IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2796-SB-2017
Reserved on 01.03.2025
Pronounced on: 12.03.2025

Kamalpreet Singh Dhariwal ..... Appellant

Versus

State of Punjab ..... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Ms. G.K. Mann, Senior Advocate with
Ms. Simrat Kaur, Advocate,
Mr. Anand Jeewan Singh Gill, Advocate, for the appellant.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J.

Present appeal has been preferred against the judgment dated 18.07.2017 passed by learned Special Judge, Ludhiana, vide which, the appellant herein has been convicted for offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, PC Act), and vide order of even date, he was sentenced as under:-

Under Section 7	Sentence	Fine	In default of payment of fine
7 of the PC Act	Rigorous imprisonment for three years	Rs.50,000/-	Further rigorous imprisonment for six months
13(1)(d) read with Section 13(2) of the PC Act	Rigorous imprisonment for three years	Rs.50,000/-	Further rigorous imprisonment for six months

Both the substantive sentences of imprisonment were ordered to run concurrently.

The present case arises from an FIR bearing No.12, registered on 20.09.2013, under Sections 7, 13(2) of PC Act, at Police Station Vigilance Bureau, Ludhiana, based on the statement of the complainant, Jaswant Singh, against the appellant.

As per the case of the prosecution, during the year 2012, 28,000 gunny bags were borrowed from the Commission Agents in the Jagraon Market for purchasing paddy on behalf of the Markfed. Similarly, 1,19,500 gunny bags were borrowed from Commission Agents in Jagraon Market for purchasing paddy on behalf of Markfed. The reports regarding the borrowing of these gunny bags were submitted to the District Manager, Markfed, in response to which, an order was issued that no borrowed bags were to be returned to the Commission Agents without the explicit sanction of the District Manager.

On 29.05.2013, the complainant wrote to the District Manager, Markfed, Ludhiana, seeking permission to return the borrowed gunny bags. He stated that there was growing resentment among the Commission Agents due to the non-return of the bags, and they had warned that they would refuse to make purchases for Markfed in the following season. The complainant also met the appellant personally, who was then posted as the District Manager, Markfed, and urged him to grant permission to return the bags, as they had been borrowed on the personal responsibility of the complainant. However, the appellant did not grant the necessary sanction.

On 18.07.2013, the Commission Agents Association, Jagraon, issued a letter stating that if the borrowed gunny bags were not returned within 15 days, legal action would be initiated. This letter was forwarded by the

complainant along with his own letter dated 22.07.2013. A few days later, the appellant called the complainant to his office and allegedly demanded illegal gratification of Rs.3 lakhs for granting permission to return the borrowed gunny bags. The appellant further suggested that the complainant could either collect the amount from the Commission Agents or pay it from his own pocket.

Despite repeated requests from the complainant, the appellant allegedly remained adamant about his demand for the bribe and even threatened him with dire consequences if the amount was not paid. However, after some time, the appellant called the complainant to his office and granted oral sanction to return the gunny bags. As a result, the complainant returned the borrowed bags to the Commission Agents on 31.08.2013.

On 02.09.2013, the appellant again called the complainant to his office and reiterated his demand for Rs.3 lakhs. The complainant left the office after assuring the appellant that he would pay the bribe in three installments of Rs.1 lakh each, with the first installment to be paid on 20.09.2013 in Room No.11, Circuit House, Ludhiana.

Unwilling to pay the bribe, the complainant accompanied by his friend, Harmandeep Singh, approached the Vigilance Bureau with currency notes amounting to Rs.1 lakh and requested action against the appellant. The statement of the complainant was recorded by DSP, Balbir Singh (Investigating Officer) of the Vigilance Bureau. Thereafter, a trap was planned, and two official witnesses were called from the department of Animal Husbandry to join the proceedings. Harmandeep Singh was designated as the shadow witness,

tasked with accompanying the complainant into the room of the appellant to overhear the conversion and witness the exchange of bribe money.

