

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Govt. Appeal (SJ) No.2 of 2014**

Arising Out of PS.Case No. -21 Year- 1985 Thana -Vigilance District- PATNA

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State Of Bihar through Jaynandan Sharma Dy S.P. Vigilance Investigation Bureau,  
Bihar, Patna

.... .... Appellant/s

Versus

Suresh Singh, S/o Late Rampati Singh, R/o Village- Phatehpur, P.S. Didarganj,  
District- Patna, the then Assistant District Transport Office, Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Patanjali Rishi, Adv.

Mr. Ramakant Sharma, A.C. to Ms. Babita Kumari

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 13-02-2015**

This appeal under section 378(ii) and (iii) of the Code of Criminal Procedure is directed against the judgment and order of acquittal dated 9<sup>th</sup> July, 2013 passed by the learned Special Judge Vigilance-I, Patna in Special Case No. 117 of 1985 arising out of Vigilance P.S.Case No. 21 of 1985, whereby the sole respondent has been acquitted of the charges under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947 corresponding to Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The prosecution case arose out of a complaint made by one Lala Rai alleging that he purchased a Priya Scooter on 14<sup>th</sup> November, 1985. On 25<sup>th</sup> November, 1985 he went to the D.T.O.



Office, Patna and applied for registration of the vehicle in his name and also deposited necessary fees. He was regularly visiting the D.T.O. Office for having the registration number of his Scooter but the same was not supplied. During the relevant time the respondent was the Dealing Assistant in the District Transport Office, Patna and as per allegation he demanded a sum of Rs.200/- from the complainant by way of bribe for registration of the Scooter and out of the said amount the respondent told that Rs.100/- was meant for the District Transport Officer and the remaining amount was meant for the office. Since the complainant did not pay the bribe, he reported the matter to the Vigilance Department. Upon receipt of the complaint, one Ramji Prasad (P.W.17) was appointed Verifier to verify the veracity of the allegation made by the complainant. The complainant again went to the office of the respondent on 7<sup>th</sup> December, 1985 and requested for registration of his Scooter and upon such request having been made, the accused respondent again demanded the bribe money in front of the Verifier Ramji Prasad. On persistent persuasion of the complainant, the respondent reduced the bribe money to Rs.150/-. The Verifier submitted his report to the Vigilance Department and upon receipt of the report a raiding team was constituted to apprehend the respondent red-handed while taking the bribe. A pre-trap memorandum was prepared, phenolphthalein



power was put on the Government Currency Notes, their numbers were recorded in the pre-trap memorandum and the same was returned to the complainant with a clear instruction to give the money to the respondent only upon demand of bribe. The chemical reaction between phenolphthalein power and sodium carbonate was demonstrated to the members of the trap team and they witnessed the chemical reaction of the same. The said trap team was constituted under the leadership of Sri Ramashray Lal, Dy.S.P. (P.W.4). The Inspector of Police Ram Dayal Singh (not examined) was further instructed to make a signal upon acceptance of the bribe by the respondent. The other members of the raiding team were also instructed to remain present nearby. On 9<sup>th</sup> December, 1985 the complainant went to the respondent in his office, who demanded the bribe and upon such demand having been made, the complainant paid the money to the respondent in front of the members of the raiding team and Ram Dayal Singh. The said money taken as bribe was kept by the respondent in the lower pocket on the right side of his coat. Upon being signaled, the members of the raiding party apprehended the respondent and upon being searched, Rs.150/- was recovered from his possession. The recovered notes from the respondent were matched with the numbers noted in the pre-trap memorandum. Solution of sodium carbonate was prepared and right hand of the

respondent was dipped in the same upon which the solution turned pink. The seizure list was prepared in presence of the witnesses as well as the respondent.

