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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1652/1996

Single Bench (Criminal)

APPELLANT/ACCUSED
(ON BAIL)

- Teerath Ram Rathore son of Shri Dadu Ram Rathore, aged 47 years, Occupation - Patwari, resident of village - Sukli, Tahsil Jangir, Distt. Bilaspur (M.P.)

V/s

DEFENDANT

- State of M.P. Through Special Police Establishment, Likayukt Bilaspur Division Bilaspur (M.P.)

CRIMINAL APPEAL UNDER SECTION 374 of CODE OF CRIMINAL PROCEDURE.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1652 of 1996

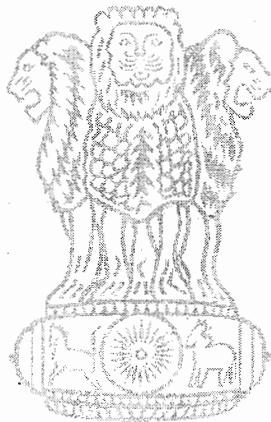
Appellant : Teerath Ram Rathore

VERSUS

Respondent : State of Madhya Pradesh (now
Chhattisgarh)

Post for pronouncement of judgment on 24th day of
December, 2014.

Sd/-
Goutam Bhaduri
Judge



सत्यमेव जयते

(52)

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 1652 of 1996**

Appellant : Teerath Ram Rathore

VERSUS

Respondent : State of Madhya Pradesh (now
Chhattisgarh)

Criminal Appeal U/s. 374 of the Criminal Procedure Code

SB: Hon'ble Shri Goutam Bhaduri, J.

Present: Shri V.C. Ottalwar, counsel for the appellant.
Shri Sameer Behar, PL for the State.

JUDGEMENT

(Delivered on 24th of December, 2014)

1. This is an appeal against the judgment and order dated 11th September, 1996 passed in Special Case No. 03/88 by the court of Special Judge, Bilaspur whereby the appellant has been convicted under Section 5 (1) (D) and 5 (2) of Prevention of Corruption Act, 1947 and has been awarded sentence of R.I. for 1 year and fine of Rs.100/-. Further the appellant has been convicted under Section 161 of IPC and has been awarded sentence of R.I. for 1 year and fine of Rs.100/-.
2. Brief facts of the prosecution case was that complainant Ram Sharan Kewat was staying along with his brother Ram Bhagat @ Bhagat Ram at Pandhi. It was further case of the prosecution that in the year 1985 both brothers had purchased different lands by different sale deeds. Therefore, both of them i.e. Ram Sharan and Ram Bhagat wanted to get the name recorded in the revenue record. Pursuant to such process they approached

appellant Teerath Ram Rathore, who was patwari and requested to get name mutated in the revenue records. It was case of the prosecution that appellant on such request, demanded an amount of Rs.1370/-. The complainant thereafter requested to reduce the amount and consider the same. However such request was not acceded to by Teerath Ram so the complainant approached to one Jageshwar Prasad PW-2, who was Sarpanch of the village. The complainant disclosed that an amount Rs.1370/- was being asked which was very high. It was case of the prosecution that Jageshwar Prasad also went to the appellant and stated that Rs.1370/- was too much and requested to settle amount for Rs.800/- but the appellant did not accede to it. Subsequently perforce, the complainant had paid an initial amount of Rs.800/- to the appellant for mutation and correction of the revenue records in front of one Mohan Puri and agreed to pay rest of the amount after the work is done i.e. after mutation of names. According to the prosecution, subsequently on 25/10/85 the Patwari/appellant told them that their work has been done and asked for remaining amount and therefore complainant Ram Sharan PW-1 arranged the remaining amount of Rs.570/- and simultaneously made a complaint by Ex.P-1 to the Vigilance Office to catch the appellant/accused under the trap.

