Jagdish Chander v. State of Haryana decided by this Court on 30.1.2013;

4. Though non-joining of some independent witnesses *ipso facto* is no ground to discard the prosecution case, but when witnesses of the prosecution are not trustworthy and are rather of shady and questionable moral fibre, their testimony would be acceptable for proving guilt of the accused. Reliance is being placed on Darshan Lal v. Delhi Administration 2010 (1) RCR (Criminal) 892 (P&H). Sat Paul v. Delhi Administration (1976) 1 SCC 727, and Harbans Singh v. State of Punjab AIR 1974 (SC) 218;
5. To raise a presumption under section 20 of the Act, prerequisites of demand as also of acceptance of illegal gratification are to be proved by the prosecution. Reference may be made to V. Venkata Subbarao v. State of A.P. 2007 CrL. L.J.754, Union of India Thr. Inspector, CBI v. Purnanadu Biswas 2005 (4) RCR (Cr.) 517, and C.M. Girish Babu v. CBI, Cochin, High Court of Kerala.
6. If on evidence and circumstances of a case two views are possible, one supporting innocence of the accused is to be followed. Reference is being made to T. Subramanian v. State of T.N. (2006) 1 SCC 401.

(Para 11)

Further held, that neither complainant Balbir Singh appearing as PW1 nor shadow witness Rajpal appearing as PW3 have supported the prosecution case on this count. They were declared hostile and despite having been cross examined at length by the prosecution, nothing supporting the case of the prosecution had emerged in their statements. When Balbir Singh PW1 was cross examined by the defence, he rather explained that neither any raid was conducted nor any recovery was

effected from the accused in his presence. He has also elaborated that he and *thanedar* in civil dress had gone to the accused where neither DSP nor Tehsildar were present. He has further elaborated that the accused was called upon to deposit a payment of ₹ 4,000/-, i.e., ₹ 3,750/- on account of trade tax for 1-1/2 years at the rate of ₹ 2,500/- per year and ₹ 250/- as municipal fee of yearly contractorship licence. When shadow witness Rajpal was cross examined, he conceded his signatures on various documents but claimed that these signatures had been obtained by the police on blank papers. He has denied the entire case of the prosecution.

(Para 14)

Further held, that in this backdrop of the prosecution case, as it has emerged from the testimony of Tehsildar Dharampal PW2 and of Investigating Officer Rohtash Singh Ahlawat PW10 speaking about the recovery of tainted currency notes from the accused becomes inconsequential. Recovery of currency notes was further to be proved to have been accepted by the accused as bribe as a motive or reward but no such evidence is available with the prosecution.

(Para 15)

Further held, that in view of the discussion as made earlier, the prosecution has not been able to prove its case beyond doubts and benefit of doubt is given to the appellant-accused.

(Para 23)

Shri Sudhir Sharma, Advocate, *for the appellant*.

Shri Gurvinder S. Sandhu, Assistant Advocate General, Haryana.

DR. BHARAT BHUSHAN PARSOON, J.

This appeal is directed against judgment of conviction dated and order of sentence dated 15.3.2005 passed by Additional Sessions Judge, Bhiwani vide which accused-appellant Mahabir Parshad was held guilty in case FIR No.266 dated 7.9.2001 registered at Police Station, City, Bhiwani for commission of the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter mentioned as the Act) and was sentenced as under:

<i>Offence</i>	<i>Sentence in default</i>
Under Section 7 of the Act.	RI for six months and fine RI for three months of ₹ 500/-
Under Section 13(2) of the Act	RI for one year and fine RI for three months of ₹ 1,000/-

(2) The prosecution case put in a narrow compass is being reproduced as below:-

2.1 The appellant-convict (hereinafter mentioned as the accused) was a Municipal Engineer posted with Municipal Committee, Bhiwani (hereinafter referred to as the Committee). Complainant Balbir Singh was a construction contractor with the same Committee. He had supplied construction material in Ward No.28 of the said Committee. He contacted the accused for release of the payment. ₹ 4,000/- were demanded as bribe by the accused for doing the needful. The complainant did not want to pay the bribe.

2.2 Sequel to, at the instance of the complainant, a raiding party under the aegis of Deputy Superintendent of Police (DSP), Bhiwani was constituted. In the presence of Rajpal, Shadow witness, currency notes of ₹ 4,000/- in the denomination of ₹ 500/- each were supplied by the complainant. These were initialled by Tehsildar, Bhiwani and were treated with phenolphthalein powder (P Powder) by the Investigating Officer in the presence of Tehsildar, Bhiwani and shadow witness Rajpal. Instructions were given to the complainant to go to the accused along with shadow witness and to hand over the currency notes on demand from the accused as bribe. The remaining members of the raiding party were to come to the office of the accused only after getting pre-determined signal from the shadow witness signifying that the currency notes had exchanged hands from the complainant to the accused as bribe.

