

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Goutam Bhaduri J

Cr.A.No. 411 of 1990

APPELLANT

Brij Bihari Pandey, son of
Ramnihore Pandey, aged
about 47 years, Head
Constable No.164, Police
Chowki, Belgahana, P.S.
Kota, Distt. Bilaspur (M.P).

-Vs-

RESPONDENT

State of Madhya Pradesh
(now Chhattisgarh)

Present

Shri Pramod Verma, Sr. Advocate with Mr. Suresh Pandey,
for the appellant.
Shri Ashish Shukla, Govt. Advocate, for the State.

JUDGMENT/ORDER (ORAL)
(05.01.2015)

1. This is an appeal against the impugned judgment/order dated 11th April 1990 passed by the Court of Second Addl. Sessions Judge, Bilaspur, in Special Trial No.1/1985 whereby the appellant was convicted under Section 161 IPC and Sections 5(1)(d) and 5(2) of the prevention of Corruption Act, 1947 and has been sentenced to a fine of Rs.2000/- under Section 161 IPC and R.I., for one year with fine of Rs.1000/-, in default of payment of fine, to further undergo R.I., for six months under Sections 5(1)(d) & 5(2) of the Prevention of Corruption Act.

2. Briefly stated facts of the prosecution are that one Mannulal (P.W.9) was detained on the allegation that he caught hold of hand of one Sita Bai and therefore he was detained from 10.02.1982 and was taken to Police Station Belgahana on 11.2.1982. When one of the friends of the said Mannulal namely Girvar Singh (P.W.8) went

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to get Mannulal released, at that time, Girvar was advised by Daroga Yadav to contact accused appellant. Further as per the prosecution case, when Girdhar Singh (P.W.8) contacted the appellant, a bribe of Rs.200/- was demanded by the accused for releasing Mannulal. Subsequently Mannulal was sent alongwith Girvar Singh to make arrangement of Rs.200/-. It was also alleged that the appellant had assured that Mannulal would be released after getting bribe of Rs.200/-. Girvar Singh had filed a written complaint before the office of Special Police vide Ex.P-4, on the basis of which, the trap was arranged by the Special Police and initially Panchnama was also prepared. The currency notes which were meant for bribe were coated with phenolphthalein powder and were handed over to Girdhar Singh and was advised to hand over the money to Yadav. After reaching the police station, Girvar Singh and Mannulal handed over Rs.200/- which were received by the appellant and were kept in his pocket. Subsequently, the appellant was caught red handed with money and when the hands were washed in sodium Carbonate, the solution changed its colour whereby the positive test was shown. Subsequently, the solution was sent for FSL wherein also the positive report was received. Thereafter, the prosecution recorded the statement and after sanction, the charge sheet was filed.

3. During the course of trial, the appellant abjured his guilt and claimed to be tried. The prosecution in order to prove its case, had examined as many as 12 witnesses and the court below after evaluating the evidence on record had convicted and sentenced the appellant as aforementioned. Hence, this appeal.

4. Learned trial Court after hearing counsel for the parties and on evaluating the evidence on record had convicted and sentenced

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the accused/appellant as aforesaid. Hence this appeal.

5. The learned senior counsel appearing on behalf of the appellant would submit that the prosecution in this case has failed to prove the fact that a demand was made by this appellant. It was contended on behalf of the appellant that the entire allegation is attributed to one Daroga Yadav who was Station House Officer and therefore it was contended that the demand itself having not been proved by the prosecution, the conviction made by the court below is liable to be set aside. He placed reliance in case law reported in **AIR SCW 2009 (Vol.5) Pg. 3994 - A. Subair Vs. State of Kerala** and would submit that in similar circumstances under the Prevention of Corruption Act of 1988, the Supreme Court while interpreting Section 13(1)(d) which is similar to section 5(1)(d) the Court interpreted that in absence of proof of any demand, the conviction cannot be sustained. He went through the statements of P.W.9 Mannulal, P.W.8 Girvar, P.W.4, Madanlal Tiwari and would submit that the entire allegations are attributed to Station House Officer Yadav for demand and only this appellant has worked as messenger, therefore, the demand cannot be said to be made by this appellant.

6. He further submits that mere recovery of the amount shall not ipso facto constitute an offence in absence of any demand. He fairly submits that so far as the recovery of amount from the appellant is concerned, the appellant is not in a position to challenge the same. It is further contended that the conviction is under Section 5(1)(d) and 5(2) of the Prevention of Corruption Act 1947 and since the case was pending nearly for 32 years i.e., since 1982 and the appellant has already suffered monetary loss as he lost his service and other retirement benefits. By placing reliance

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on case laws reported in **AIR 1973 S.C. Page 1457 - B.C. Goswami Vs. Delhi Administration; 1993 Supp.(1) SCC Page 465 - T.M. Joseph Vs. State of Kerala; 1995(5) SCC Page 320 - Ramesh Kumar Vs. state of M.P., and 2000(9) SCC Page 206 - Aditya Nath Pandey Vs. State of U.P.**, he would submit that under the circumstances, the Supreme Court treated the jail sentence to be undergone and considering the loss of the service/retirement benefits, similar orders may be passed in this case.