3. Subsequently in presence of Naib Tehsildar, R.N. Singh PW-7 the complainant was explained about such preparation of raid including use of phenolphthalein and sodium carbonate powder and other Panch witnesses were also explained about the

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process. Thereafter the notes which were to be handed over to the accused/appellant phenolphthalein powder was applied to it and was kept in the pocket of the complainant and other solution so prepared were kept sealed. The entire proceeding was recorded in Panchnama Ex.P-2. Thereafter the complainant along with the trap party reached to village and after reaching house of appellant gave the amount of Rs.570/- to him. After giving the amount the appellant was caught red handed and his hands were washed in sodium carbonate powder solution wherein colour of the liquid changed into light pink due to phenolphthalein. Notes when dipped in solution there also changed its colour thereafter the panchnama were prepared by Ex.P-1. The notes was seized by Ex.P-17 and the other documents were seized by Ex.P-18. The said seized articles were sent to FSL and the FSL report was received vide Ex.P-25 as positive. The report was made of said proceeding by Dehati Nalashi vide Ex.P-22 and FIR was registered vide Ex.P-23. Subsequently, after recording statement of the witnesses the charge sheet was filed in this case.

4. During the course of trial the appellant/accused abjured his guilt. Primary witness on behalf of the prosecution Ram Sharan complainant was examined as PW-1, Jageshwar Prasad as PW-2, Ramfal who prepared the map of the spot by Ex.P-16 was examined as PW-3, Premchand Tiwari, Constable I.O. was examined as PW-5 and N.K. Pandey was examined as PW-6.

Naib Tehsildar before whom entire proceeding was carried out who prepared raid was examined as PW-7 R.N. Singh.

5. Learned court below after evaluating the entire evidence on record has convicted the appellant under aforesaid sections, hence this appeal.
6. Learned counsel for the appellant would submit that in this case the recovery of the amount was not in person from the appellant and was from a place said to be kothi which was in the house of the appellant. Therefore he would submit that evidence to this regard is completely absent as to how the amount reached to that part in kothi. He further submits that in this case evidence is on record to show that at the relevant time when alleged amount was said to be handed over to the appellant, the complainant had asked for glass of water and when appellant had went to fetch a glass of water, at that time the amount was implanted by the complainant at part of kothi. He further stated that a previous enmity was existing with complainant since the appellant being the Patwari has complained of the encroachment made by the complainant over the village land. He further contended that in this case the evidence is also absent as to who had taken out the amount from the kothi. Therefore even the colour of the hands when washed of the appellant changed it will not have any significance and therefore he submits that since amount in this case was seized from certain place of a house of the appellant, the appellant cannot be held liable as the prosecution has to prove beyond reasonable doubt that appellant has himself

received the amount. Therefore prays to set aside the judgement and order of conviction.

7. Per contra, learned State counsel opposes the appeal and would submit that in this case the appellant who was discharging the job of Patwari in order to make mutation of the name has received the amount for illegal gratification. He therefore submits that complainant himself has categorically stated that appellant had himself demanded the amount and on such demand the amount was handed over to the appellant which he kept in the house at certain place. Therefore recovery of the amount from the house itself and the fact that hands were when washed in sodium carbonate solution changed its colour completes the chain of the events which proves that appellant has committed the crime. He would submit that order passed by learned court below is well merited which do not call for any interference.

8. I have heard learned counsel for the parties at length and perused the documents and the evidence on record.

9. Statement of complainant Ram Sharan PW-1 would reveal that he has stated that in the year 1985 accused was a Patwari in his village. Further witness had stated that he had purchased land from one Radheshyam Gupta, Hamid Khan, Jamuna Bai and Sunderi Bai and he had also purchased land in the name of his brother Ram Bhagat from Ram Prasad, Nanbai and Ram Singh. He had further stated that thereafter along with sale deed he went to the accused/appellant so as to get the name recorded in the revenue record. On such request being made the appellant

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Teerath Ram Rathore had demanded an amount of Rs.1370/- as otherwise refused to do the job. Witness has further stated that he requested to reduce the amount but it was not acceded to. Further the witness has stated that he along with Sarpanch Jageshwar Prasad who is examined as PW-2 in this case went to the appellant and request was made to do the job for Rs.700/- but it was again refused and the appellant stated that he will do the job only on receipt of Rs.1370/-. This fact is also corroborated by PW-2 Jageshwar Prasad. Again witness stated that on 26/08/1985 he again went with one Mohan Puri Goswami who is examined as PW-4 with a request to do the job and request was also made to reduce the amount demanded but the appellant/accused refused to accede to such demand.