3. On conclusion of investigation, charge sheet had been submitted against the respondent under section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947. However, the trial court framed charges under section 161 of the Indian Penal Code corresponding to Section 7 of the Prevention of Corruption Act and Section 5(2) of the Prevention of Corruption Act, 1947 corresponding to Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

4. In order to prove the charges, the prosecution examined altogether 21 witnesses. Out of them, P.W.3 Ram Kumar Prasad, P.W.5 Shashi Bhushan Sharma, P.W.6 Din Dayal Singh, P.W.8 Hari Mohan Jha, P.W.9 Gobind Dubey and P.W.14 Pramod Kumar Singh were tendered by the prosecution, meaning thereby that they were given up by the prosecution. P.W.2 Sanjay Kumar, son of the complainant Lala Rai, is a formal witness. He has proved the writing and signature of the complainant. P.W.16 Madan Mohan Singh is the authority, who had sanctioned for prosecution of the respondent. P.W.12 Jag Narain Singh is a formal witness, who has proved the writing of the sanctioning authority. P.W.20 Lal Babu Singh is also a

formal witness, who has proved the writing and signature of one Bijendra Kumar, Dy.S.P. on the formal F.I.R. as well as the endorsement of Vijay Kumar on the complaint petition. P.W.15 Satyendra Kumar Singh, a seizure list witness, has turned hostile. P.W.21 is the first Investigating Officer of the case whereas P.W.19 Braj Mohan Prasad is the second Investigating Officer, who has submitted charge-sheet on conclusion of trial.

5. In addition to the oral evidence, documentary evidences were also produced on behalf of the prosecution. They are Ext.-1 Memorandum of G.C.Notes, Ext.-2 seizure list prepared by P.W.1, Ext.-2/1 seizure list of documents, Ext.-3 writing and signature of Lala Rai over complaint petition, Ext.-3/1 writing of Bijendra Kumar over Ext.-3, Ext.-4 signature of the complainant over Ext.-2, Ext.-5 official order by which trap party was constituted, Ext.-6 endorsement of accused on Ext.-2, Ext.-7 Form-E of Priya Scooter, Ext.-7/1 counterfoil of Bank challan, Ext.-7/2 counterfoil of Bank challan, Ext.-8 Form-‘क’, Ext.-9 sale letter in favour of Usha Panja, Ext.-10 affidavit of Usha Panja, Ext.-11 sanction order, Ext.-12 verification report of Ramji Prasad, Ext.-13 writing of Bijendra Kumar over formal F.I.R. and Ext.-13/1 report of Forensic Science Laboratory.

6. The material witnesses examined in course of trial are P.W.1 Prabhu Dayal Singh, P.W.4 Ramashray Lal, P.W.7 Parmanand

Singh, P.W. 10 Parmanand Singh, P.W.11 Laxman Prasad @ Lachhu Lal and P.W.18 Vaidehi Sharan Mishra.

7. P.W.1 has deposed in his examination-in-chief that on 9th December, 1985 at about 2.30 p.m. he along with other members of the raiding party had gathered and the complainant Lala Rai was also present there. Lala Rai was introduced to the members of the raiding party. Solution of sodium carbonate was prepared and phenolphthalein powder was kept separately. The said powder was added in the paper. Parmanand Singh touched the paper and poured his hand in the solution which turned pink from white, which was sealed. The complainant handed over Rs.150/- to the Deputy Superintendent of Police, which was to be given for the purpose of bribe. Out of Rs.150/- there was one note of Rs.100 denomination and the others were five in number of Rs.10/- denomination. The phenolphthalein power was applied to those notes and each of the said notes was handed over to the complainant with an instruction to deliver the same to the accused only on demand. The numbers of the notes were noted down in the memo and memorandum was prepared. Ram Dayal Singh, Inspector, was directed to give signal when the accused would receive the tainted money. They proceeded to the D.T.O. Office at Patna. The complainant Lala Rai along with the Inspector Ramji Prasad Singh went into the room of the accused.



They remained standing and at about 4.00 p.m. Ram Dayal Singh (not examined) gave signal, then the Deputy Superintendent of Police, Special Magistrate and others went inside the room of the accused. They stated that the accused had taken the bribe money. He stood up and did not reply. Two independent witnesses were called and after giving search, the accused was searched and out of pocket of his coat Rs.150/- was recovered and those were the same notes whose numbers were incorporated in the memorandum. Accordingly, the seizure list was prepared in his writing. Solution of sodium carbonate was prepared and hands of accused were dipped into it and the same became pink from white and they were kept in a bottle. Inner part of the coat of the accused was also dipped in the solution which also became pink. He has further stated that from the table of the accused documents related to the Scooter were seized. A copy of the seizure list was handed over to the accused. During cross-examination, he has stated that he had not counted the money given by the complainant to the Deputy Superintendent of Police.

