

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

MISCELLANEOUS APPLICATION No(s).1075 OF 2020

IN

CRIMINAL APPEAL NO. 2256 OF 2010

GURDIP SINGH PATWARI

...Petitioner(s)

VERSUS

STATE OF PUNJAB

...Respondent(s)

O R D E R

Since the instant Criminal Appeal was disposed of vide order dated 27.11.2019 without affording any hearing to the appellant, we deem it appropriate to recall the order dated 27.11.2019.

The M.A. is accordingly allowed.

The appeal is restored to the file and with the consent of the learned counsel for the parties, it is taken up for hearing.

The appellant, a Patwari working in the Revenue Department of State of Punjab was alleged to have committed offences punishable under Sections 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

According to the prosecution, the appellant demanded a sum of Rs.300/- by way of an illegal gratification after the signature of the complainant was obtained in the Register but a copy of the Jamabandi was not supplied to the complainant.

The case of the prosecution rested principally on the testimony of the complainant- Gurmeet Singh (examined as PW-4) and the shadow witness Sukhdev Singh (examined as PW-5) in the trial, apart from the fact that in the trap, the currency notes of Rs.200/- were found on the person of the appellant.

The evidence as regards demand and acceptance was found to be credit-worthy by the Trial Court which by its judgment and order dated 01.12.1999 found the appellant guilty of charges levelled against him and sentenced him to suffer rigorous imprisonment for four years and to pay fine of Rs.1000/- in default whereof, the appellant was to suffer further rigorous imprisonment for one month.

The appellant being aggrieved, filed Criminal Appeal No.1204-SB of 1999 in the High Court of Punjab and Haryana at Chandigarh which was disposed of by the High Court vide order dated 31.03.2010 stating as under:

“Learned counsel at the very outset has contended that he does not challenge the conviction of the appellant on merit and confines his argument on the point of quantum of sentence. Learned counsel further submits

that a case under Section 7, 13(2) of the Act was registered against the appellant in the year 1997. The present appellant was convicted and sentenced under Section 7 read with Section 13(2) of the Act passed by the Special Judge vide judgment dated 01.12.1999. Learned counsel further submits that during this period, the appellant has been facing mental agony of the trial and a sword of conviction has been persistently hanging over his head since then. Learned counsel has further submitted that keeping in view the facts and mitigating circumstances of the appellant, as also the fact that appellant is a poor fellow, some lenience be shown against him in the matter of sentence.

Since, the prayer made by the learned counsel appearing for the appellant has been restricted only on the quantum of sentence, therefore, in order to avoid repetition of facts in the judgment herein, I do not consider it necessary to recapitulate the same again, since they have been narrated in the judgment of the court below in details.

I have considered the submissions raised by the learned counsel appearing for the appellant and scrutinized the record of the case. It is no doubt true that since the date of registration of the case, the appellant has been facing mental stress and agony for the last more than 13 years and in such like circumstances, I am of the view that ends of justice would be amply met if a lenient view in the matter of sentence is taken against the appellant. Accordingly, taking a lenient view against the appellant, it is directed that conviction recorded against the appellant under Section 7 read with Section 13(2) of the Act shall be maintained, but the period of sentence awarded to him by the court below is reduced from four years to one year rigorous imprisonment. Appellant shall be taken into custody for serving out the aforementioned period of sentence awarded to him by this Court."

The order thus discloses that no submissions on merit were advanced before the High Court. The petition of appeal does not dispute the position.

Even then we have considered the merits of the matter and heard the submissions advanced by Mr. K.T.S. Tulsi, learned Senior Advocate for the appellant and by Ms. Jaspreet Gogia, learned Advocate for the State.

It was submitted by Mr. Tulsi, learned Senior Advocate that the copy of the Jamabandi was issued to the complainant on 25.06.1997 and the trap was laid thereafter. In the submission of the learned Senior Advocate, since the copy of the Jamabandi was already given there was no reason for the accused to make any demand and as such the entire prosecution case must fail.

Reliance was placed on the order dated 16.11.2010 passed by this Court in Criminal Appeal No.1227 of 2005 in Nishan Singh vs. State of Punjab.

Said order in Nishan Singh's case indicates that the independent witness namely, PW-7 could not state about actual demand of bribe made by the accused. Thus, in the peculiar facts of that case, the relief was granted to said accused.

The consistent version emanating from two prosecution witnesses completely establishes that the demand was made. It is also established that the money was found on the person of the accused. We therefore, see no reason to interfere. The appeal is, therefore, dismissed.

The appellant shall surrender within three weeks from today, failing which he shall be taken in custody and the bail bonds furnished on his behalf shall stand forfeited. If he surrenders within the period as stated above, the bail bonds shall stand cancelled. A copy of this Order shall be sent to the concerned Police Station and the jurisdictional Chief Judicial Magistrate, who may report compliance immediately.

.....J.
[UDAY UMESH LALIT]

.....J.
[MOHAN M. SHANTANAGODAR]

.....J.
[VINEET SARAN]

New Delhi
July 24, 2020.

