



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1105 OF 2013**

RAJ BAHADUR SINGH

... APPELLANT

VERSUS

STATE OF UTTARAKHAND

... RESPONDENT

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeal is directed against the final judgment and order dated 13.04.2012 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 40 of 2006. By the impugned judgment and order High Court dismissed the appeal filed by the appellant and sustained the order of conviction and sentence passed by the Trial Court to undergo R.I. for one year and pay a fine of Rs. 1,000/-, and in default of payment of fine, to further undergo S.I. for 15 days under Section

7 of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'P.C. Act'], and to undergo R.I. for two years and pay a fine of Rs. 2,000/-, and in default of payment of fine, to further undergo S.I. for 30 days for the offence under Section 13(2) of P.C. Act.

BRIEF FACTS

2. The factual matrix of the case is that the accused appellant, Raj Bahadur Singh [hereinafter referred to as 'appellant/accused'], was serving as a Constable in the Excise Department in District Udham Singh Nagar, Uttarakhand. The complainant, Kashmir Singh (PW1) [hereinafter referred to as 'complainant'], was allegedly involved in the business of manufacturing contraband liquor and had been challenged by the Excise party on three previous occasions. On fourth occasion i.e. on 16.06.1990, during a raid on the complainant's village, complicity of the complainant in the said crime was also noticed. It is alleged that the complainant was asked to sign some papers by the appellant and was threatened that if Rs 500/- of illegal gratification was not given then Challan would be forwarded to the competent Court. The appellant further claimed he had

already prepared a “temporary bail” bond for the complainant, which would only be honored upon payment. Complainant feeling constrained by persistent threats at the hands of appellant agreed to pay Rs. 500/-.

3. However, on 18.06.1990 the complainant filed a complaint with the Superintendent of Police (Vigilance) who thereafter marked an endorsement and ordered the Inspector to organise the trap. Accordingly, a trap was organized at a restaurant in Khatima and as a prelude to trap, complainant handed over five currency notes of denomination of Rs. 100/- each to Inspector Mahender Pal Singh who tainted these currency notes with “Phenolphthalein Powder” in the presence of 2 independent witnesses. On 19.06.1990 around 11:00 a.m. trap party which included police team along with 2 independent witnesses Sree Jeet Singh/PW- 2 & Sree Bhagwan Singh went inside the restaurant and in presence of complainant recovered five currency notes of denomination of Rs. 100/- from the appellant. Appellant’s hands were then soaked in Sodium Carbonate solution, which turned pinkish, confirming the presence of phenolphthalein powder. Memo of action taken on the spot was prepared and the appellant was taken into judicial custody.

4. It was in this background, the criminal machinery was set into motion and an FIR Case No. 114 of 1990 was registered under P.C. Act. Upon investigation, a chargesheet was submitted vide case no 368 of 1990 under Section 7 and Section 13(1)(d) read with Section 13(2) of P.C. Act. Special Session Trial No. 46 of 1991 was registered.

5. The Trial Court, vide its judgment and order dated 03.03.2006, convicted the appellant to undergo R.I. for one year and pay a fine of Rs. 1,000/-, and in default of payment of fine, to further undergo S.I. for 15 days under Section 7 of P.C. Act, and to undergo R.I. for two years and pay a fine of Rs. 2,000/-, and in default of payment of fine, to further undergo S.I. for 30 days for the offence under Section 13(2) of P.C. Act.

6. On appreciation of evidence on record, the High Court vide its judgment dated 13.04.2012 dismissed the appeal, sustaining the conviction.

7. Aggrieved by the said judgement of the High Court and the Trial Court, the appellant is before us.

CONTENTIONS

8. The Learned Counsel for the appellant vehemently submitted that the complainant had a strong motive to implicate

appellant in the false case so that his business of contraband liquor could flourish without disturbance. It was submitted that the complainant did not indicate the date, time, and place as to when appellant raised demand of Rs. 500/- as a gratification to exonerate complainant from the crime. It was further contended that there were material contradictions in the statements of PW 1 & PW 2 regarding the time of arrival of the accused at the relevant spot where the gratification was offered and that the witnesses were examined after a gap of 14 years. It was contended that PW-2 was well acquainted with the complainant and thus an interested witness whose testimony ought not to have been relied upon. Additionally, it is submitted that the trap was jointly organised by the complainant and the police in which the appellant who is an honest constable was trapped. The appellant further contended that he was not afforded an opportunity to examine himself as a defence witness as per the provisions of Section 21 of P.C. Act. It is submitted that complaint is a result of personal enmity which complainant bears against appellant accused. Lastly, it was argued that the tainted currency notes were not produced before the Court.