8. P.W.2 Sanjay Kumar has deposed in his examination-in-chief that his father Lala Rai (complainant) was murdered on 25<sup>th</sup> January, 1989. He was literate and was in a position to identify his writing and identified the written application, which was marked as Ext.-2. He has also identified his signature on Ext.-2, which was

marked as Ext.-4.

9. P.W.4 Ramashray Lal has deposed in his examination-in-chief that on 9.12.1985 he was posted as Additional Superintendent of Police. He received F.I.R. No.21 of 1985 from D.I.G. Office. Inspector Ramji Prasad produced Lala Rai. In his presence, he was examined and Verifier Ramji Prasad was also examined. Accordingly, a raiding party was constituted by one Vijendra Kumar, Deputy Superintendent of Police, who was leader of the raiding party. Vaidehi Sharan Mishra was also a member of the raiding party as Special Magistrate. Members of the raiding party and the complainant presented themselves in the office. They were introduced with each other. The complaint filed by the complainant was read over and explained to the complainant, who admitted that he had filed this petition. Members of the raiding party were made known regarding the reaction of sodium carbonate and phenolphthalein powder and the chemical reaction shown through a piece of paper. Solution of sodium carbonate was prepared and during the course of exhibition hands were dipped and the solution became pink. The complainant Lala Rai produced Rs.150/- for handing it over to the accused respondent. The numbers of the Government currency notes were mentioned in the memorandum, phenolphthalein powder was added and the same was returned with instruction to the



complainant that in case of demand he would deliver the same to the accused, otherwise not. A pre-trap memorandum was prepared which bears the signature of the complainant as well as the Magistrate. He along with other members of the raiding party and the complainant proceeded for D.T.O. Office, Patna and reached there at 2.00 p.m. on 9<sup>th</sup> December, 1985. As per direction, the members took their position. Complainant Lala Rai delivered some papers to the accused respondent, who received it and demanded money, pursuant to which the complainant took out the money and handed over the same to him, who received the money with his right hand and put inside pocket of the coat, which he wore. He rushed there along with other members and gave him his introduction. One Satyendra Kumar Singh (P.W.15) was called and after observing the rules, in his presence, the respondent was searched and out of pocket of his coat, Rs.150/- Government currency notes were recovered, which were compared with the pre-trap memorandum and were found same and identical. The coat was also seized and from it, apart from the bribe money, Rs.2811/- was also recovered. The complainant was also searched but nothing was recovered from his possession. They went in the official chamber of D.T.O. Solution was prepared and hands of accused were dipped into it and it turned pink from white. The solution was kept in a bottle and witnesses signed over it and further the coat of the



accused was also dipped into the solution which also became pink from white. The said solution was sealed, seizure memo was prepared and a copy of the same was served upon the accused. He has further stated that from the table of the accused, some documents were recovered, which were related to Priya Scooter. During cross-examination, he has stated that at the time of delivering money no independent witness was present.

10. P.W.7 Parmanand Singh has deposed in his examination-in-chief that the occurrence took place on 9<sup>th</sup> December, 1985. He was one of the members of the raiding party. In his presence, memo was prepared in Vigilance Department, Patna. The complainant produced Rs.150/-, out of whom, one note was of Rs.100/- denomination while the other five notes were of Rs.10/- denomination each. Entry of notes was made in the memo and phenolphthalein powder was added. Reaction with sodium carbonate was exhibited. Notes were handed over to the complainant with instruction that in case of demand only he would deliver the same. They reached near the Golambar and proceeded towards the D.T.O. Office, Patna. The complainant, Inspector Ramji Prasad and Ramdayal Prasad went inside the office. At 4.15 on receiving signal they rushed there and in presence of two independent witnesses and the Magistrate, after observing the rules of search and seizure,

accused was searched and out of his pocket Rs.150/- was recovered. He has corroborated the other part of the story narrated in the F.I.R. During cross-examination, he has stated that at the time of preparation of memo independent witnesses were not present.

