

REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1163 OF 2017
(ARISING OUT OF S.L.P (CRIMINAL) NO. 207 OF 2016)****MUKHTIAR SINGH (SINCE DECEASED)
THROUGH HIS L.R.****...APPELLANT****VERSUS****STATE OF PUNJAB****....RESPONDENT****J U D G M E N T****AMITAVA ROY, J.**

Leave granted.

2. The appellant, heir of Mukhtiar Singh (since deceased) has carried this appeal to this Court against the affirmation of his conviction under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (for short, hereafter referred to as 'the Act'), recorded at the first instance by the learned Special Judge, S.A.S. Nagar (Mohali) in his judgment and order dated 04.09.2009. Thereby the predecessor of the present appellant had been, as a consequence of his conviction, sentenced to rigorous imprisonment for one year for the offence under Section 7 and to pay a fine of

Rs.2,000/- therefor and further sentenced to 2 years' rigorous imprisonment for the offence under Section 13(2) of the Act along with fine of Rs.2,000/- with related default sentence.

3. Though this verdict was challenged before the High Court by the original convict, he, during the pendency of the appeal expired, whereupon the present appellant got herself substituted with a bid to purge him of the stigma. She having failed in her endeavour as the appeal has been dismissed, seeks redress from this Court.

4. We have heard Mr. O.P. Bhadani, learned counsel for the appellant and Ms. Jaspreet Gogia, learned counsel for the respondent.

5. Sans the unnecessary details, the essence of the prosecution case is that the predecessor of the appellant, Mukhtiar Singh (also referred to hereinafter as original accused) while was serving as Station House Officer of Police Station, Ajnala was entrusted with the investigation of the case launched against Sarabjit Singh (complainant) by his (Sarabjit) wife under Sections 406,498A IPC. It was alleged by the complainant-Sarabjit Singh that the original accused in order to favour him in the investigation demanded and received bribe of Rs. 3,000/- from him (Sarabjit) and in the process and at the fag-end of the probe, demanded a further amount of

Rs.2,000/- as illegal gratification to file a report of exoneration. That the original accused threatened to harass the complainant if he did not submit to his demand, was also imputed. At this, the complainant approached the DSP, Vigilance, FS-I Unit – 2 Punjab, Chandigarh and lodged a complaint disclosing the above facts.

6. The said officer after recording the statement of the complainant took preparatory steps to lay a trap to intercept the original accused and set up a trap team constituting amongst others of Inspector Satpal (PW2) and Aman Kumar (PW3). Currency notes furnished by the complainant amounting to Rs. 2,000/- were smeared with phenolphthalein powder and handed over to the complainant to be delivered to the original accused on demand. Inspector Satpal (PW2) was nominated as a shadow witness to accompany the complainant so as to be a witness to the possible transaction. Subsequent thereto, on the appointed day, the trap team visited the Ajnala Police Station, whereupon the complainant and the shadow witness met the original accused in his room. Thereafter the original accused having enquired as to whether money had been brought, the complainant handed over the prepared currency notes to the former, who kept it in a card board box placed on his table. The prosecution version is that on this, the

shadow witness signalled the other members of the trap team waiting outside, who thereafter entered the room, confronted the original accused with the demand and receipt of the currency notes whereupon, he took out the same from the card board box and handed over those to trap team. As the fingers of the original accused when dipped in the chemical compound prepared for the purpose indicated that he had handled the currency notes, the investigating party completed the formalities and after obtaining the report of the Forensic Science Laboratory, lodged the prosecution against the original accused on obtaining the necessary sanction therefor.