9. *Per contra*, Ld. Counsel for the State of Uttarakhand specifically contended that FIR was lodged on 19.06.1990. He further submitted that sealed sample of solutions was sent to Forensic Science Laboratory Agra for examination and the Investigating Officer after completing investigation submitted charge sheet against the accused appellant. It is also submitted that the High Court had dismissed the appeal of the appellant accused and sustained conviction. It is submitted that complainant had clearly deposed that appellant accused had demanded bribe from complainant and threatened to implicate him in false case. The case of complainant was further supported by PW 3 who in his cross-examination has stated that complainant was present in his office on 18.06.1990 and submitted application. It is argued that appellant accused had sufficient opportunity to demand illegal gratification as appellant was present in the raid proceedings which were conducted on 16.06.1990 at complainant's village. It is also submitted that it cannot be said that there are many contradictions in the statements of PW-1 & PW-2 regarding the amount of bribe or that the complaint was lodged out of personal enmity because complainant has proved identity of currency notes which were

received by accused appellant and PW-2 who is an independent witness has corroborated the entire chain of occurrence. Further, in response to the contention of the learned counsel for the appellant that the trap was allegedly jointly laid by the complainant and the police, it is submitted that the complainant merely approached the Vigilance Department with his grievance. The complainant had no role whatsoever in the constitution or selection of the trap party. The decision to take cognizance of the complaint was taken independently and at the sole discretion of the Vigilance Officer.

ANALYSIS

10. We have heard learned counsels for the respective parties at length and perused the material placed on record.

11. In our considered opinion, the High Court committed no error in upholding the judgment and order of the Trial Court and thereby sustaining the conviction recorded by the Trial Court and the sentence awarded by the Trial Court. Admittedly, the prosecution case rest on the ocular evidence and the Trial Court as well as the High Court dealt with the oral testimonies of two material and important witnesses namely, Kashmir Singh-PW-1,

the complainant and Jeet Singh-PW-2, the independent witness or the shadow witness.

12. Kashmir Singh-PW-1 in his detailed version stated before the Court that he is indulged in the liquor trade. He also submits before the Court that on earlier three occasions, he was booked as an offender and was released on bail. He further deposed before the Trial Court that on 16.06.1990, the Excise Department raided several places in his village and caught contraband liquor. His house was also raided but nothing was recovered from his house. He was forced to sign certain documents and the accused demanded an amount of Rs.500/- and threatened him that if he fails to pay the amount, he will put the complainant-Kashmir Singh behind bars in a false case. As the complainant was not ready to comply with the demand of the accused, he approached the police authorities. Then, he stated before the Court the necessary detail about the action initiated by the authorities and the steps taken by the authorities pursuant to lodgement of his report.

13. Perusal of the deposition of this witness shows that he gave a detailed description about the pre-trap steps taken by the authorities, the details of the trap conducted by the authorities

and post-trap measures taken by the authorities. PW-1 was subjected to cross-examination and he stood firm to his version. Though an attempt was made to submit before this Court that there are contradictions or omissions in the version of PW-1, we are unable to find any such contradiction or omission so as to make the version of this witness doubtful.

14. PW-2/Jeet Singh, the shadow witness supports the case of prosecution, though an attempt was made to submit that PW-2 is an interested witness.

15. Perusal of the testimony of this witness shows that PW-2 in his deposition before the Court stated that the complainant-Kashmir Singh is not his relative but person of his knowledge. Now, merely on the statement that PW-2 had an acquaintance with PW-1, one cannot jump to the conclusion that PW-2 was an interested witness. To brand the witness as an interested witness, the defence is required to bring specific material before the Court showing the hostility of the particular witness.

16. The High Court in its judgment appreciated the evidence of PW-1 and PW-2, as follows:

“8. Now, we have a glance upon prosecution evidence. PW1 Kashmir Singh has narrated the entire incidents in his chief examination rightly from raiding of village including his house by accused appellant in suspicion of manufacturing of contraband liquor till acceptance of Rs. 500/- as gratification by accused. He has also proved the identity of currency notes, which were received

by Raj Bahadur Singh in his hands. He was nabbed by team of Vigilance Department, which was in close proximity of the place of occurrence. After the incidents, hands of Kashmir Singh and Raj Bahadur Singh were washed by simple water and the same became colourful. PW2 Jeet Singh is an independent witness who has corroborated the entire chain of occurrence in pith and substance leaving minor discrepancies, which are ignorable. PW3 Nand Kishor Tyagi was Inspector in Vigilance Department at the relevant time. He was also a witness of giving and taking of gratification and has proved all factual and legal aspects, in similar manner, as stated by the previous two fact witnesses. It is worthless to reproduce the statements of all the witnesses, at the stage of appeal when it has already been elaborately discussed in the judgment of trial Court. PW4 Daya Krishan Joshi, Head constable was simply a formal witness, who noted down the First Information Report lodged by Kashmir Singh and has proved the same. PW 5 Mohd. Vakil Khan was the Investigation officer, who has also proved the entire sequence of the investigation and submission of charge sheet in the case.”

