

Kehar Singh vs State Of Punjab on 10 November, 2010

Author: A.N. Jindal

Bench: A.N. Jindal

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Appeal No. 1160-SB of 2000

Date of decision: November 10, 2010

Kehar Singh

.. Appellant

Vs.

State of Punjab

.. Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Aman Chaudhary, Advocate and
Mr. R.S. Dadwal, Advocate for the appellant.
Mr. Amit Chaudhary, AAG, Punjab for the respondent.

A.N. Jindal, J

Accused Kehar Singh being Statistical Assistant deputed to the office of Civil Surgeon, Fatehgarh Sahib for preparing the birth and death certificates was prosecuted for allegedly receiving a sum of Rs.1200/- as bribe from the complainant Talwinder Singh for issuing birth certificate. Consequently, vide judgment dated 6.11.2000 passed by the Special Judge, Fatehgarh Sahib appellant was convicted and sentenced to undergo rigorous imprisonment for 2- 1/2 years and fine of Rs.1500/- under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 (for brevity, 'the Act').

Talwinder Singh (PW4) in his statement before DSP Vigilance Sukhminder Singh (PW8) disclosed that he wanted to have birth certificates of his brother's children from the office of Chief Medical Officer, Fatehgarh Sahib. On 6.7.1995 he had contacted the accused in his office and showed his requirement of birth certificate of Sarpreet Singh, Ramanpreet Kaur and Amandeep Kaur and nephew Parminder Singh and he had deposited the requisite fee in that connection. However, the accused demanded Rs.1500/- for doing the needful. Since the complainant being reluctant to pay that much bribe, he again contacted the accused and made request. Again, the demand was repeated. However, the matter was settled at Rs.1200/-. The complainant while showing his inability to pay the amount on the same day came back and then on 13.7.1995 he along with Baldev

Singh an independent witness approached the DSP Vigilance, Fatehgarh Sahib and told him the aforesaid facts. He had handed over 12 currency notes to him for laying trap upon him. DSP Vigilance (PW8) recorded the statement (Ex.P7) and treated the currency notes MO2 to MO13 with phenolphthalein powder, prepared the memo of the currency notes and thereafter passed the same to the complainant with the direction that he would hand over the money to the accused on demand. Baldev Singh was appointed as shadow witness with the direction that he would hear the conversation between the complainant and the accused and after the tainted money is passed on to the accused, he would give signal to him with his right hand. Kuldip Singh Work Munshi Public Health Sub Division-I, Fatehgarh Sahib (PW7) was joined as independent witness. He was also informed about the plan organized by the Investigating Officer. All these proceedings and trap proceedings were recorded vide endorsement Ex.PW7/A. On the basis of the ruqa sent to the Police station formal FIR (Ex.P19) was recorded by Inspector Vigilance Hakumat Singh.

As per directions the complainant and the shadow witness Baldev Singh met the accused who demanded Rs.1200/- for issuing four birth certificates as aforesaid, where upon the complainant handed over the currency notes to the accused who put the same under the papers lying on the table. In the meantime, on giving signal by the shadow witness, DSP Sukhdev Singh along with other members of the raiding party arrived there; caught hold the accused from his wrist. After giving him his identity, DSP Sukhdev Singh called for a glass of water in which he put sodium carbonate but the colour of the water did not change. However, when the hands of the accused were got washed in the said solution, the colour of water turned pink then it was put into a nip MO-1 which was converted into parcel and it was sealed with the seal bearing impression "SS". The seal was handed over to Kuldip Singh Work Munshi and the nip was taken into possession vide memo Ex.P10. The accused, after taking out the tainted currency notes from beneath the papers handed over the same to DSP Sukhdev Singh. On comparison of the currency notes so recovered from the accused tallied. As such, the said currency notes were taken into possession vide memo Ex.P11. The complainant produced four birth certificates which were also taken into possession as MO-14 to MO-17 vide memo Ex.P13. The receipt book No.48570 (Ex.P4) which included four receipts vide which the complainant had deposited the fee for four birth certificates was also produced by the accused and the same was taken into possession vide memo Ex.P14. The application for taking birth certificates Ex.P15 was also taken into possession. On personal search of the accused, a sum of Rs.286/- were recovered from his shirt pocket which were also taken into possession vide memo Ex.P12. Investigating Officer prepared the rough site plan Ex.P23 and on completion of the investigation challan against the accused was presented in the court.

The accused was charged under Section 7 read with Section 13 (2) of the Act, to which he pleaded not guilty and opted to contest.

In order to substantiate the charges, the prosecution examined Karnail Singh (PW1), MHC Gurcharan Singh (PW2), Bikramjit Mahajan (PW3), Talwinder Singh complainant (PW4), Baldev Singh (PW5), Raghbir Singh (PW6), Kuldip Singh (PW7), DSP Sukhwinder Singh (PW8) and C. Harminder Singh (PW9).