The currency notes were treated with phenolphthalein power and handed over to the complainant for the trap. After completing all necessary pre-trap formalities, the trap team proceeded to the Circuit House, Ludhiana. The complainant and the shadow witness entered Room No.11 where the appellant was staying, and upon the handover of the bribe money, the shadow witness came out and gave the pre-determined signal. Acting on the signal, the trap team led by the Investigating Officer, entered the room and caught the appellant red-handed. The tainted currency notes were received from a bag kept on the table in the room of the appellant.

To further substantiate the allegations, a chemical test was conducted on the spot. The Investigating Officer prepared two solutions, and the hands of the appellant as well as the inside of the bag, were washed in the solution, which turned pink, indicating the presence of phenolphthalein power. The solutions were then sealed in nips, and other post trap proceedings were conducted at the scene.

During the course of the investigation, the relevant documents were seized by the Investigating Officer, and the sealed items were sent to the forensic science laboratory for examination.

The charges were framed on 17.09.2014, to which, the appellant pleaded not guilty and claimed trial.

In support to prove its case, 16 witnesses were examined by the prosecution, including the complainant and the shadow witness.

The learned trial Court, on the basis of the evidence led by the prosecution as well as the defence, convicted the appellant for the commission of the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, and sentenced him, as already detailed in the earlier part of this order.

Aggrieved by the judgment of conviction, the instant appeal has been preferred by the appellant.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

Learned senior counsel appearing on behalf of the appellant has strenuously argued that the appellant has been falsely implicated in the present case and never demanded any money, much less any illegal gratification, from the complainant. It is contended that the entire case of the prosecution is fabricated and that the charges against the appellant are wholly baseless and motivated.

It has been vehemently submitted that the prosecution has miserably failed to prove the essential ingredients of demand of illegal gratification by the appellant. Apart from the complainant, Jaswant Singh, and his friend, Harmandeep Singh (shadow witness), who are both interested witnesses, no independent or reliable evidence has been adduced by the prosecution to substantiate the demand. It is a well settled principle of law that in the absence of proof of demand beyond reasonable doubt, conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act cannot be sustained. Mere recovery of currency notes from the alleged place of occurrence is insufficient to prove the commission of the offence, unless the demand and acceptance of illegal gratification are conclusively proved. In support of this

submission, reliance has been placed on the judgments of ***Manohar Lal Versus State, 2006(2) Crimes 502; Wasudeo Versus State of Maharasthra, 2023 NCB HC-NAG 14611.***

Further, learned senior counsel has pointed out that even the alleged recovery of money from the appellant is highly suspicious and shrouded in doubt. It is submitted that the appellant was staying in a room in the Circuit House, that admittedly was not locked or bolted from inside, and the money was allegedly recovered from a bag placed on a table, which was far from the bed where the appellant was resting at the relevant time. It has been argued that this fact itself casts serious doubt on the version of the prosecution and suggests a clear case of false implication.

It is further contended that the tainted money was, in fact, planted to falsely implicate the appellant. It has been asserted that this submission finds support from the testimonies of the prosecution witnesses, which reveal that the appellant was forced to take out the money from the bag, following which, his hands were subjected to a phenolphthalein test to fabricate evidence against him. There is no cogent or reliable evidence on record to establish that the appellant had voluntarily accepted the alleged bribe money, fully aware that it was illegal gratification. In this regard, learned senior counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Mukhtiar Singh (since deceased, through his LR) Versus State of Punjab***, ***2017(3) RCR (Criminal) 694.*** wherein it has been held that in the absence of voluntary acceptance of money with guilty knowledge, mere recovery of tainted money cannot be the sole basis for conviction under the PC Act.

Further, inviting the attention of this Court to Exhibits DXX/A and DXX/B, learned senior counsel has also assailed the sanction for prosecution, arguing that it is fundamentally flawed due to non-application of mind by the sanctioning authority. It is pointed out that the sanction order is a verbatim reproduction of the draft sanction forwarded by the Vigilance Bureau, without any independent consideration by the competent authority. This fact has been explicitly admitted by PW9-Narinder Krishan Bhatnagar, during cross-examination, wherein he stated that the sanction order was merely copied by the stenographer and was subsequently signed by Dr. Karamjit Singh Sran, Managing Director, Markfed, without any due application of mind.