2.3 Everything went as was pre-planned. The raid was successful; the accused was caught red handed. Hands as also relevant pocket of the pants of the accused were separately dipped in the sodium carbonate solution which had turned pink. Hand wash as also pocket wash of the pants of the accused were transferred in separate 'nips' which were duly

sealed with seal of monogram 'RSA'. FIR was registered, the accused was arrested, spot investigations were conducted, site plan was prepared and 'nips' were later sent to the Forensic Science Laboratory for analysis. On receipt of receipt of the said laboratory and on completion of the necessary investigation, report under Section 173 Cr.P.C. was furnished against the accused.

(3) Charge under Sections 7 and 13(2) of the Act was framed against the accused to which he pleaded not guilty and claimed trial.

(4) To substantiate the charge under Sections 7 and 13 of the Act against the accused, the prosecution had examined as many as 11 witnesses in addition to production of documentary evidence. In his statement recorded under Section 313 Cr.P.C., the accused had denied the prosecution case claiming innocence. He claimed that in fact a sum of ₹ 4,000/- was due from the contractor on account of trade tax as ₹ 3,750/- and contractor fee of ₹ 250/- and he was legally bound to deposit this amount with the Committee.

(5) The trial court relying on the prosecution version emerging in the statements of complainant Balbir Singh and shadow witness Rajpal, recovery witness Tehsildar, Bhiwani and DSP, Bhiwani, Rohtash Singh Ahlawat, Investigating Officer, while rejecting the case of the defence, held the accused guilty and convicting him for commission of the offences punishable under Sections 7 and 13 of the Act, sentenced him as mentioned in earlier part of the judgment.

(6) Challenging the finding of conviction as also order of sentence against him, the accused has claimed that neither any bribe had ever been demanded by him nor was accepted. It is claimed that even presumption under Section 20 of the Act could not be raised against him. Referring to statement of Tehsildar, Bhiwani Dharam Pal (recovery witness) and DSP Rohtash Singh Ahlawat (Investigating Officer), it is claimed that the trial court wrongly accepted their version without there being any evidence to show complicity of the accused in commission of the alleged offence. It is claimed that recovery of money *ipso facto* was not sufficient to indict the accused. It is alleged that the case against him is false and fabricated whereas there was nothing against him.

(7) Counsel for the parties have been heard while going through the impugned judgment and order of sentence, grounds of appeal and evidence recorded by the trial court.

(8) When Counsel for the appellant-accused has urged that entire case of the prosecution is tried to be built up in vacuum whereas there is neither demand nor acceptance of the bribe amount and there is no complicity of the accused at all, stand of the respondent-State on the other hand is that the impugned judgment being correct on facts as also in law, does not call for any interference. It is alleged that when recovery of tainted currency notes has been proved from possession of the accused, there is nothing which dilutes the strength of the prosecution case.

(9) At the outset, it may be mentioned that to sustain a charge under Section 7 as also under Section 13(2) of the Act, the prosecution is required to prove that there was demand of bribe and further that pursuant to such demand, payment was made which was accepted as bribe. It is claimed that after proof of 'demand' and 'acceptance' of money as bribe, 'receipt' of money raises a rebuttable presumption against the implicity of the accused in terms of Section 20 of the Act to the effect that such payment was recovered as bribe.

10. In *Subash Parbt Sonvane v. State of Gujarat(1)*, it has been held by the Hon'ble Supreme Court that for convicting a person under Section 13 of the Act, there must be evidence that the accused had demanded money from the complainant, which he accepted as bribe amount. In *Union of India through Inspector, CBI v. Purnandu Biswas(2)*, it was further held by the Hon'ble Supreme Court that when demand of illegal gratification is not proved, it was not enough that some currency notes were handed over to the public servant to make it as acceptance of gratification. It was held that the prosecution has a further duty to prove that what was paid, amounted to gratification. It was held that to raise presumption under Section 20 of the Act against the accused, pre-requisites of demand and acceptance need to be proved. Following these precepts of law, a Division Bench of Madhya Pradesh High Court in *Hariram Patel v. State of M.P.(3)*, had made it even more explicit. To

(1) AIR 2003 SC 2169

(2) 2005(4) RCR (CrI.) 517

(3) 2012(1) RCR (CrI.) 804

the same effect is *V. Venkata Subbarao v. State represented by Inspector of Police, A.P.*(4) where it was held that presumption that the money was accepted as motive or reward, cannot be raised, when demand by accused has not been proved. In this regard, reference may also be made to *Amrik Singh v. State of Punjab*(5) and *Prabhu Dayal v. State of Haryana*(6).