10. The evidence is on record that an amount of Rs.800/- was paid to the appellant in front of Mohan Puri. The witness PW-4 had also corroborated the fact. Thereafter on 25/10/1985, P.W.-1 had stated that while ^{सत्यमेव जयते} he was doing his job in badi then appellant/accused came and informed that his work has been done, so advised him to take the document after payment of remaining money. The witness had stated that he arranged for the remaining amount of Rs.570/- and went to the Vigilance Office and gave an application by Ex.P-1. Reading of Ex.P-1 shows that it is also in the same line which the PW-1 had stated. Further it was stated that he was introduced with head clerk Bhoi and other persons Pandey and Tiwari and subsequently Mr. Singh Naib Tehsildar who is PW-7 in this case also came and the

witness was also introduced with them. Premchand Tiwari PW-5, N.K. Pandey PW-6, Naib Tehsildar R.N. Singh PW-7 and Radheshyam Bhoi PW-8 have also corroborated each others statement as also statement of PW-1 that every body was introduced to the complainant PW-1. Thereafter personal search was made and two powders were examined before him. The statement of PW-5, PW-6, PW-7 and PW-8 would reveal that after the search was made of each other, the PW-1 was explained use of sodium carbonate powder and phenolphthalein powder and both the solutions were prepared in separate glasses and the plain paper when were placed in the sodium carbonate solution it did not change its colour but the other paper which was having phenolphthalein powder when was dipped into sodium carbonate solution it changed its colour into pink. Both the bottles one containing white colour and other pink was sealed.

11. Thereafter amount of currency note of Rs.570/- which were to be given to the appellant, the ^{सत्यमेव जयते} phenolphthalein powder was applied and which were 5 notes of 100, one note of 50 and one note of 20 were kept in the upper pocket of the complainant. It was also advised that the witness should not shake hand with the appellant. Thereafter initially panchnama was prepared by Ex.P-2. Reading of Ex.P-2 also corroborates the same. The number of notes were also written which was also recorded in the initial panchnama Ex.P-2. Subsequent to it the complainant along with trap party started for village Pandhi and reached there at 7'O

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clock. After reaching the house of the appellant, the trap party scattered in the area.

12. The complainant thereafter went to the house of accused and there after the Rin-pustika were handed over by the appellant to Ram Sharan and Ram Sharan had handed over the amount of Rs.570/- to the appellant. Thereafter according to the PW-1, the accused took the amount and kept it in the kothi of the house which was seen by this witness. Subsequently witness has stated that according to the instruction imparted he gave the signal and the trap party came inside the house and asked the appellant where he has kept the amount. On personal search nothing was recovered from the appellant/accused. Then complainant PW-1 told that accused has kept amount inside the house in kothi. Thereafter kothi of the house was searched and amount of Rs.570/- was recovered. After recovery of the notes, number of the notes were tallied which were found to be correct and the notes on being dipped into sodium carbonate solution colour of the notes changed into pink. The hand of the Teerath Ram was also washed in the solution and hand also changed its colour into pink. Witness has stated that the revenue documents which were seized were subsequently received in supurdnama. The documents were marked as Ex.P-4, Ex.P-5, Ex.P-6, Ex.P-7, Ex.P-8, Ex.P-9, Ex.P-10 and Ex.P-11 and rin pustika which were given by the Patwari/appellant were marked as Ex.P-12, Ex.P-13, Ex.P-14 and Ex.P-15. So the reasons were chain of facts were established.

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13. The appellant/accused has contended that recovery of the amount was found in the kothi and not from the person of the appellant. It is further contended that the witness was in the house of the appellant/accused and when complainant had asked for glass of water and when the appellant went to fetch the glass of water at that time complainant has implanted notes in the kothi. Therefore it is not a case that money was recovered in person from the accused/appellant. It is further stated that there is no evidence on record to prove that by whom money was taken out from the kothi. It was submitted that inference can be drawn that money which was kept in the kothi was taken out at the instance and pressure of the trap party itself by the appellant and therefore after taking out money from the kothi when hands were washed in the chemical it turned colour. Now in this context if we look to the evidence of PW-1. He has stated in para 9 that after money was given to the appellant of Rs.570/-, appellant went inside and kept it in the kothi of the room which was seen by him.