11. P.W.10 Parmanand Singh has deposed in his examination-in-chief that on 2<sup>nd</sup> November, 1985 Lala Rai had stated that he has to purchase scooter. One Sardar Pal Singh was known to him. He used to do sale and purchase of scooter. Lala Rai gave Rs.15,000/- to Sardar Pal Singh for purchasing the scooter and after receiving the amount, Sardar Pal Singh handed over the paper of the scooter and advised him to get the vehicle registered from D.T.O., Patna. He has stated that Lachchu Lal @ Laxman was also present. During cross-examination, he has stated that Sardar Pal Singh had no agency to sell the scooter. He also admitted that he was not authorized agent of any Company. He has further admitted that he was also not an agent of Sardar Pal Singh. He admitted that he did not know from where Pal Singh had purchased his scooter.

12. P.W.11 Laxman Prasad @ Lachchhu Lal has deposed that on 2<sup>nd</sup> November, 1985 Sardar Pal Singh had sold a new scooter to Lala Rai on consideration of Rs.15,000/-. During cross-examination, he had admitted that Sardar Pal Singh had no agency of his own and he was not an authorized agent of any scooter company. He has also



admitted that at the time of sale Sardar Pal Singh had stated that the scooter cannot be transferred in the name of any one else for two years as the scooter was in the name of someone else. Both P.W.10 and P.W.11 have admitted in cross-examination that they were called by the officers of the Vigilance to depose. P.W.11 has also admitted that he did not know complainant Lala Rai personally and he came to know about him through P.W.10 Parmanand Singh.

13. P.W.15 Satyendra Kumar Singh is the seizure list witness. As noted above, he has turned hostile. He has categorically stated that no seizure was prepared in his presence and he had signed over the seizure memo even without reading the contents. In cross-examination conducted by the prosecution, he has denied giving any statement before the Investigating Officer of the case. He has also denied that any search or recovery of any amount from the accused was made in his presence.

14. P.W.17 Ramji Prasad has deposed in his examination-in-chief that on 4<sup>th</sup> December, 1985 he was posted as Inspector in the Vigilance Department. On 6<sup>th</sup> December, 1985 the complaint of the complainant was handed over to him for verification and on the same day he along with the complainant went in the D.T.O. office. The most interesting part of his evidence is that in examination-in-chief he has stated that the complainant handed over Rs.150/- to the raiding

party and all the three notes handed over by him were of Rs.50/- denomination. He has stated that those notes were recovered by the raiding party from the possession of the accused.

15. P.W.18 Vaidehi Sharan Mishra has deposed in his examination-in-chief that on 9<sup>th</sup> December, 1985 he was posted as Special Magistrate in the Vigilance Department. On the same day raiding party was constituted and he was also a member of the raiding party as Special Magistrate. He has also stated that one Ram Dayal Singh was directed to remain present along with the complainant and when the accused would demand money, he would give signal. At 3.45 they reached the D.T.O Office and remained outside whereas the complainant and Ram Dayal Singh entered into the office and after some time Ram Dayal Singh gave signal and thereafter all went inside the room and trap and recovery etc. were conducted. It would be relevant to note here that Ram Dayal Singh, who was all along with the raiding team and the only person, who had gone to the office of the D.T.O. along with the complainant, has not been examined by the prosecution in course of trial. There is no explanation for his non-examination.

16. Learned counsel for the appellant has submitted that though there was ample evidence the trial court has wrongly come to the conclusion that the prosecution has failed to prove its case beyond



reasonable doubts. He has submitted that the trial court has wrongly observed that the accused is competent to rebut the presumption as raised under section 20 of the Prevention of Corruption Act, 1988 in the light of the fact that the demand and acceptance of bribe as well as recovery of the bribe money had been proved against the accused. The prosecution has only the burden to prove that the trap was conducted in accordance with law and once that is proved, the burden to disprove the case fell on the defence. He has submitted that there were minor variations in the testimony of the witnesses and those were of no consequence. According to him, due to non-appreciation of evidence in proper perspective, the impugned order of acquittal is bad in law and deserves to be set aside.