(11) So far as further application of law to the facts of the case is concerned, the following points are also noteworthy:-

1. Onus of proving charge against an accused always is on the prosecution;
2. Prosecution is to prove its case beyond any reasonable doubt whereas the defence is to create a dent in the prosecution case by preponderance of evidence. In short test of proof beyond any doubt is not applicable in case of the defence. In this respect *M.K. Harshan versus State of Kerala*(7) and *Garapathi Sanyua Naik v State of Karnataka*(8) are being referred to;
3. Mere recovery of tainted currency notes from accused is not sufficient to connect the accused when substantive evidence in the case is not reliable. Reliance is being placed on *Amrik Singh v. State of Punjab*(9), *Anand Parkash v. State of Haryana*(10), *Shiv Narain Sharma v. State of Haryana*(11), *Raghu Nath Bansall v. State of Punjab*(12), and on Criminal Appeal No.1619- SB of

(4) 2007 CrI. L.J. 754

(5) 2005 (4) RCR (CrI.) 310

(6) 1991(1) RCR (CrI.) 374

(7) AIR 1995 SC 2178

(8) 2007(4) RCR (Criminal) 184 (SC)

(9) 2005(4) RCR 9Criminal) 310

(10) 2008(2) RCR (Criminal) 335

(11) 2009(2) RCR (Criminal) 372

(12) 2010 (2) RCR (CrI.) 430 (P&H)

2013 titled *Jagdish Chanderv. State of Haryana* decided by this Court on 30.1.2013;

4. Though non-joining of some independent witnesses *ipso fact* is no ground to discard the prosecution case, but when witnesses of the prosecution are not trustworthy and are rather of shady and questionable moral fibre, their testimony would be acceptable for proving guilt of the accused. Reliance is being placed on *Darshan Lal v. Delhi Administration*(13). *Sat Paul v. Delhi Administration*(14), and *Harbans Singh v. State of Punjab*(15);
5. To raise a presumption under Section 20 of the Act, prerequisites of demand as also of acceptance of illegal gratification are to be proved by the prosecution. Reference may be made to *V. Venkata Subbarao v. State of A.P.*(16), *Union of India Thr. Inspector, CBI v. Purnanadu Biswas*(17), and *C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*;
6. If on evidence and circumstances of a case two views are possible, one supporting innocence of the accused is to be followed. Reference is being made to *T. Subramanian v. State of T.N.*(18).

(12) When entire evidence is examined on the touchstone of this legal pedestal, it transpires that everything is not well with the prosecution case.

(13) As per the prosecution case, demand of bribe was firstly made by the accused to the complainant Balbir Singh PW1 as is noticed in his application dated 7.9.2001 (Ex.PA). This demand was reiterated by the accused on the same day when complainant Balbir Singh PW2 had

(13) 1974 AIR (SC) 218

(14) (1976)1 SCC 727

(15) 2010(1) RCR (Criminal) 892 (P&H)

(16) 2007 CrL. L.J. 754

(17) 2005(4) RCR (CrL.) 517

(18) (2006)1 SCC 401

gone to him again during the day and was accompanied by the shadow witness. This part of the prosecution case forms the foundation of its entire edifice.

(14) Neither complainant Balbir Singh appearing as PW1 nor shadow witness Rajpal appearing as PW3 have supported the prosecution case on this count. They were declared hostile and despite having been cross examined at length by the prosecution, nothing supporting the case of the prosecution had emerged in their statements. When Balbir Singh PW1 was cross examined by the defence, he rather explained that neither any raid was conducted nor any recovery was effected from the accused in his presence. He has also elaborated that he and *thanedar* in civil dress had gone to the accused where neither DSP nor Tehsildar were present. He has further elaborated that the accused was called upon to deposit a payment of ₹ 4,000/-, i.e., ₹ 3,750/- on account of trade tax for 1-1/2 years@ ₹ 2,500/- per year and ₹ 250/- as municipal fee of yearly contractorship licence. When shadow witness Rajpal was cross examined, he conceded his signatures on various documents but claimed that these signatures had been obtained by the police on blank papers. He has denied the entire case of the prosecution.

(15) In this backdrop of the prosecution case, as it has emerged from the testimony of Tehsildar Dharampal PW2 and of Investigating Officer Rohtash Singh Ahlawat PW10 speaking about the recovery of tainted currency notes from the accused becomes inconsequential. Recovery of currency notes was further to be proved to have been accepted by the accused as bribe as a motive or reward but no such evidence is available with the prosecution.