When examined under Section 313 Cr.P.C. the accused while admitting that Talwinder Singh had met him on 6.7.1995 when he had come to obtain birth certificates pertaining to Sarpreet Singh, Ramanpreet Kaur, Amanpreet Kaur and Parminder Singh, denied all other allegations and pleaded his false implication in the case. However, no evidence was led in defence.

The trial ended in conviction.

Arguments heard. Record perused.

The motive regarding demand of bribe money is writ large in the case. As a matter of fact, birth entries of Parminder Singh and Ramandeep Kaur were not recorded in the Birth and Death Register. However, on the request of the complainant, the same were entered some time prior to 6.7.1995 with late fee and permission by the competent authority. The fee receipt Ex.P28, letter Ex.P25, applications Ex.P30 and P31, affidavit Ex.P32 regarding birth entry relating to Parminder Singh and letter Ex.P40 regarding late fee deposit receipt Ex.P39, letters Ex.P35 and Ex.P36 regarding Ramanpreet Kaur and letters dated 6.7.1995 Ex.P24 regarding Parminder Singh, letter dated 6.7.1995 Ex.P25 regarding Amanpreet Kaur which were issued by the District Registrar, Births and Deaths, Fatehgarh Sahib to Local Registrar, Births & Deaths, Police Station Sirhind for sending their birth certificates duly exist in the record. After the application moved by the complainant to receive the birth certificates of his niece and nephew also established that the complainant was in need of the birth certificates and he had visited the office of Civil Surgeon in that connection. The accused has also admitted that the complainant had met him on 6.7.1995 in connection with the issuance of certificates and had also filed the application Ex.P34. The complainant, without mincing the words, had stated that the accused had demanded Rs.1400/- from him on 6.7.1995 for issuing birth certificates and again he visited the office on 11.7.1995 and he was not delivered the certificates on that day also, indicate about the designs of the accused to issue certificates only on receipt of the bribe money. The complainant has been cross examined regarding demand of bribe who has withstood the test. The argument raised by the learned counsel for the accused that mere ipsi dixit of the complainant is not sufficient to prove the demand is without any merit. As a matter of fact, the bribe is always demanded in isolation and there could be no witness to the same, as such, it is only the conduct of the complainant which the court could examine before reaching the conclusion if there was any demand or not. As such, no corroborative evidence was required. The trial court has also relied upon two judgments delivered in the cases of Rajinder Kumar Sood v. State of Punjab 1983 Crl. L. J. 1338 and Ramesh Kumar Gupta v. State of M.P. 1995 Crl. L. J. 3656. In the latter judgment, it was observed that the court could act upon un-corroborated testimony of the trap witness if it is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

It is often seen that bargaining qua passing of illegal gratification are made in the isolation, therefore, no corroboration is required to the testimony of the complainant who makes categorical statement that the accused had demanded the bribe. The other evidence and the evidence with regard to acceptance also proves the prior demand of the gratification. As such, no corroboration is required.

In the instant case, the demand was made on 6.7.1995 and then on 11.7.1995, the bargain was settled at Rs.1200/-. The payment of Rs.1200/- was handed over and recovery of the said amount was effected from the accused, therefore, no further corroboration to the previous demand was required. Subsequent demand has been duly proved by the prosecution witnesses on 13.7.1995. The complainant while appearing in the witness box has subsequently stated that when he went to the office of the accused, he met him when he was sitting in the chair and the table was lying in front of him after he demanded the money. He had handed over the same which he had concealed under some papers, therefore, on receipt of the money he handed over him birth certificates. On signal being given, DSP Sukhminder Singh reached the spot and recovered the amount. Baldev Singh (PW5) a shadow witness while corroborating the testimony of Talwinder Singh (PW4) had admitted that the accused disclosed before him that he had done his work, therefore, the complainant should part with the money, there upon the complainant handed over Rs.1200/- to the accused. During cross examination, Baldev Singh (PW5) has tried to give some twist to the statement, however, on going through the statement of Baldev Singh a shadow witness in entirety it comes out that he was present with the complainant in the office of the accused and the accused had accepted the bribe money from the complainant and the recovery of the bribe money was effected by the Investigating Officer from the accused which was concealed by him beneath the papers on the table in front of him, therefore, even if the shadow witness Baldev Singh has tried to give some turn to the statement that would hardly be sufficient to shatter the recovery of the money by the DSP Sukhminder Singh from the accused.