It has been asserted by the learned senior counsel that it is a settled principle that a valid sanction is a *sine qua non* for a prosecution under the PC Act, and any failure to independently apply judicial mind renders the entire prosecution vitiated. Since the sanction order in the present case suffers from a serious legal infirmity, the prosecution of the appellant itself stands vitiated, and his conviction cannot be sustained on this ground alone. In support of this submission, reliance has been placed upon judgments in ***State of Karnataka Versus Ameer Jan, (2007) 11 SCC 273; State of Punjab Versus Dr. Paramjit Singh (P& H), 2004(1) RCR (Crl.) 629; Anand Murlidhar Salvi Versus State of Maharashtra (Bombay), 2021 ALL MR (Cri) 1106*** which have consistently held that a sanction order prepared mechanically, without due application of mind, renders the entire prosecution invalid.

Lastly, learned senior counsel has contended that the appellant has been deliberately framed in the present case due to personal animosity. It is

pointed out that the appellant had issued a show cause notice to the complainant on 09.04.2013, wherein there were allegations against the complainant of violating the rules of Markfed by borrowing gunny bags from Commission Agents without obtaining requisite permission from any superior officer. This prior disciplinary action against the complainant, therefore, was a strong motive for him to falsely implicate the appellant in a fabricated case.

In view of the aforementioned inconsistencies, contradictions and legal infirmities, learned senior counsel for the appellant has prayed for setting aside the impugned judgment and acquitting the appellant, as the prosecution has utterly failed to prove the charges against the appellant beyond reasonable doubt.

SUBMISSIONS ON BEHALF OF THE RESPONDENT-STATE:

Learned counsel for the State, while controverting the arguments advanced by the learned senior counsel for the appellant, has emphatically submitted that the appellant was apprehended red-handed while accepting bribe from the complainant. The bribe money was recovered from a bag placed in Room No.11 of Circuit House, Ludhiana, where the appellant was staying. Furthermore, when the hands of the appellant and the bag were washed in a solution of sodium carbonate, the solution turned light pink, clearly indicating the presence of phenolphthalein powder. This fact stands duly corroborated by the FSL report, led in evidence during the trial and remains undisputed.

It has been further contended by the learned State counsel that once the bribe money was recovered from the room in which the appellant was admittedly staying, the statutory presumption under Section 20 of the PC Act, is

automatically attracted. In terms of the said provision, it was incumbent upon the appellant to satisfactorily explain the possession of the tainted money. However, the appellant has failed to discharge this burden, and no plausible or credible explanation was offered by him during the trial. Consequently, in the absence of any satisfactory rebuttal, the presumption of guilt remains unrebutted.

With respect to the issue of sanction for prosecution, learned State counsel has argued that the sanction order (Ex.DXX/B) was legally valid, as it was granted after due application of mind by the competent authority. The sanctioning authority thoroughly examined the entire material on record before according sanction, and the order itself reflects due consideration of all relevant facts. It has been specifically pointed out that the entire challan, including all relevant documents, was furnished to the sanctioning authority for its perusal, and the competent authority duly assessed the material before granting sanction. Merely because the Vigilance Bureau had provided a draft sanction order does not, in any manner, vitiate the sanction, especially when the sanction order on record clearly demonstrates independent application of mind by the competent authority.

Learned State counsel has further submitted that the defence of false implication raised by the appellant is a mere afterthought and lacks any merit. Such a plea cannot form the basis for acquittal, particularly in the light of substantial and cogent evidence led by the prosecution, which proves the guilt of the appellant beyond reasonable doubt. Moreover, it has been specifically pointed out that the complainant was exonerated in the show cause proceedings

initiated by the appellant, as evident from the documents of Markfed placed on record. This fact further negates the appellant's plea of false implication, as there existed no motive for the complainant to falsely implicate the appellant.