(16) At this stage, stand of the accused taken in his statement under Section 313 Cr.P.C. also needs to be looked at. In his own words, stand of the accused appearing there, is reproduced as below:-

“... I am innocent. PWs are deposing falsely. It is a false case against me. In fact this false case was registered against him at the behest of the then DC, Bhiwani, who was annoyed with me as I obtained a stay from Hon’ble High Court after my transfer from Bhiwani to Sirsa. In my place one Mr. Mittal was posted who was favorite of D.C. Bhiwani and he wanted Mr. Mittal at Bhiwani in my place. After my false involvement in this case again Mr. Mittal was got posted as Municipal Engineer as my successor.”

The story of alleged payment and acceptance of bribe and raid and recovery is false and in fact I have neither demanded any bribe from PW1 Balbir Singh nor accepted any bribe as alleged nor any raid was conducted nor any recovery was effected from me. The official PWs including PW2 Dharampal, PW10 Rohtash Singh, DSP have deposed false at the behest of D.C. Bhiwani. In fact a sum of ₹4,000/- on account of ₹3750/- as Trade Tax and ₹250/- as contractor fee from PW Balbir Singh, complainant of this case, was the amount and i had asked said Balbir Singh to deposit the said amount of ₹4,000/- with the concerned official of the office in lieu of above trade tax and contractor fee. The above documents put to me are false and forged one. ...”

(17) When this version of the accused is evaluated in the context of evidence in defence, it is highly probalilized. On the other hand, there is neither evidence of demand of bribe nor of acceptance thereof by the accused and thus presumption under Section 20 of the Act is not available to the prosecution against the accused. On the other hand, recovery of the tainted currency notes simpliciter is not enough to nail the accused. The defence version also puts the prosecution case to further doubt.

(18) From Ex.PL, it is proved that the appellant was posted as Municipal Engineer in MC, Bhiwani on 5.1.2001. PW8 Daulat Ram Accountant has also testified to this effect. On 30.7.2001 (Ex.DD), the transfer orders were issued whereby the appellant had been sent to Municipal Committee, Sirsa and in his place one G.R. Mittal had been posted as Municipal Engineer. On 7.8.2001 (Ex.DE), the appellant had obtained stay order from this Court against such transfer. The appellant was got arrested and implicated in the present case. Complaint (Ex.PA) reveals that the then DC, Bhiwani had specifically ordered Tehsildar Dharam Pal Pannu and DSP Rohtash Singh Ahalawat to do the needful. On 26.9.2001 (Ex.DE), G.R. Mittal was again posted as Municipal Engineer in the Committee. Contention of the appellant is that he was being shown the exit door of the Committee to accommodate G.R. Mittal and the then DC, Bhiwani had prompted the complainant municipal contractor for the said purpose.

(19) Without going into this aspect of the defence version, it is sufficient to mention that though no accusing finger should be raised

towards the then DC qua launching of this case against the accused, but it is to be mentioned that the prosecution case even on its own is not able to stand. In addition to absence of element of demand and acceptance thereof, there are even other multiple infirmities in the prosecution case.

(20) The samples were sent to FSL on 24.9.2001 whereas, the alleged trap is of 7.9.2001. There is delay of 17 days which remains unexplained. Even thereafter report (Ex.PM) from FSL has been received on 12.10.2001 showing that the samples were analyzed with considerable delay, which delay also remains unexplained. There is lack of evidence to show that the samples during this period were intact and were not tampered or interfered with. DSP Rohtash Singh Ahlawat PW10 stated that he got the currency notes initialed from Tehsildar Dharam Pal PW2 whereas PW2, after going through currency notes (Ex.P1 to P8), has conceded that the said currency notes, did not bear his signatures.

(21) DSP Rohtash Singh Ahlawat PW10 testified that he applied the P Powder on the currency notes but it is nowhere the case of the prosecution that he had washed his hands thereafter, i.e., before apprehending the accused and before conducting the alleged search. His further statement is that he had himself prepared the solution which in the circumstances of he having not washed his hands after smearing the currency note with P- Powder, dilutes the prosecution case considerably because his hands even then were having traces of P Powder and then he having gone to prepare the solution for wash was required to wash his hands first.

(22) From the totality of discussion as made earlier, defence version is highly probablised when the prosecution case is full of multiple doubts.

(23) In view of the discussion as made earlier, the prosecution has not been able to prove its case beyond doubts and benefit of doubt is given to the appellant-accused.

(24) Consequently, setting aside the impugned judgment and order of conviction, this appeal is allowed, the appellant is acquitted of the charge. Bail/surety bonds stand discharged.