As regards motive, the accused being the Statistical Assistant was the concerned person to issue birth certificates and the fact that he had issued the birth certificates after demand and acceptance of the bribe money and the fact that these birth certificates were got entered by the complainant prior to 6.7.1995 goes to show that the complainant was much interested in receiving the birth certificates and the accused knew about his anxiety and therefore, he had placed the demand for serving his purpose. Not only the shadow witness, but Kuldip Singh (PW7) and also the Investigating Officer are the witnesses to the recovery. They have fully corroborated the factum of recovery from underneath the files on the table. Though some doubts have been raised over the conduct of these witnesses that the money handed over to the accused were in the envelope when it was handed over to accused and Kuldip Singh was not with the shadow witness when money was handed over to the complainant but when they say that the money was handed over to the accused in envelope falsifies the prosecution version appear to be not of much significance as such discrepancies are bound to occur with the lapse of time. Their statements were recorded after five years of the occurrence and in these circumstances there are all chances that the human memory is likely to fade and they could give minute details of the occurrence. However, DSP Vigilance has given complete details of the occurrence and corroborated the prosecution version in all minute details. No such enmity has been pointed out against him for falsely implicating the accused in the instant case.

Still much stress has been given by the learned counsel for the appellant in order to falsify the statement of the complainant as well as the other witnesses of the trap. On going through the testimonies in minute, this court had no reason to disbelieve them. Baldev Singh (PW5), a shadow witness, who was accompanying the complainant has duly accepted the fact that the accused had

demanding and accepted the bribe and kept it under the files. Kuldip Singh (PW7) has also stated that he had seen the complainant passing on the currency notes to the accused and the latter having received the same through envelope. He also deposed that he had kept the money under the files over the table. As referred to above, Baldev Singh has tried to give twist to his statement which is indicative of the fact that the said twist is motivated for extending help to the accused. He has also given twist on the point that the complainant has told as to what had been exchanged between him and the accused when once he had seen the money being handed over to the accused then mentioning of these words does not arise.

In any case, the statement of the complainant coupled with the statements of the recovery witnesses cannot be thrown away particularly when presumption under Section 20 of the Act is attracted. It may further be mentioned that the prosecution has proved the demand, acceptance and recovery of the tainted currency notes from the accused and he had not led any sufficient evidence to prove the falsity of the prosecution version.

Besides the oral evidence, this court also can not overlook the circumstantial evidence prevailing over the case. Both the hands of the accused were washed in the solution of the water and sodium carbonate and the colour of the water turned pink. The numbers of the currency notes as recovered from the accused tallied with the memo as prepared by the Investigating Officer. The solution so prepared at the spot was sealed in a nip MO-1 which was later on sent for chemical examination. Ex.P41, which is the report of the Forensic Science Laboratory, also indicates that the contents of the solution were the mixture of sodium carbonate and phenolphthalein, as such it establishes the fact that the accused had once handled the currency notes upon which phenolphthalein powder was applied and on hand wash got done by the Deputy Superintendent of Police the colour turned pink. The accused has no explanation to the aforesaid circumstances of the case. Merely to say that the case is false is not sufficient to condemn the coterie of witnesses who wanted to unearth this menace of corruption.

The complainant being reluctant to give the bribe would be the last person to put himself into trouble and instead of getting his work done by hook or crook would open another chapter, therefore, there is no reason to disbelieve the complainant.

Thus, taking stock of the aforesaid situation, no iota of doubt remains in my mind to hold that there is an impeachable evidence leading to establishment of fact of demand and acceptance of the bribe money by the public servant.

No doubt, conviction of a Government employee in a corruption case results in snatching not only his livelihood but also of the persons who are completely dependent upon him receive a set back, but at the same time, the Apex Court has said time and again and particularly in the judgment rendered in case State of Madhya Pradesh vs. Ram Singh and others 2000 (1) RCR (Criminal) 784 that corruption in a civilized society is a disease like cancer which if not detected in time is sure to malignise the policy of the country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. It effects the economy and destroys the cultural heritage. It was further observed that unless it is nipped in the bud at the

earliest, it is likely to cause turbulence shaking of the socio-economic political system of the country. No doubt fundamental principle of the administration of justice is to treat the accused as innocent and he has a right of silence till he is proved to be guilty. Now in these days of advanced science, technology and variety of devices to be used and diversity of the ways instrumented in earning of easy money, administration of justice should look with its inner eyes about the balance between the illegal acts and innocence of the accused, also about the extent of evidence the prosecution could produce and if some obligation could be placed upon the accused to explain which are in their exclusive knowledge. The States are slow in its action on account of untrained state machinery or other various reasons, at the same time, the criminals have faster and more advanced devices and instruments to make way for achieving their targets, then those who wield the handle of investigation. As such, law requires the vamping up of the state machinery so as to create a sense of dedication and sincerity towards their duties and train them to coup up with the present techniques, means, ways and devices used by the accused in the commission of the crime. The court should rise to occasion to direct the Investigating Agencies to introduce new and advanced systems and technology in conducting the investigation to the state to provide latest infrastructure. The videography, being also one of the sure test to prove the actual raid, should also be introduced.

Thus, in the wake of the aforesaid discussions, this court is of the definite opinion that the trial court has rightly concluded that the accused had demanded and accepted the bribe for a motive.

No other argument has been advanced.

For the foregoing reasons, finding no merit in the appeal, the same is dismissed.

November 10, 2010
deepak

(A.N. Jindal)
Judge

Whether refer to reporter: Yes/No.