17. I have heard learned counsel for the appellant and with his assistance perused the records. I find that the court below while passing the impugned judgment has taken into consideration the fact that the case relates to registration of a new Priya Scooter. The case of the complainant is that he had purchased a new Priya Scooter from an agent of Patna City. However, the documentary evidence, as contained in Exts.-7/1 and 7/2 and 10 clearly suggests that one Usha Panja was the purchaser of the Scooter in question. From Ext.-9, it would appear that the sale letter was issued by M/s P.S. Jain Motor Co. (P) Ltd., Jalandhar on 14.11.1985 in favour of Usha Panja. No



person has come forward to give evidence that Usha Panja had ever sold the Priya Scooter to the complainant. Neither Usha Panja nor any sale letter issued by her was brought on record by the prosecution to substantiate the claim that complainant had purchased the scooter in question. The trial court has recorded that all the documentary evidences produced on behalf of the prosecution would show that it was Usha Panja, who was the legal owner of Priya Scooter in question. If the complainant was not the original owner of the Scooter in question, the story that he approached the accused for its registration becomes doubtful. The trial court has correctly held that it is not a case of the prosecution that the complainant was taking any step for registration of the said Scooter in the name of Usha Panja. Hence, the very genesis of illegal demand is not proved by the prosecution during trial. In absence of any motive for illegal demand, the trial court has rightly held that no work of the complainant was pending before the accused. Even P.W.17 Ramji Prasad, the Verifier, an Inspector of Vigilance Department and a member of the raiding party has given a completely different story. The consistent case of the prosecution is that the complainant handed over Rs.150/- to the Deputy Superintendent of Police and out of Rs.150/-, one note was of Rs.100/- denomination and others were five in number of Rs.10/- denomination but P.W.17 has categorically stated that the



complainant had handed over Rs.150/- and all the three notes handed over by him were of Rs.50/- denomination. Another issue of importance is that so far as acceptance and recovery of tainted money is concerned, one of the most important witness Ram Dayal Singh was not examined by the prosecution. There is no explanation for his non-examination. Further, from perusal of Ext.-13, the report submitted by the Forensic Science Laboratory, it is clear that presence of phenolphthalein powder was not detected at the time of examination of G.C. Notes. The three glass phials marked as 'क' 'ख' and 'ग' said to contain washings of right hand fingers, lower right pocket of wearing coat of the accused and the exhibit sample respectively, which were sent to the Forensic Science Laboratory for examination demolishes the prosecution case. The result of examination, as noted in the test report contained in Ext.-13, reads as under :-

“The glass phials marked 'क', 'ख' and 'ग' contained a colourless liquid, which remained colourless even in presence of alkali, only “Sodium Carbonate” could be detected but “Phenolphthalein”, however, could not be detected in the contents of these glass phials.”

18. Moreover, the seizure list witness also turned hostile. It would appear from record that the leader of the raiding party P.W.4 Ramashray Lal had not deposited the material exhibits of the case in



the Malkhana. He had also not handed over the material exhibits to the Investigating Officer of the case inspite of repeated request made by the Inestigating Officer. The trial court has referred to the evidence of P.W.21 Arbind Prasad in this regard, who had stated in his deposition that on 22.1.1987, 9.6.1987 and 29.10.1988 he requested the Incharge of the raiding team to deposit or hand over the material exhibits but P.W.4 did not deposit those articles to him.

19. In so far as the question of presumption under section 20 of the Act is concerned, the same would arise only if the prosecution proves that the accused had received gratification other than legal remuneration. Before a presumption can be raised, the burden is on the prosecution to prove that the accused had accepted or obtained or had agreed to accept or attempted to obtain for himself any gratification other than legal remuneration etc. The presumption arising under section 20 of the Act is a rebuttable presumption. It is well settled that the burden of accused against whom presumption is made is not akin to that of the burden placed on the prosecution to prove the case beyond reasonable doubt. It is sufficient if the accused succeeds in proving the preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case of innocence beyond reasonable doubt or in default to incur a verdict of guilt. The preponderance of probability can be inferred from the facts

and circumstances of each case. When the substantive evidence in the case is not reliable, the verdict of the court cannot be of guilt.

20. In the present case, as discussed herein above, the prosecution has failed to prove even the motive for illegal demand. The very genesis of the occurrence has been doubted. The witnesses, who are members of the trap party, are not consistent in material particulars. The material exhibits were not handed over to the Investigating Officer of the case. The seizure list witness has turned hostile. The person, who accompanied the complainant, namely, Ram Dayal Singh, Inspector, Vigilance, at the time of giving bribe has not been examined. The F.S.L. report completely demolishes the prosecution case as the Phenolphthalein test has failed.

21. Considering the quality of evidence led by the prosecution, in my considered opinion, the finding of acquittal recorded by the trial court cannot be held to be erroneous or perverse. I find no reason to interfere with the judgment of the trial court. Accordingly, the appeal is dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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