Thus, it has been urged that considering the overwhelming evidence on record, coupled with the statutory presumption under Section 20 of the PC Act, the conviction of the appellant deserves to be upheld and does not warrant any interference.

FINDINGS OF THE COURT:

After a meticulous examination of the evidence on record and the submissions advanced by both the sides, this Court finds substantial merit in the contentions raised on behalf of the appellant. The prosecution has failed to meet the stringent burden of proof required in cases under the PC Act, and the conviction of the appellant, therefore, cannot be sustained.

The first and foremost issue for consideration is whether the sanction to prosecute the appellant was validly granted. Sanction is not a mere formality; it serves as a safeguard against frivolous and vexatious prosecutions of public servants. It is a settled law that the sanctioning authority must apply its independent mind to the material placed before it before according sanction. A failure to do so vitiates the entire prosecution.

In the instant case, the learned senior counsel for the appellant has contended that the sanction order was granted mechanically by merely copying a draft sanction order provided by the Vigilance Bureau, without any independent application of mind by the competent authority. This Court finds considerable force in this contention. PW9-Narinder Krishan Bhatnagar, who

was examined as a prosecution witness, admitted in his testimony that the sanction order (Ex.DXX/B) was a verbatim copy of the draft sanction order provided by the Vigilance Bureau (Ex.DXX/A). He specifically stated in his cross-examination: "*The draft sanction order which was sent by Vigilance Bureau to us, was copied by the Steno and got signed from Dr. Karamjit Singh Sran, MD of Markfed.*"

This categorical admission leaves no room for doubt that the sanction order was granted in a mechanical manner, without any independent application of mind. The Vigilance Bureau had no authority to prepare or dictate the sanction order, as the responsibility of applying an independent mind solely rests with the competent authority.

It is important to emphasize that the requirement of sanction under the PC Act is not a perfunctory or routine approval by the sanctioning authority but a carefully considered and well-reasoned decision. It serves a dual purpose: protection of innocent public servants, so that it is ensured that upright officers are not subjected to frivolous, baseless or politically motivated proceedings. At the same time, it also serves as a weapon against corruption; it ensures that there is a robust preliminary scrutiny of the allegations, thereby, reinforcing the integrity of anti-corruption measures.

Thus, sanction acts as a judicial safeguard, striking a balance between preventing harassment of honest officials and ensuring that corrupt officials do not evade accountability. Any mechanical or unconsidered sanction would defeat the legislative intent, rendering the provision meaningless.

The Hon'ble Supreme Court has repeatedly held that sanction for

prosecution is a sacrosanct requirement and cannot be treated as a mere formality. In ***State of Karnataka Versus Ameer Jan (supra)***, the Hon'ble Supreme Court held as under:-

> *"8. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."*

In the present case, the sanctioning authority merely signed the draft provided by the Vigilance Bureau, which clearly demonstrates that there was no independent satisfaction arrived by the competent authority. The argument advanced by learned State counsel that the sanction order records that the competent authority had applied its mind is devoid of merit, as even those lines were copied from the draft provided by the Vigilance Bureau.

In the light of the above, this Court has no hesitation in holding that the sanction order is invalid, rendering the entire prosecution as *void ab initio*.

Proceeding further, it is a well settled principle of law that in cases under the PC Act, the prosecution must prove both demand and acceptance of illegal gratification beyond reasonable doubt. The absence of proof of either demand or acceptance is fatal to the prosecution case. It is not sufficient to show that money was merely exchanged; there must be a clear evidence that the public servant demanded the bribe. Even if demand is proved, it must also be shown that the public servant actually received the bribe with the corrupt intent. Mere recovery of money is insufficient in itself. The prosecution can prove these facts through direct evidence, which may take the form of oral testimony (for example, the deposition of the complainant) or documentary proof (for example, audio/video recordings, trap proceedings, or written communications). The Hon'ble Supreme Court in ***Neeraj Dutta Versus State (NCT of Delhi), (2022) 5 SCR 104*** has underscored that the demand and acceptance are not mere procedural elements but substantive facts that must be proved as foundational requirements for a conviction under the Act. If either element is absent, the charge fails as a matter of law. In ***Neeraj Dutta's case (supra)***, the Hon'ble Supreme Court has summarized the legal position as follows:-

> "74. What emerges from the aforesaid discussion is summarised as under:
>
> (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.
>
> (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

> (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence."

