

Mukhtiar Singh vs State Of Punjab on 5 July, 2016

Equivalent citations: AIR 2016 SC 3100, 2016 (11) SCC 357, 2016 CRI. L. J. 4191, AIR 2016 SC (CRIMINAL) 1034, (2016) 64 OCR 1016, (2016) 3 CURCRIR 359, (2016) 3 DLT(CRL) 755, (2016) 3 RECCRIR 558, (2016) 3 UC 1757, 2016 CRILR(SC&MP) 734, (2016) 3 ALLCRIR 2565, (2016) 4 JLJR 11, (2016) 4 PAT LJR 113, (2016) 3 CRILR(RAJ) 734, (2016) 164 ALLINDCAS 63 (SC), (2016) 4 ALLCRILR 160, 2016 CRILR(SC MAH GUJ) 734, (2016) 96 ALLCRIC 499, 2017 (1) SCC (CRI) 317, AIR 2016 SUPREME COURT 3100, (2017) 1 CRIMES 195, (2016) 6 SCALE 326, (2016) 2 ALD(CRL) 868

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Bench: J. Chelameswar, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 618 OF 2012

Mukhtiar Singh

.... Appellant(s)

Versus

State of Punjab
Respondent(s)

....

J U D G M E N T

R.K. Agrawal, J.

1) This appeal has been filed against the judgment and order dated 28.07.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 852-SB of 2002 whereby the High Court disposed of the appeal filed by the appellant herein against the judgment and order dated 03.05.2002 passed by the Special Judge, Patiala in C.C. No. 20 T/2001/11.4.97 by affirming the conviction while reducing the sentence.

2) Brief facts:

(a) Mukhtiar Singh-the appellant herein was posted as Revenue Patwari at Patiala at the relevant time. One Arjan Singh-the complainant approached the appellant herein in his office and requested for a copy of Jamabandi of his land for the year 1992-93. As per the prosecution, the appellant herein agreed to supply the copy provided he was paid Rs. 600/-. The complainant was asked by the appellant herein to come along with the money on the next day.

(b) The complainant (PW-6), who was not willing to pay the bribe to the appellant herein, disclosed the entire incident before one Bakhshish Singh (PW-8) and requested for his help. On 06.09.1996, Bakhshish Singh and Arjan Singh lodged a written complaint to the Deputy Superintendent of Police, Vigilance Bureau, Patiala.

(c) On the abovesaid complaint, a trap was laid and currency notes in the denomination of Rs. 500/- and Rs. 100/- smeared with phenolphthalein powder and after duly recording their numbers were handed over to the complainant.

After following the due procedure, the raiding party along with Arjan Singh (PW-6) and Bakhshish Singh (PW-8) reached the spot. When the complainant went inside the office along with Bakhshish Singh, he found the appellant herein sitting on his chair and on seeing them; the appellant herein asked the complainant if he had brought the money. Arjan Singh responded in affirmative and handed over the currency notes to the appellant herein which was kept by the appellant-accused in his right hand side upper drawer of the table. The appellant-accused handed over the copy of the jamabandi after obtaining the signature of the complainant.

(d) The shadow witness-Bakhshish Singh came out of the office of the appellant-accused and signaled in a specific manner. Thereupon, the investigating officer-Shri Amar Nath, DSP, Vigilance Bureau along with the raiding party and the official witness-Kewal Krishan (PW-5) went inside the office of the appellant-accused. The money was recovered and the handwash of the appellant-accused was taken which turned pink. After following the necessary formalities, a First Information Report (FIR), being No. 58 dated 06.09.1996 came to be registered under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (in short 'the PC Act').

(e) The Special Judge, Patiala, vide order dated 03.05.2002 in C.C. No. 20 T/2001/11.4.97 convicted the appellant-accused under Section 13(1)(d) read with Sections 13(2) and 7 of the PC Act and was sentenced to undergo rigorous imprisonment (RI) for 2 (two) years each under Section 7 and Section 13(2) of the Act with the direction that sentences shall run concurrently.

(f) Being aggrieved by the order dated 03.05.2002, the appellant-accused preferred a Criminal Appeal being No. 852-SB of 2002 before the High Court. The High Court, by order dated 28.07.2011, confirmed the order of conviction passed by the Special Judge while reducing the sentence of imprisonment from two years to one year for each of the two offences.

(g) Being aggrieved by the order dated 28.07.2011, the appellant-accused preferred this appeal by way of special leave before this Court.

3) Heard the arguments advanced by learned counsel for the parties and perused the records.

Rival submissions:

4) Learned counsel for the appellant-accused contended before this Court that the High Court ought to have appreciated that the copy of the Jamabandi of the land of the complainant was prepared on 04.09.1996 and there was no occasion for the appellant-accused to have demanded the money from the complainant to pay the amount of illegal gratification. It is further submitted that the complainant did not collect the copy of the Jamabandi on 04.09.1996 but later on he connived with the police personnel (vigilance) and came to his office on 06.09.1996 in order to frame the appellant in a fabricated case. Learned counsel further contended that the complainant was annoyed with the appellant because he had supplied a copy of the Jamabandi of the land of the complainant to his adopted son-

Nirmal Singh to whom the complainant did not wish to give anything out of his property.

