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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

M.Cr.C.No. 4597 of 1997

Single Bench Criminal

Criminal Appeal No. 1236 of 1997

Appellant : State of M.P.

-V/s-

Respondents : 1. Ram Gopal Patel s/o Pannalal Patel,
Caste Kurmi, aged 34 years,
Village Panjai, Distt. Jabalpur,
At present Agent, Bhumi Vikas Bank
Mungeli.
2. Jitendra Kishore Vaishnav, s/o/
Shyamdas Vaishnav, Caste Vaishnav,
aged 35 years, Village Chircha,
Post Chhui Khadan, Distt. Rajnand-
gaon, At present Mukam Beular,
Bhumi Vikas Bank, Pandaria,
Distt. Bilaspur.

11445
Filed on 22.8.97

by Shri. G. V. R. Adv.

Advocate

22.8.97

R. A. R.

APPLICATION FOR LEAVE TO APPEAL U/S 378(iii) CR.P.C.
CRIMINAL APPEAL U/S 378(1) CR.P.C. AGAINST THE ACQUITT
OF RESPONDENTS/ACCUSED



HIGH COURT OF CHHATTISGARH: BILASPUR

Cr. A. No.1836 of 1997

APPELLANT:

State of M.P.

Versus

RESPONDENTS:

Ram Gopal Patel & another

POST FOR JUDGMENT ON 24th DECEMBER, 2014

Sd/-
Prashant Kumar Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. A. No.1836 of 1997

APPELLANT:

State of M.P.

Versus

RESPONDENTS:

Ram Gopal Patel & another

Present:

Shri O.P. Sahu, Govt. Advocate for the State/appellant.

Shri Shailendra Sharma, counsel for respondent No.1.

Shri Malay Shrivastava, counsel for respondent No.2.

J U D G M E N T

(Delivered on 24th December, 2014)

PRASHANT KUMAR MISHRA, J.

1. This appeal against acquittal has been preferred by the State challenging the judgment of acquittal passed by the Special Judge (PC Act) Bilaspur in Special Criminal Case No.11/92 whereby the respondents have been acquitted of the charges under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (for short 'the Act') and under Section 161 of the IPC.
2. At the relevant time, respondent No.1 Ram Gopal Patel was working as agent of the Land Development Bank, Mungeli whereas respondent No.2 Jitendra was posted as Valuer. Complainant Basant Pandey had met accused Ram Gopal for obtaining loan for tubewell in the land belonging to his wife for which Ram Gopal had sent Jitendra Vaishnav on 14.5.1986 to

value the property of the complainant. Valuation report was submitted by him on 20.5.1986.

3. It is alleged that the complainant had opted for loan and had completed the formalities including submission of the valuation report by Jitendra. However, when the complainant met accused Ram Gopal, he informed that there are some objections in his case and he should meet Jitendra to sort out the problem. The complainant wanted to withdraw his loan application, however, Ram Gopal asked him not to get annoyed and assured that he would convince Jitendra to change the report so that the complainant's work is accomplished. 3 days prior to 13.6.1986, Ram Gopal informed the complainant that his work is completed and some amount is to be paid to the valuer, however, the complainant avoided the issue. On 13.6.86, both the accused met the complainant at Takhatpur and asked the complainant to clear the account by evening. Jitendra threatened that if the amount is not paid, he would submit a negative report. The complainant thereafter lodged a complaint with the Vigilance Department at 2 pm on 13.6.86 on which a trap team was constituted including NK Sahariya (PW-11) and RD Diwan (not examined) as Panch witnesses. Phenolphthalein test was conducted for demonstration to the complainant and Panch witnesses. The complainant was instructed to signal the trap team after payment of the bribe amount.
4. The trap team reached Takhatpur at 5.30 pm. The complainant got down and the peon of the Bank, who was instructed by

Ram Gopal to accompany the complainant from Takhatpur to Mungeli, sat on the motorcycle along with one member of the trap team and the complainant. When they started for Mungeli, the trap team followed them. At 6.30-6.45 pm, the complainant and the peon of the Bank went to the house of Ram Gopal where both the accused were sitting. After consuming tea, both the accused took the complainant to another room inside the house and asked about the bribe amount, on which the complainant handed over Rs.1,000/- to Ram Gopal, which was kept by him in his pocket. The complainant came out and signaled the trap team whereupon the trap team entered the house of Ram Gopal; caught hold of him and conducted phenolphthalein test, which was positive. Rs.1,000/- was recovered from his trouser's pocket, which was also subjected to phenolphthalein test, which was positive. The pocket of the trouser was also subjected to phenolphthalein test, which was also positive.

5. After recording statements of witnesses and after obtaining sanction, the charge sheet was filed.
6. In course of trial, the prosecution examined 12 witnesses to bring home the charges. The trial Court has acquitted the accused persons of both the charges.
7. Learned State counsel would submit that the prosecution has proved its case beyond all reasonable doubt and the judgment of acquittal is based on perverse finding, therefore, it deserves to be set aside.

