

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.107 of 2017

Hari Ram TiruwaAppellant

Versus

State of UttarakhandRespondent

Mr. Arvind Vashishtha, Sr. Advocate assisted by Mr. Sarang Dhulia and Mr. B.K. Mishra, Advocates for the appellant.

Mr. S.C. Dumka, learned AGA for the State.

Judgment reserved on 21.04.2025

Judgment delivered on 30.04.2025

Hon'ble Pankaj Purohit, J. (Oral)

This appeal is preferred by the appellant under Section 374(2) Cr.P.C. and is directed against the judgment and order dated 13.04.2017 passed by the learned Special Judge (Prevention of Corruption Act)/ 1st Additional Sessions Judge, Nainital in Sessions Trial No.5 of 2011, State vs. Hari Ram Tiruwa, whereby, the accused/appellant has been convicted under Section 7 and 13(2) of Prevention of Corruption Act, 1988 and was sentenced to undergo five years simple imprisonment with fine of Rs.10,000/- with default stipulation of one year simple imprisonment under Section 7 Prevention of Corruption Act and was sentenced to undergo five years simple imprisonment with fine of Rs.20,000/- with default stipulation of one year simple imprisonment under Section 13(2) Prevention of Corruption Act. Both the sentences were directed to run concurrently and period already spent in jail in this case shall also be adjusted with the sentence imposed.

2. In brief the prosecution case is that the complainant (PW-5) wrote a letter to S.P. Vigilance, Haldwani stating that she is working as a contractual steno recruited through UPNL in Government P.G. College, Dwarahat, Almora and the principal of

the said college is demanding a bribe of a mobile phone or Rs.10,000/- in the alternative in lieu of letting her continue in the said job.

3. On the basis of above complaint, S.P. Vigilance R.P. Sharma (PW-4) by an order dated 07.03.2011 directed Inspector Harak Singh Fimal (PW-1) to conduct a preliminary investigation who in turn filed a report dated 08.03.2011 stating therein that prima facie it is a fit case for laying a trap. Thereafter, the S.P. Vigilance directed the Inspector (PW-1) to take necessary steps regarding the trap and also wrote a letter to S.D.M., Ranikhet requesting him to provide two independent witnesses who in turn named Puran Singh Supyal (PW-3), Revenue Inspector, Ranikhet and Kundan Bisht Patwari, Ranikhet as Government witnesses. Thereafter, the vigilance team on 10.03.2011 went to Spring Field Police Guest House along with the complainant and the independent witnesses and conducted a mock trial for laying the trap. They applied Sodium Carbonate Powder and Phenolphthalein Powder to the currency notes used for the trap. Thereafter, on 11.03.2011, they went to the area near principal's office and directed the complainant to hand him over the currency notes, on which the said chemical were applied at around 10.50 am, they caught the accused/appellant red handed while he was counting the currency notes. Thereafter, the currency notes were taken into custody and put into an envelope and the hand of the accused/appellant were washed, during washing the water turned pink colour because of the chemical, the sample of the pink liquid was seized and sealed.

4. On the basis of above drill, the accused was charged under Section 7/13(1)(d) read with Section 13(2) and after investigation, a charge-sheet was filed in the court of the learned Special Judge (Prevention of Corruption Act).

5. Thereafter, on 13.07.2012, learned Special Judge, framed charges under Section 7, 13(1)(d) and 13(2) Prevention of Corruption Act. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined PW-1 Inspector Harak Singh Fimal, PW-2 S.P. Anand Singh Gussain, PW-3 Revenue Inspector Pooran Singh Supyal, PW-4 Retd. S.P. R.P. Sharma, PW-5 Complainant Chandra Chauhan, PW-6 Inspector Devendra Singh Digari, PW-7 Principal Secretary to U.K. Government Manisha Panwar.

7. After prosecution evidence, the statement of appellant was recorded under Section 313 Cr.P.C. in which he stated that the complainant was working in his college as a steno and she was careless in her work and used to even take leaves without permission. On that fateful day when he called her in his chamber to call for an explanation for an unauthorized leave to his surprise she entered alongwith persons from vigilance and the team forcefully took him to Ranikhet. He claimed that he was innocent and claimed to be tried. The appellant also got examined DW1- Jagat Singh, who was the driver of the concerned vehicle, in his defence.

8. During trial, PW-1 reiterated the facts of prosecution story and supported it. He stated that he was nominated by S.P. Vigilance (PW-4) to lead the trap and he also confirmed that he went to the Government P.G. College, Dwarahat along with the trap team and caught the accused/appellant red handed when he was counting the currency notes received in bribe. He thereafter washed the hands of the accused and the liquid turned pink because of the chemicals applied. He further stated that FSL report confirmed that sodium carbonate and Phenolphthalein Powder applied on the hands of the accused, victim was the

same.

9. PW-2 on oath deposed that he was also nominated by the then S.P. Vigilance in the trap team. He also supported the prosecution story along with other facts of laying the trap, catching of the accused red handed while he was counting the currency notes and the water turning pink because of the applied chemicals.

10. PW-3 in his examination in chief stated that at the time of alleged incident he was working as Revenue Inspector and the then SDM, Ranikhet nominated him as independent witnesses of the trap team. He also supported the prosecution story and stated that in the Spring Field Guest House the victim was supplied with 20 currency notes of Rs.500/- denomination by inspector Fimal. He further stated that after handing over the currency notes the inspector washed his hand and sealed the resultant liquid. He also stated that thereafter the team reached Government P.G. College, Dwarahat and when the accused was counting the currency notes they caught him red handed.