7. Per contra, learned State Counsel opposes the arguments and would submit that as per the statements of P.W.9 Mannulal, P.W.8 Girvar Singh and P.W.4 Madanlal Tiwari, the demand has been clearly proved by the prosecution. He further relies on statement of Mannulal and would submit that according to his statement, the appellant was also party to the demand and therefore, even if the money has been received on behalf of SHO Yadav, the appellant cannot escape from his criminal liability. He further submits that the judgment/order of the court below is well merited which do not call for any interference.

8. I have heard the learned counsel counsel for the parties at length and have also gone through the evidence and material on record.

9. The complainant P.W.9 is Mannulal who was detained on the allegation of outraging the modesty of one Sita Bai. In a statement before the Court, he had stated that he was summoned by S.H.O., Yadav to the house of one Mahraj Singh wherein he was made to sit the entire day. Thereafter, at about 10 - 11 pm., in the night he was brutally assaulted. This witness had further stated that thereafter Daroga Yadav and one Rahman had urinated on his face.

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Thereafter, he was taken to Belgahana Police station on the next day. It is further stated that Girvar Singh, the friend of Mannulal was summoned by Tuladas, Kotwar. It was further stated that when his friend Girvar came, it was disclosed by him that he had met Yadav Daroga and he advised to meet the appellant. It was further stated that Girvar was advised by Yadav to pay the amount in police station and thereafter Girvar took away this witness. The witness further stated that Girvar has told him on the way that SHO Yadav had demanded Rs.200/- which he refused on the ground that since he was tortured and further demand of money was made, as such, he decided not to pay the amount and wanted to trap him. Thereafter, they went to one Madanlal Tiwari from whom the witness took a loan of Rs.200/-. Subsequently, they came to Bilaspur and made a report to the vigilance office wherein two currency notes of Rs.100/- denomination were given after the said notes were quoted with phenolphthalein powder and the solution was also prepared and the said two currency notes of Rs.100/- denomination were kept in the pocket of Girvar Singh.

10. The witness had further stated that when they reached to the Police Station with the amount, they saw that SHO was not present in the police station and they waited there and subsequently since they were advised by Yadav SHO to give the amount to Pandey, the appellant, the amount of Rs.200/- was given to appellant Pandey by Girvar Singh and after receiving the amount by the appellant, he placed the amount in his pocket. Thereafter, the witness further stated that after giving the notes they came out and gave signal and the appellant was caught hold and the amount was taken out by the appellant from his pocket and was handed over to Mr. Tiwari.

In the cross examination of the witness, he has stated that after

waiting for 2-3 hours when Yadav Daroga did not come and on the advice of Girvar, the amount was handed over to Munsiji Pandey as he was told by Yadav to hand over the money to him. He further stated that when the appellant was caught, he admitted the fact that the amount was received on behalf of Daroga i.e., Yadav.

11. P.W.8 is Girvar Singh, who handed over the amount to the appellant. He stated that he was summoned to the Police Station through Kotwar Tuladas and when he went to Police Station and met Daroga Sahab, he was further advised by Daroga Anandram Yadav to talk to appellant Pandey Jamadar, the appellant. The witness had further stated that he was advised by Yadav to talk to the appellant about money as he has already advised the appellant. Further when he went to police station, he met Brij Bihari Pandey, the appellant. Thereafter, the witness stated that appellant Pandey told him that Rs.200/- will be required to release Mannulal. Subsequently, it was advised by said witness Girvar Singh that in order to make arrangement for the money, Mannulal may be released and on such assurance that the money will be paid on the next day, Mannulal was released.

12. Thereafter, they went to Madanlal Tiwari (P.W.4) and a report was made vide Ex.P-4. Ex.P-4 is the report which was made by the witnesses and the complainant. The reading of Ex.P-4 also would reveal that it falls in the same line that an amount of Rs.200/- was asked for to release Mannulal. The witness has further corroborated the fact and proved the initial *panchnama* (Ex.P-1) which purports that before going for the raid, the entire transaction was written on a paper and the Panchnama was marked as Ex.P-1. In the cross examination of this witness, it was stated that he was told by Yadav Daroga to talk to Pandey Munshiji, the appellant, so

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as to release Mannulal. Further, in the cross examination, the witness had stated that he was not advised by Daroga to leave the amount with the appellant. Therefore, the entire demand was attributed to one Daroga Yadav.