8. Per contra, learned counsel for the respondents would submit that the judgment of acquittal does not call for any interference.
9. I have heard learned counsel for the parties at length and perused the record.
10. The question to be considered is – whether the prosecution has established the demand and acceptance of illegal gratification by the accused persons?
11. PW-1 Khalil Khan is a witness, who was working as cycle repairer in the cycle store belonging to the complainant. He says that one day both the appellants had come to the shop and enquired about Basant Pandey and kept waiting. When the complainant came to the shop, the accused persons demanded Rs.1,000/- and when the complainant demonstrated his inability to arrange the amount at once, they went away leaving their peon in the shop directing the complainant to hand over the amount to the peon. In cross-examination, he categorically says that the accused persons and the peon had come to the shop and the demand was made by the accused persons. He further says that the peon kept waiting in the shop till evening. Despite detailed cross-examination, this witness remained firm on his statement.
12. PW-2 Basant Pandey is the complainant. He also stood firm in supporting the case of the prosecution. He categorically speaks about the demand made by the accused persons when they came to his shop on 13.6.86.

13. PW-3 Tara Bai is the mother of the complainant. She had obtained loan for purchasing a tractor. She denies that the tractor was attached, therefore, her son i.e. the complainant has lodged a false complaint against the accused persons.
14. PW-4 Hargovind Rathore is the General Manager of the Land Development Bank. He has proved that accused JK Vaishnav had already sent his valuation report in favour of the complainant. He admits in his cross-examination that despite non-payment of installments by the mother of the complainant, the present loan for tubewell could have been granted to the complainant and there was no impediment in granting such loan to him. In further cross-examination, he admits that the loan case was never sent back to Jitendra (respondent) after submission of valuation report by him on 20.5.86.
15. PW-5 Chatur Singh Dhurve is a witness to the preliminary inquest. PW-6 SB Singh is the Assistant Manager of the Land Development Bank. He had seen both the accused persons coming from Takhatpur to Mungeli in the morning of the date of the incident whereupon he instructed Jitendra to proceed to Mungeli and directed Ramgopal to come along with him for effecting the recovery to village Khamriya. He left Ramgopal at Takhatpur at about 11 am. According to this witness, when the installments are due from a borrower, the loan is not granted to any member of his family. He also says that recovery of installments from the mother of the complainant was entrusted to accused Ramgopal.

16. PW-7 Durga Prasad is an agriculturist (this witness was examined in July, 1986). According to this witness, about 10 years back, both the accused persons met the complainant and informed him that if he deposits Rs.1,000/- warrant of attachment would be stayed.
17. PW-8 Uttam Kumar Dubey is the Process Server (Machhkhuri) of the Land Development Bank. He speaks about attachment of tractor at village Khamriya. On the date of the incident, he had gone along with PW-6 Mr. SB Singh for recovery to village Khamriya. This witness has been declared hostile. Subsequently, he clarifies that he had gone to make recovery by attaching tractor of the complainant's mother Tara Bai.
18. PW-9 HN Shukla was inspector in the Lokayukt office and had conducted trap proceedings. PW-10 Lakhan Lal Mahobia was working as Revenue Inspector, Mungeli and had prepared the site map Ex.-P/26.
19. PW-11 Narendra Sahariya was posted as Naib Tehsildar/ Tehsildar at the relevant time. He is a witness to the trap proceeding and complaint (Ex.-P/3). PW-12 SS Gaur was a member of the trap team.
20. From the evidence adduced by the prosecution, as discussed above, it would appear that on the one hand PW-1 Khalil Khan, PW-2 Basant Pandey (complainant) and PW-3 Tara Bai had supported the case of the prosecution, however, on the other hand, the evidence of PW-4 Hargovind Rathore, PW-5 Chatur

Singh Dhurve, PW-7 Durga Prasad & PW-8 Uttam Kumar Dubey, would reveal that valuation report was already submitted; the complainant's mother had already obtained a loan for purchasing a tractor and some installments were due and in the recovery proceeding, the tractor was attached, therefore, the accused persons were asking the complainant to deposit Rs.1,000/- in the loan account of the complainant's mother so that warrant of attachment of tractor be stayed and the approval of the present loan case is facilitated. This raises some doubt as to whether, in fact, there was demand of illegal gratification or the accused persons directed the complainant to deposit Rs.1,000/- in the loan account of his mother.

21. Since the law is settled that when two views are possible and the trial Court, while acquitting the accused persons, had taken one view in the matter, the appellate Court may not set aside the judgment of acquittal and record conviction of the accused persons.

22. For the foregoing, this Court is of the considered opinion that the trial Court has not committed any illegality in giving benefit of doubt to the accused persons and acquitting them of the charges.

23. The appeal is accordingly dismissed.

Sd/-
Prashant Kumar Mishra
Judge

24/12/2014