Adverting to the present case, the prosecution examined the complainant as PW2, and the shadow witness, Harmandeep Singh, as PW3, to establish the demand of illegal gratification. However, their testimonies fail to inspire confidence.

The complainant (PW2) admitted in his cross-examination that he could not state how many times the appellant had demanded money from him, nor could he specify the date and month of such demand. He further conceded that despite the alleged repeated demands, he never reported the same to any senior official of Markfed.

The shadow witness, PW3, was a personal associate of the complainant, having worked as his driver and also serving him meals. His close association with the complainant raises concerns regarding the possibility of him being influenced to depose in a particular manner. It is also noteworthy that despite the availability of official witnesses from the department of Animal Husbandry, the Vigilance Bureau chose the complainant's associate, Harmandeep Singh, to be the shadow witness, further weakening the case of the prosecution.

Both, PW2-Jaswant Singh and PW3-Harmandeep Singh, merely stated that a demand for money was made, but neither specifically stated that the appellant made a categorical demand of illegal gratification in exchange for granting sanction for the return of gunny bags.

Under Section 7 of the PC Act, the prosecution must establish beyond reasonable doubt that the accused made an illicit demand for gratification. The prosecution cannot rely on mere conjectures or assumptions; it must establish the demand with concrete and credible evidence. Any ambiguity in proving demand benefits the accused. Moreover a request for money *per se* does not automatically amount to an illegal demand. The prosecution must prove that the money was sought as a bribe in exchange for an official favour. If an officer asks for money for an official purpose, e.g. *government fees or legitimate reimbursement*, it does not constitute a bribe; offence under Section 7 of the PC Act is not attracted merely because money was requested; the illegal nature of the demand must be conclusively demonstrated. The burden on the prosecution is, therefore, high, and any doubt in proving demand beyond reasonable doubt would lead to acquittal. The Hon'ble Supreme Court in ***Soundarajan Versus State Rep by the Inspector of Police, Vigilance Anti Corruption Dindigul, 2023 Live Law (SC) 314***, held that as under:-

> *"11. Now, we turn to the evidence of the shadow witness (PW-3). In the examination-in-chief, he stated that the appellant asked the PW-2 whether he had brought the amount. PW-3 did not say that the appellant made a specific demand of gratification in his presence to PW-2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26th July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused.*
>
> *12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under*

> *Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved."*

Further, the prosecution in the present case failed to prove that the appellant voluntarily accepted the money, knowing it to be bribe. The alleged bribe money which recovered from a bag placed on the table, whereas the appellant was lying on the bed. If the appellant had accepted the money, the Investigating Officer ought to have conducted a hand wash test immediately, rather than first instructing the appellant to take out notes from the bag before testing his hands.

The Hon'ble Supreme Court in ***Mukhtiar Singh (since deceased, through his LR) Versus State of Punjab (supra)*** explicitly held that mere recovery of money is not sufficient to sustain a conviction under the PC Act unless the prosecution proves demand and voluntary acceptance of the bribe amount.

Given these serious deficiencies in the case of the prosecution, this Court has no hesitation to hold that the prosecution has failed to discharge its burden of proving demand and acceptance of illegal gratification beyond a reasonable doubt.

In view of the above analysis, this Court finds that:

(i) the sanction order was vitiated due to non-application of mind;

(ii) the prosecution failed to prove the essential ingredients of demand and acceptance of illegal gratification;

(iii) the presumption under Section 20 of the PC Act cannot be invoked in the absence of proof of demand.

Consequently the impugned judgment dated 18.07.2017 passed by learned Special Judge, Ludhiana, is set aside and the appellant is acquitted of all the charges framed against him.

Appeal stands allowed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

March 12, 2025
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No