13. Now, if the statement of P.W.4 Madanlal Tiwari is seen whom both P.W.9 Mannulal and P.W.8 Girvar approached after the demand was made, he had stated that Girvar Singh had told that when he went to the police station to get Mannulal released, at that time, the amount was demanded by Daroga i.e., Yadav. He has further stated that Mannulal and his wife have approached him and disclosed the incident that Mannulal was tortured and further an amount of Rs.200/- was demanded by Yadav Daroga. He further stated that Mannulal also disclosed him that he did not go to pay the amount to Daroga i.e., Yadav and wanted to get him trapped. Referring to Ex.P-4, the witness had stated that the contents of Ex.P-4 were written at the instance of one Tiwari, DSP and at that time, Mannulal and Girvar were present there.

14. Further in the cross examination, P.W.4 has stated that Mannulal wanted action against the Yadav Daroga. He further stated that after reaching Belgahana, he went for taking bath at about 4 O' clock and when he returned at about 5.30, it was told by Madanlal Shukla that something wrong had happened, since Daroga Yadav was not present and the money was given to Munsiji i.e., the appellant and he was caught. Therefore, the inference would be that the money was demanded by Yadav Daroga and not directly by this appellant. This witness (P.W.4) had also stated that they wanted to catch hold of Daroga i.e., Yadav. Thereafter, the witness had stated that he met Tiwari DSP and they were advised to come again to the vigilance office. Thereafter, he alongwith

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Mannulal and Girvar Singh again went to vigilance office on the next day. It was further stated that on the next day, another application was drafted which was marked as Ex.P-4. In the cross examination, the witness had stated that on the first day, when an application was written, it was against the demand made by Yadav but when the money was given to the appellant in absence of Yadav, the subsequent application was written so as to inculcate this appellant.

15. Therefore, a conjoint reading of the statement of P.W.9, P.W.8 & P.W.4 would reveal that Mannulal was detained in custody on the allegations that he caught hold of the hand of one lady and for which he was detained. In order to release him from custody, the amount was asked by Yadav (SHO). A close scrutiny of the evidence would further reveal that for the amount so demanded by Yadav, the present appellant was instrumental since he was also working under him in the same police station. The evidence has also come on record that the SHO, Yadav had advised Girvar (PW8) to talk to present appellant and P.W.8 has corroborated the fact that in order to release Mannulal, an amount of Rs.200/- was asked by the present appellant. So far as the recovery of amount from the possession of this appellant is concerned, the positive chemical test is not under challenge, therefore, this fact is substantiated that the amount of bribe of Rs.200/- was recovered from the possession of the appellant.

16. Now the question arises for consideration that whether under the facts and circumstances of the case the offence would be made out against the appellant? In order to appreciate the fact, Section 5(1)(d) of the Act 1947 is relevant here which reads as under:

5. Criminal misconduct in discharge of official

duty,-- (1) A public servant is said to commit the offence of criminal misconduct -

- (a)
- (b)
- (c)
- (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage;

So reading of section would reveal that it takes within its sweep that the public servant is said to have committed the criminal misconduct even if he obtains for himself or for any other person a pecuniary advantage or any valuable thing abusing his official position as public servant.

17. In the case in hand, the evidence has come on record that the appellant was working as Munshi in the Police Station Belgahana wherein Mr. Yadav was working as his superior in the capacity of Station House Officer (Thanedar). Therefore, when it was ordered by Yadav, SHO, to Girvar (P.W.8) to talk to appellant for release of Mannulal and thereafter when it was further advised by the appellant to pay Rs.200/- to get Mannulal released, certainly it cannot be stated that the appellant has not misused his official position to make such demand as he was working in the police station as Jamadar. The receipt of amount also corroborates the fact that he received the amount by abusing his position as public servant. Even if the amount was received on behalf of Thanedar Yadav, it cannot be stated that no demand was made by him in person. Therefore, the conviction made by the court below u/s 5(1) (d) and 5(2) of the Prevention of Corruption Act, 1947 appears to be well merited.

18. Now coming to the part of sentence, the appellant was

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convicted under sections 5(1)(d) & 5(2) and sentenced to undergo R.I., for one year with fine of Rs.1000/-. He was also sentenced to pay a fine of Rs. 2000/- under Section 161 IPC. Section 5(2) of Prevention of Corruption Act, 1947 provides that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

19. In this case, as appears, at present, the appellant is aged about 71 years and he had already lost his job about 32 years ago. He has undergone the agony of trial for more than 29 years i.e., since 1985. He lost the job and could not revive the pension, therefore, following the judgment in case of **T.M. Joseph (supra)** and considering the fact that the occurrence took place way back in the year 1982 and the appellant cannot revive his pension, I deem it proper to reduce the sentence of R.I., of 1 year to 15 days and confirm the sentence of fine of Rs.2000/- and Rs.1000/- under section 161 IPC and Sections 5(1)(d) and 5(2). Accordingly, the conviction of the court below is confirmed and the sentence of 1 year R.I., is reduced to 15 days. The sentence of fine is, however, confirmed.

20. In the result, the appeal is dismissed subject to the modification of sentence.

21. The appellant shall surrender before the concerned trial Court to undergo the sentence of 15 days if at all the sentence has not been suffered.

Sd/-
Goutam Bhaduri
Judge