7. In support of the charge under Sections 7 and 13(2) of the Act laid by the prosecution, which the original accused denied, it examined several witnesses including the complainant Sarabjit Singh (PW1), the shadow witness Inspector Satpal (PW2), Aman Kumar (PW3) and Paramjit Singh Khaira (PW5). In course of his examination under Section 313 Cr.P.C., the original accused denied the correctness of the incriminating evidence adduced by the prosecution and pleaded to be innocent. He categorically denied to have either made any demand for illegal gratification or having received any bribe from the complainant and alleged that the

complainant was a relative of Superintendent of Police, Mukhwinder Singh Cheena, who constantly pressurised him (original accused) not to file charge-sheet in the case lodged against the complainant and that as he (original accused) did not succumb thereto, he was falsely implicated in the case through Sarabjit. The original accused also examined Lakhwinder Singh as a defence witness to demonstrate that the prosecution case of demand and recovery through a trap drill was a myth and that instead on the basis of the stratagem between Sarabjit and Superintendent of Police, Mukhwinder Singh Cheena, he was forcibly lifted from outside the Ajnala Police Station and embroiled by fabricating records.

8. The Trial Court however on the basis of the evidence on record held the charge against the original accused to be proved and as referred to hereinabove, the High Court by the impugned order, has sustained the conviction and sentence so recorded by it.

9. As the impugned judgment would reveal, the High Court while noting that the original accused at the relevant time was in-charge of the investigation of the case under Sections 406,498A IPC initiated by the wife of the complainant against him, proceeded on the pre-supposition that as both the original accused and the complainant belonged to the police force, there was a remote

possibility of a false complaint being lodged. It held that the demand of Rs. 2,000/- and the receipt thereof had been established by the prosecution and there was no reason for the prosecution or its witnesses to lie against the original accused. The High Court however recorded that there was no direct demand of illegal gratification by the original accused from the complainant in the presence of the shadow witness at the police station, but the query made by him (original accused) of the money being brought or not did amount to such demand. In addition, the receipt of the currency notes of Rs. 2,000/- which was recovered by the trap team, did substantiate the accusation of demand as well. The High Court held the view that the imputation of false implication at the instance of the Superintendent of Police, Mukhwinder Singh Cheena, as made by the original accused in his 313 Cr.P.C. statement, in absence of any evidence, did not merit acceptance. To reiterate, the High Court thus affirmed conviction and sentence awarded by the Trial Court.

10. The learned Counsel for the appellant has strenuously urged that the evidence on record is visibly deficient to prove the demand, receipt and recovery of any amount of illegal gratification as alleged and thus as the indispensable ingredients of the offence with which the original accused had been charged, have remained unproved,

the conviction and sentence is patently untenable and if allowed to stand would result in gross travesty of justice. Without in any manner conceding to the charge of receipt or recovery of the amount of Rs.2,000/- as per the prosecution case, it has been alleged that in absence of any proof of demand therefor, the same is wholly inconsequential qua the prescriptions of Sections 7 and 13 of the Act. The prosecution having failed to establish any demand for bribe as alleged, no presumption under Section 20 of the Act is also available to further the charge, he urged. To buttress these pleas, reliance has been placed on the decision of this Court in ***P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and Another***¹.

11. As against this, the learned Counsel for the respondent has submitted that the evidence adduced by the prosecution is cogent and convincing and in the face of the concurrent findings of the two courts below holding that the charge against the original accused had been established, no interference is warranted. She has further asserted that not only the essential ingredients of the offence under Sections 7, 13(2) of the Act have been amply proved by the prosecution, the view taken by the Trial Court and affirmed by the High Court finds endorsement in the pronouncements of this

1 (2015) 10 SCC 152

Court in ***Somabhai Gopalbhai Patel vs. State of Gujarat***² and ***Mukhtiar Singh vs. State of Punjab***³.

12. The contrasting arguments and the evidence on record to the extent essential and relevant have been analysed.

13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:

“7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extent to seven years and shall also be liable to

2 (2014) 5 SCC 103

3 (2016) 11 SCC 357

fine.

13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, -

.....
(2).....”