17. An attempt was made to submit that the defence witness namely, the owner of the restaurant is not supporting the case of prosecution and as such the case of the prosecution is a doubtful one. The High Court has dealt with this submission and assigned justifiable reason to submit that the oral testimony of the restaurant owner-defence witness cannot be accepted as against the reliable version of PW-2. It may not be out of place to reproduce the observations of the High Court, which are as under:

*“11. It has also been argued on behalf of the appellant **that restaurant owner was not produced by the prosecution in order to ratify the version of other witnesses while he has been produced as defence witness by the accused and he has altogether denied any occurrence of raid conducted by Anti-Corruption in his restaurant on the relevant date. This witness is not trustworthy at all because he is a local resident of town Khatima. He runs his restaurant there and accused***

appellant also hails from the same town so naturally the court can discern that a small restaurant owner cannot incur wrath of his native person and that too of a Government servant Constable of excise Police, who has been linked with other Government servants, just to open door for all the troubles in running his small restaurant whereas complainant Kashmir Singh is residents of a village, far away from Khatima, so in all probabilities it is not possible for this small restaurant owner at Tehsil Khatima to depose the truth against accused before court in the above circumstances.”

18. Ld. counsel for the appellant also made an attempt to submit before this Court that no opportunity was given to the Appellant to examine himself as Defence Witness. This ground, in our opinion, holds no water, in view of the observations of the High Court and the same reads thus:-

*“13. **Accused has not examined himself as defence witness, as per the above provision of the Act in order to rebut the prosecution version and assert his plea that he has been falsely implicated by Kashmir Singh because Kashmir Singh was challenged by him for manufacturing of contraband liquor. The Act provides an opportunity to the accused to get himself examined in the open court on oath in order to reveal the truth but he has not dared to avail this opportunity.”***

19. It may not be out of place to state here that the statement of accused under Section 313 Cr.P.C. was recorded.

20. Ld. counsel for the Appellant submitted before this Court that the currency notes in question were not produced before this Court and such omission was fatal to the case of the prosecution

21. Though the submission of the learned counsel looks attractive at the first blush, we are unable to accept the same for the simple reason that this ground was never raised neither

before the Trial Court nor before the High Court. This ground is not even raised as one of the grounds in the special leave petition filed in this Court. This was orally raised by the ld. counsel before this Court at the time of arguing the matter.

22. On the contrary, the perusal of the judgment of the Trial Court as well as the High Court clearly shows that the complainant along with the raiding party went to the restaurant. The act of handing over the currency notes to the accused and acceptance of the currency notes and thereafter, the hands and the currency notes being exposed to water turned pink showing the trace of phenolphthalein powder, is also recorded in the duly drawn *panchnama*. Thus, we are unable to accept the submission of ld. counsel for the appellant.

23. Learned counsel has also made an attempt to submit that both the Courts failed to appreciate the defence raised by the Appellant of the enmity of the complainant against the Appellant.

24. The perusal of the deposition of PW-1 clearly shows that he has stated before the Court that he was indulged in liquor trade and action was already initiated against him three times and he was released on bail. As such, PW-1 was facing the prosecution launched against him. Thus, we are not inclined with this submission of the ld. counsel for the Appellant.

25. Thus, considering all abovementioned aspects, we are of the opinion that the learned Trial Court as well as High Court on appreciation of evidence, committed no error in holding the appellant guilty for the offences committed under Section 7 and Section 13(2) of P.C. Act. As such, the interference of this Court insofar as conviction being recorded by the Trial Court and upheld by the High Court is not warranted, but at the same time considering the circumstances namely, the appellant was of the age of approximately 40 years at the time of offence in question and now, he is approximately 75 years of age; considering the material, particularly, order of this Court dated 21.08.2012 whereby this Court refused the appellant exemption from surrendering, the surrender certificate dated 15.10.2012 whereby the appellant surrendered and subsequently, the order of this Court dated 07.01.2013 whereby the bail was granted to the appellant, the appellant was behind the bars for the period of approximately 2 months and 24 days. Considering these facts, we are of the opinion that the sentence awarded by the Trial Court and upheld by the High Court can be modified to the extent of minimum sentence for the said offences namely, rigorous imprisonment of 6 months for the offence under Section

7 of P.C. Act and rigorous imprisonment of 1 year for the offence under Section 13(2) of P.C. Act. Accordingly, sentence of the appellant stands modified to rigorous imprisonment of 6 months for the offence under Section 7 of P.C. Act and rigorous imprisonment of 1 year for the offence under Section 13(2) of P.C. Act.

26. Accordingly, the appeal is disposed of.

.....**J.**
[PANKAJ MITHAL]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
MARCH 13, 2026.