11. PW-4 who was the then SP Vigilance on oath stated that after doing preliminary inquiry on the received complaint he directed to inspector Harak Singh Fimal to lay a trap. He also confirmed and exhibited his signatures on the various documents which were a part of the trap.

12. PW-5 who was the victim on oath stated that she was working as a contractual employee in Government P.G. College, Dwarahat and the accused was working as the Principal of the said college. In her examination in chief she deposed that the Principal used to humiliate her. She also stated that he used to treat her inhumanly and denied her leaves. She further deposed that she initially thought of making complaint against the principal to the directorate of education but someone advised her that she should instead file a complaint to the vigilance. She

thereafter went to vigilance Cell Haldwani where she met Inspector Firmal who told her that she need not worry and assured her that she will be able to continue her job, if she brings Rs.10,000/- he also promised that the said money will be returned to her later. She further deposed that on hearing this she withdrew Rs.10,000/- from a nearby ATM and handed it over to Mr. Firmal and on his instructions wrote a complaint against the Principal Government P.G. College, Dwarahat. She further stated that on 10.03.2011, she received a call from vigilance and she was asked to meet at Spring Field Government Guest House on 11.03.2011 when she reached there, Mr. Firmal introduced her to all the member of trap team and handed her over Rs.10,000/- with certain chemicals applied. She also stated that thereafter her hands were dipped in water which was sealed after it turned pink. After doing all this, the team went to Government P.G. College, Dwarahat and instructed her to hand over the currency notes to the principal but as he was not there she placed the currency notes in his drawer. As soon as the principal reached in his chamber she went inside and before anything else could have happened, the trap team entered inside and started counting the currency notes. On counting, it was found that one currency note was missing and she had left one currency note in her purse. She thereafter rushed and brought that note and handed it over to the team. She further stated that her hands were again dipped into water and sample was sealed after it turned pink. She was declared hostile by the prosecution.

13. PW-6 was also a member of the trap team and supported the story of prosecution in its entirety.

14. PW-7 who was posted as the then Secretary Higher Education on the alleged date of incident in her examination in chief deposed that after going through the entire file of the trap,

she granted sanction to prosecute the accused/appellant.

15. It is vehemently argued by the learned counsel for the appellant that the judgment of learned trial court is devoid of merit and unsustainable in the eyes of law as it is based on evidence of hostile witness, i.e. PW-5/complainant who has even deposed that FIR was written at dictation of other prosecution witness. He further states that no independent witness proves demand and payment of illegal gratification and the fact that the money was received from the drawer of accused raised suspicion of planting of money.

16. It is also submitted by the learned counsel for the appellant that the sample which were taken on 11.03.2011 were sent to FSL on 17.03.2011. This unexplained delay too, raises great suspicion in the prosecution story. He further argues that no hand wash sample were taken of PW1 and PW-2 inspite of the fact that both of them handled the money. He also submits that the testimony of trap witnesses cannot be relied upon as they were immediate subordinate to SP Vigilance and therefore cannot be relied upon as independent witnesses. He also stated that story of the prosecution appears to be dubious as inspite of the fact that various other persons were present at the place of incident there was no reason for prosecution to take their own subordinate as shadow witnesses. He also submitted that no preliminary inquiry as to the general character and disposition of the accused/appellant was carried on by the trap team.

17. Per contra, learned State counsel admits the fact that the appellant/accused was caught counting the money but the prosecution failed to establish the demand and delivery of money.

18. Having heard the learned counsel for the parties and on perusal of record and evidence of PW-5 and appreciation of

the entire evidence, this Court is of the opinion that there is nothing on record to prove the guilt of the appellant to the hilt and beyond all reasonable doubts as here in the case in hand, it is very clear from perusal of record that the star witness PW-5 i.e. the complainant very clearly in her examination in chief stated that the principal used to trouble her, humiliate her and not grant her leaves, but she nowhere stated that there was any demand for money as bribe instead it has been clearly stated by her that there was no demand for any sort of illegal gratification which is the most essential ingredients for conviction for an offence under Section 7 and 13(2) of Prevention of Corruption Act. Moreover, she herself deposed that the whole complaint was written under the direction of the Vigilance Inspector and also stated that she did not handed over the money to Principal but planted it in his drawer in his absence. Further in her cross examination she has clearly stated that it will be wrong to say that principal demanded illegal gratification. Thus demand and delivery has not been proved by the prosecution. In such view of the matter, conviction cannot be sustained.

19. The aforesaid view is also supported by relevant para 88 of the celebrated judgment of Hon'ble Apex Court in the case of **Neeraj Dutta vs. State (NCT of Delhi), (2023) 4 SCC 731: 2022 SCC OnLine SC 1724**. The relevant portion is herein quoted below:

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (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.

88.2. (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.

88.3. (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.”

20. This Court is of the opinion that in the case in hand various lacunae like unexplained delay in sending the sample to FSL, non washing of hands of PW-1 and PW-2 who handled the money, hand wash of the victim not turning pink but milky white and non presence of independent witnesses go on to contradict the cardinal principle of criminal law i.e. the guilt of the accused should be proved beyond all reasonable doubts.

21. The upshot of the aforesaid discussion is that appeal deserves to be allowed. Accordingly, present appeal is allowed and the impugned judgment and order dated 13.04.2017 passed by Special Judge, Prevention of Corruption Act/1st Additional Sessions Judge, Nainital is hereby set aside. The appellant is on bail. He need not surrender. His sureties discharge forthwith.

22. Let the TCR be immediately sent back to Trial Court for consignment.

(Pankaj Purohit, J.)
30.04.2025

Ravi