5) Learned counsel for the appellant-accused further submitted that the alleged recovery of money and the hand wash of the appellant-accused are all made up stories. Gurbhej Singh (DW-1), Head Constable, in his deposition stated before the Court that there was no entry to show the deposit of the nip containing hand wash solution of the appellant-accused on 06.09.1996 in Register No. 19 as well as there was no entry in the field register to show that the solution was sent for chemical examination. Learned counsel further contended that the manner in which the raid was conducted and the recovery was made is also very doubtful. He also pointed out various discrepancies in the manner of recovery stating that the money was taken from the drawer of the table by the investigation officer (IO) whereas Rajwant Singh (PW-9) stated to have taken out the same from the drawer by the appellant-accused.

6) Learned counsel for the appellant-accused finally contended that the complainant and Bakhshish Singh (PW-8) are highly interested persons and their testimony as to demand as well as acceptance of the bribe money is highly doubtful. The discrepancies inherent in the prosecution case are not sufficient to bring home the guilt of the appellant-accused.

7) Learned counsel for the respondent-State while replying the above contentions submitted that the demand and acceptance by and recovery from the accused of the bribe money have been proved beyond any manner of doubt and even otherwise the incriminating currency notes having been proved to have been recovered from the custody of the accused in terms of Section 20(1) of the PC Act which were accepted by him as a motive or reward for issuance of copy of the jamabandi. He further submitted that it was not proved by the appellant-accused that the copy of the Jamabandi was delivered to the complainant on 04.09.1996. In fact, the register wherein the signature of the appellant was obtained as token of delivery of copy of the Jamabandi is the relevant piece of

evidence for that purpose.

8) With regard to the claim that the complainant nursed a grudge against the appellant-accused for having supplied a copy to his adopted son-Nirmal Singh, it was submitted that the matter between Nirmal Singh and the complainant has already been compromised and also nothing on record was brought by learned counsel for the appellant-accused to show that the copy of the Jamabandi was actually supplied to the Nirmal Singh by him.

9) Learned counsel for the respondent-State further submitted with regard to the contention that no entry was made to show the deposit of hand wash solution that the test of phenolphthalein sodium carbonate is not the requirement of law and any discrepancy pertaining to the same is of no consequence. It was also submitted that the recovery of the tainted currency notes from the custody of the appellant-accused has been proved by direct evidence. Learned counsel for the respondent-State finally submitted that the courts below have rightly convicted the appellant-accused under the provisions of the PC Act and there is no scope of interference by this Court.

Discussion:

10) For appreciating the rival submissions made by learned counsel for the parties, it is relevant to quote the relevant provisions of the PC Act which are as under:-

“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 extend to seven years and shall also be liable to fine. Explanations. – (a) “Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration”. The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organization, which

he serves, to accept.

(d) “A motive or reward for doing”. A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

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

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation. – For the purposes of this section, “known sources of income” means income received from any lawful source

and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.”

11) There is no denying the fact that on 06.09.1996, a trap was laid on the complaint filed by the complainant and the appellant-accused was caught red-handed by the Vigilance Department, Patiala. Due procedure was followed while conducting the trap wherein Bakhshish Singh (PW-8) was nominated as a shadow witness who accompanied the complainant-Arjan Singh (PW-6), who was handed over the currency notes of denomination of Rs. 500/- and Rs. 100/- duly smeared with phenolphthalein powder and after recording their numbers. When both of them went inside the office, the appellant-accused, who was sitting on a chair, on seeing them, asked the complainant if he had brought the money. When PW-6 replied positively, the appellant-accused took from him six hundred rupees and put them in the right hand side upper drawer of his table and handed over to him the copy of Jamabandi after obtaining his signature on a Register where the complainant signed and put the date as 06.09.1996. The shadow witness came out of the office of the accused and signaled in a specific manner. Thereupon, DSP Amar Nath along with other members of the raiding party went inside the office of the accused. A glass of water was requisitioned and sodium carbonate was added to the water. When fingers of both the hands of the accused were made to be washed in the solution, the colour of the solution turned light pink and the numbers of the currency notes also tallied and they were taken into possession by investigating team. After carrying out necessary formalities, the accused was arrested.