14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In **A. Subair vs. State of Kerala⁴**, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in **State of Kerala vs. C.P. Rao⁵** that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

4 (2009) 6 SCC 587

5 (2011) 6 SCC 450

15. In ***P. Satyanarayana Murthy*** (supra), this Court took note of its verdict in ***B. Jayaraj vs. State of A.P.***⁶ underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in ***P. Satyanarayana Murthy (supra)*** on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these

two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder.”

(emphasis supplied)

16. The textual facts in **Somabhai Gopalbhai Patel** (supra) and **Mukhtiar Singh** (supra) and the quality of evidence adduced by the prosecution are clearly distinguishable and are thus of no avail to the prosecution as would be discernible from the analysis of the materials on record.

17. It is in the above adumbrated legal enjoinment, that the evidence on record has to be scrutinised. Having regard to the gravamen of the charge and the imperatives of demand of illegal gratification, the receipt and recovery thereof, the evidence on record relatable thereto only need be noticed.

18. Sarabjit Singh (PW1), the complainant stated that on 01.06.2005, he was posted with Traffic Police at Moga and that at the instance of his wife, a case under Section 498A IPC had been registered against him in Ajnala Police Station. He stated that the original accused, who was a sub-inspector of Ajnala Police Station was conducting the investigation of the case, agreed to allow him to

participate in the investigation on payment of Rs. 3,000/-, which was accordingly paid. The witness alleged that the original accused made a further demand of Rs.3,000/-, whereafter negotiation was scaled down to Rs.2,000/-, so as to favour the complainant in the case, with the threat that if the demand was not met, he would see that he is harassed in connection therewith. According to this witness, he being disinclined to advance further illegal gratification, lodged a complaint with DSP Paramjit Singh Khaira, who recorded his statement and requisitioned from him currency notes of Rs. 2,000/- comprised of three notes of Rs.500 and five notes of Rs.100 each, treated those with phenolphthalein powder and constituted a trap team with Inspector Satpal as shadow witness and Aman Kumar Mani and Shashi Kant. The witness further stated that the police party thereafter visited Ajnala Police Station and he and Inspector Satpal met the original accused in his room and on being asked as to whether the money had been brought or not, he handed over Rs.2,000/- as prepared to the original accused, who received the same and after counting the money kept in a card board box. At this, the shadow witness signalled the waiting members of the raiding party along with the DSP Paramjit Singh Khaira, who entered the room, intercepted the original accused and recovered

the currency notes on being handed over by him on demand. The witness also stated about the exercise undertaken by dipping the hands of the original accused in the liquid compound prepared, which turned pink to indicate that he had handled the currency notes treated with phenolphthalein. The witness also proved the currency notes as Ex. P1 to P8.

19. In his cross-examination, the complainant admitted that M.S. Cheena, the then Superintendent of Police, Vigilance was posted as S.S.P, Moga but denied that he was related to him. He could not recall the date on which he had paid Rs.3,000/- for the first time to the original accused and admitted of not having made any complaint in connection therewith. He conceded that one Santosh Singh Lamberdar of his village was with him when he paid this amount but the said person had not been produced as a witness either in the investigation or at the trial. He admitted as well that the card board box containing the money was not seized. He however denied the suggestion that he had been pressurising the original accused to conclude the investigation in his favour and that he had implicated him falsely. He also denied the suggestion that there was neither any demand for illegal gratification by the accused nor was any sum as alleged accepted by or recovered from

him.

20. Inspector Satpal (PW2), who was the shadow witness, after reiterating the statement of the complainant with regard to the pre-trap proceedings, stated that he along with the complainant on that day met the original accused and followed to his quarter in the building of the police station whereafter the original accused enquired of the complainant as to whether he had brought the money, on which, the latter handed over three currency notes denomination of Rs.500 and five currency notes of Rs.100 each to him and that he kept the same in a card board box lying near him. The witness stated that he then gave a signal to the other members of the raiding party including the D.S.P. (Vigilance) who entered the room and undertook the steps pertaining to recovery and seizure as narrated by the complainant.