14. Map of the place of incident is proved by PW-3 Ramfal. Map is marked as Ex.P-16. Perusal of the map would show that at spot No.1 parchi of Teerath Ram is shown. It is stated that initially the complainant was standing in the parchi of the Teerath Ram at spot No.1. Spot No. 2 was the place wherein Ram Sharan was shown to be standing i.e. the complainant. The spot No. 3 is the place wherefrom it is stated that rupees was recovered i.e. kothi. The kothi is shown in the rasoi ghar i.e. kitchen. The koti is

shown to be storage for the cow dung. If map is further surveyed it would reflect that bed room and the office along with kitchen are adjacent to each other which is attached by the door and from the place where the complainant was standing and place of recovery of money is shown 24 feet away in another room connected by the door. Complainant in his statement has stated that when raid team came they were standing in the parchi place no.1 and 2 shown in the map Ex.P-16. Now if evidence of N.K. Pandey PW-6 is seen, at para 7 of the statement it is stated that when after they got the sign they went inside the house and asked appellant/accused where money is kept and when it was not answered the complainant had disclosed that accused has kept the amount inside the house in kothi. Thereafter search in person of the appellant was made but the amount was not recovered and subsequently kothi was searched and money was recovered. The said amount was taken out by S.N. Dubey. Therefore according to statement of this witness PW-6 and this fact is not been refuted that money was taken out by S.N. Dubey in front of this witness who was also party to the raid.

15. Now the question arises as to whether the money was implanted in the kothi by complainant or was kept by appellant himself. In this respect, N.K. Pandey (P.W.-6) has stated that after the money was recovered by the post trap proceeding, the hands of the appellant were dipped in the sodium carbonate solution which turned into light pink colour. It was kept and sealed in bottle. The witness had further stated that after recovery of notes they were

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also dipped in the sodium carbonate solution, which changed its colour. Simultaneously the hand of the complainant Ramsharan was also dipped in sodium carbonate solution which also change the colour. The witness has further stated that the room in which the trap party was sitting adjacent to it, kitchen was situated and the Kothi was in the kitchen. The entire incident was also recorded in the panchnama Ex.P/19. Therefore, the appellant has failed to substantiate this fact as to how the colour of his hands were changed when it was dipped in the sodium carbonate solution.

16. The complainant Ramsharan had stated that after giving note of 570 it was kept by the appellant in the kothi, which was seen by him. Map Ex.P/16 is the Kothi which is situated in the kitchen, which is a another room. Complainant has not stated that he went to the other room but clear statement is made that the accused appellant went into the kothi and kept the amount. सत्यमेव जयते Therefore, no plausible explanation has come on record by the appellant that how the colour of his hands were changed. So the facts explains a natural behaviour of accused that after taking the money when he went to the other room i.e. the kitchen where in the kothi is situated, to fetch drinking water and kept the amount at such point of time. There is no evidence has come on record even in cross-examination that complainant had crossed the parchhi and went to the kitchen. So by necessary implication it was proved that appellant was the carrier of notes to the kothi.

17. So if the entire evidence is analyzed it reveals that there had been a demand by the appellant for illegal gratification which is sine qua non for constituting an offence under the Act. It is also trite law that 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.
18. The *Hon'ble Supreme Court in case of Mukut Bihari and another Vs. State of Rajasthan, reported (2012) 11 SCC 642* has held at para-11 as under :-

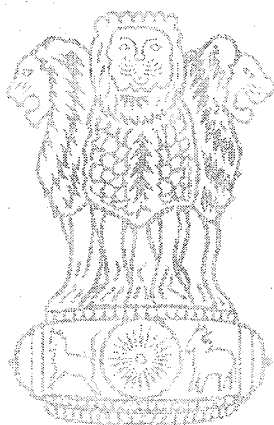
"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but 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 as to 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 and in a proper case the court may look for independent corroboration before convicting the accused person."

19. In the facts of the present case, the evidence lead on behalf of the prosecution, it is evident that the appellant demanded money from the complainant, for rectification of name in the revenue records. The positive sodium carbonate solution test *vis a vis* the finger of the appellant and the notes also corroborates the same with the illegal demand of gratification and voluntarily acceptance thereof was proved. The currency notes have been proved to be handled by the ^{सत्यमेव जयते} appellant, which was mixed by the phenolphthalein powder and when the hand of the accused was washed in a water bowl, the colour of the water turned into pink.
20. The FSL report Ex.P/25 also confirmed such fact that solution which was sent for chemical analysis was containing phenolphthalein and the positive report was given that it contained phenolphthalein and sodium carbonate, which were prepared after washing of hand of appellant.
21. So after careful scrutiny and after survey of the entire evidence and the documents, I am of the opinion that the finding arrived at

Gauri/Balram

CHHATTISGARH HIGH COURT



सत्यमेव जयते