12) In order to prove the manner of investigation and various aspects relating to the prosecution one Kewal Krishan was examined as PW-5. PW-5 is the official witness and was associated with the raid. Balbir Singh Kanungo (PW-3), a clerk of the office of the Deputy Commissioner, Patiala deposed before the court that the appellant-accused was working under him and he used to receive writings of the accused. On this basis, he identified the writing and signature of the accused on the copy of the Jamabandi. The complainant, in his deposition, narrated the whole incident before the court. PW-5 completely corroborated with the statement of the complainant-Arjan Singh (PW-6). Though learned counsel for the appellant-accused pointed out the flaws in the process, no discrepancy was found with respect to the material aspects of the matter such as recovery of the incriminating currency notes, their identity or the credibility of the witnesses. When witness is examined on oath at length, it is quite possible for him to make some discrepancies. No true witness can possibly

escape from making some discrepant details. An objection was raised by learned counsel for the appellant-accused that the copy of the Jamabandi stood prepared on 04.09.1996 and thus, there was no occasion for the appellant-accused to ask for the illegal gratification on 06.09.1996. The best piece of evidence to establish this point was the Ujrat Register wherein signatures of the complainant were obtained as a token of delivery of copy of Jamabandi but no attempt was made on behalf of the appellant-accused to get the said Register produced on record. The said entry bears the date as 04.09.1996 in the relevant column but signatures of the complainant regarding receipt thereof were obtained on the said entry by the appellant-accused at the time of trap, that is, on 06.09.1996. Even otherwise, the demand, acceptance and recovery of the incriminating currency notes from the accused have been sufficiently proved. The objection that reliability of the trap was impaired as the solution collected in the phial was not sent to the Chemical Examiner is too puerile for acceptance. This point was considered by this Court in *State of U.P. vs. Zakaullah* (1998) 1 SCC 557 wherein it was held as under:-

“13.....We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money.....” Further, it was asserted that the hands of the appellant-accused might have got in touch with the phenolphthalein powder when he was caught hold by the investigating officer and, thus, finding on conviction cannot be recorded on the basis of the phenolphthalein sodium carbonate test. In the case on hand, there is no evidence on record to show that the investigating officer shook hands with the appellant-accused or caught his hands and, as such there was no occasion for the phenolphthalein powder being transferred from the hands of the investigating officer to those of the accused. Even otherwise, the recovery of the tainted currency notes from the custody of the appellant-accused has been proved by direct evidence.

13) It was also brought to the notice of the court that the complainant-

Arjan Singh nursed a grudge against the appellant-accused for having supplied a copy of the Jamabandi to Nirmal Singh- adopted son of the complainant and the present case is the outcome of the said grudge only. In view of the above, it was stated before the court by learned counsel for the respondent-State that the matter between the aforesaid Nirmal Singh and the complainant was compromised and even otherwise no material on record has been placed to show that a copy of the Jamabandi was supplied to Nirmal Singh by the appellant-accused. The contention is misconceived. Moreover, the said suit has no relevance at all with the instant case as it was filed on 16.01.1997, i.e., much later than the date of incident of 06.09.1996.

14) It may also be mentioned here that Head Constable Gurcharan Singh (PW-

1) has categorically stated in his deposition that the sealed nip of hand- wash of the appellant-accused was also deposited with him on 06.09.1996 along with other case properties and

he made the entry thereof in the relevant register. Though he was not cross-examined on this aspect, it was he who made the entry and he should have been confronted with the said entry if learned counsel for the appellant-accused thought that there was some discrepancy in it and if the appellant-accused wanted to take benefit thereof. In fact, there was no such discrepancy as deposit of sealed nip of hand-wash of the appellant-accused has been mentioned in the register.

15) The premise to be established on the facts for drawing the presumption is that there was demand, payment and acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted “as motive or reward” for doing or forbearing to do any official act. So the word “gratification” need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like “gratification or any valuable thing”. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word “gratification” must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. In the case on hand, from the facts on record, it is proved beyond doubt that the appellant-accused asked for the money to do a particular act and actually accepted the same. He was caught red-handed and, therefore, we do not find any reason to disagree with the findings of the trial court and the High Court.

16) In a decision of this Court in *State of Punjab vs. Madan Mohan Lal Verma* (2013) 14 SCC 153 it was held as under:-

“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide *Ram Prakash Arora v. State of Punjab*, *T. Subramanian v. State*

of T.N., State of Kerala v. C.P. Rao and Mukut Bihari v. State of Rajasthan.)”

17) On the same lines, in C.M. Sharma vs. State of A.P. (2010) 15 SCC 1, this Court has held as under:-

“23. We do not have the slightest hesitation in accepting the broad submission of Mr Rai that demand of illegal gratification is a sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the facts of the present case, we are of the opinion that both the ingredients to bring the Act within the mischief of Sections 7 and 13(1)(d)(ii) of the Act are satisfied.”

18) It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused.

Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act. In the light of our own re-appraisal of the evidence and keeping in view the abovesaid principle in mind, we have also come to a conclusion that twin requirements of demand and acceptance of illegal gratification were proved in the case on hand on the basis of evidence adduced by the prosecution against the appellant and hence the appellant was rightly convicted and sentenced for the offences punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Act.
Conclusion:

19) On the face of the specific and positive evidence which cannot be said to be inherently improbable, the plea of the appellant-accused that the prosecution case is fit to be rejected on the ground of improbability does not appeal to us. The courts below, in our opinion, have rightly rejected the defence evidence. Therefore, in our opinion, the prosecution in this case has proved the guilt of the appellant-accused beyond all reasonable doubt.

20) For the reasons stated above, this appeal fails and the same is dismissed.

.....J. (J. CHELAMESWAR)J. (R.K. AGRAWAL) NEW DELHI;

JULY 5, 2016.