21. In cross-examination, this witness did not refer to the quarter of the original accused in the building of the police station and stated that both he and the complainant met him in his room in the police station. He however confirmed that the card board box was lying on the table of the accused which was not seized by the police. He denied the suggestion that he was not a member of the raiding party and that he had signed the memo while sitting in his office.

22. Aman Kumar Mani (PW3) is a witness to the steps taken by the raiding party after it had entered the room in response to the signal given by the shadow witness. According to him, on being enquired, the original accused took out the currency notes of Rs.2,000/- from the box lying in his room and that the same tallied with those set out in the memo prepared by the police. He proved as well the currency notes as Ex.P1 to P8.

23. Superintendent of Police, Paramjit Singh Khaira (PW5), deposed that he was posted as DSP (Vigilance) FS-I, Unit-2, Punjab, Chandigarh on 01.06.2005. He stated that on that day, he recorded the statement of the complainant pertaining to the demand of illegal gratification made by the original accused. He thereafter constituted a trap team as above and treated currency notes totalling Rs.2,000/- for the exercise and led the party to the Ajnala Police Station. The witness affirmed that Inspector Satpal was nominated as the shadow witness to accompany the complainant to witness the actual transaction and track the accompanying conversation and to give signal to the trap team at the appropriate point of time. This witness however stated in categorical terms that the complainant and the shadow witness went to the house of the original accused whereas the other

members of the trap team waited outside and when Inspector Satpal flagged his signal, the house of the accused situated near Ajnala Police Station was raided. He stated that the police party intercepted the accused and on being asked, he took out the currency notes of Rs.2,000/- from the card board box placed on the nearby table which tallied with those mentioned in the pre-trap, prepared memo and seized the currency notes. That the fingers of the original accused were dipped in the liquid compound, which turned pink was also stated.

24. In cross-examination, this witness admitted that Mr. Mukhwinder Singh Cheena was at the relevant time posted as Superintendent of Police, Mohali and that he was his in-charge, then. To the suggestions made, the witness stated that he had no knowledge that the complainant was related to Mukhwinder Singh Cheena and that the latter had been pressurising the original accused not to pursue the case against the complainant. He also denied the suggestion that the Mr. Cheena was the brain behind the raid and the registration of the case against the original accused.

25. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of

Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/- at the first instance is alleged to have been paid i.e. Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/- as well as the demand of Rs.2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record

cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.

26. In addition thereto, not only the prosecution version of demand and acceptance of illegal gratification in the police station seems to be unusual, contradictions of the witnesses, PW-1, PW-2 and PW-5 with regard to the location of the transaction relating to Rs.2,000/- also renders it doubtful. It is also noticeably unusual that the currency notes when allegedly handed over by the complainant to the original accused, the same instead of being keenly kept with him, were placed casually in the card board box placed on his table. Though the original accused, apart from imputing his false implication at the instance of Superintendent of Police Cheena, said to be the relative of the complainant could not adduce any evidence to consolidate the same, the fact remains that this officer at the relevant point of time was indeed Superintendent of Police at Mohali and was the superior of PW5 who led the trap operation.

27. On an overall appreciation of evidence on record, in the context of the elucidation of law pertaining to proof of the ingredients of Sections 7 and 13 of the Act as adverted to herein-above, we are of the unhesitant opinion that the prosecution

has failed to prove the charge levelled against the original accused beyond all reasonable doubt. The charge against him therefore fails. The Trial Court as well as the High Court had failed to analyse the factual and legal aspects as involved in their true perspectives and resultantly the determinations made are not sustainable. The impugned judgment and order of the High Court affirming the conviction and sentence recorded by the Trial Court is set aside. The appeal is allowed.

.....**J.**
(ARUN MISHRA)

.....**J.**
(AMITAVA ROY)

NEW DELHI;
JULY 14, 2017.