

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2296 of 1998**

- Tamradhwaj Verma, son of Kamta Prasad Verma, aged about 41 years, resident of village Ghumka, tahsil & district Rajnandgaon (MP now CG)

---- Appellant**Versus**

- The State of M.P. now Chhattisgarh, Through Special Police Establishment, O/o Lokayukta, Bhopal

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent/State	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja**C A V Judgment****Delivered on 23 /09/2015**

Challenge in this appeal is to the judgment of conviction and order of sentence dated 10.09.1998 passed by the Special Judge, Rajnandgaon, in Special Case No. 2/1992, convicting the appellant under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C.Act) and sentencing him to undergo rigorous imprisonment for one year and to pay fine of Rs.1000/-, in default of payment of fine to further undergo RI for three months respectively on each count with further direction to run the sentences concurrently.

2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed an illegality.

3. As per case of the prosecution, the appellant is a Government servant and posted as Patwari of Patwari Halka No.5 at village Khujri. The accused / appellant

demanding illegal gratification of Rs.80/- from the complainant Psreetram (P.W.3) for supplying a copy of Khasra and map of the agricultural land bearing Kh.No.332, which was required to be demarcated by the complainant - Preetram, and therefore, a report was lodged by him in Lokyaukt Office, Raipur on 29.06.1987. On the same day, the entire trap party was set on foot to nab the appellant red handed. The accused/appellant was caught red handed while receiving illegal gratification in form of bribe. After compliance of all formalities, challan under Section 7 & 13 (1) (d) read with Section 13(2) of the P.C. Act was filed against the accused/appellant before the Special Judge under P.C. Act.

4. In order to prove the guilt of the accused/appellant, the prosecution examined as many as 12 witnesses. Accused was examined under Section 313 of the Cr.P.C., in which, he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.

5. After providing an opportunity of hearing to the parties, learned Special Judge convicted and sentenced the appellant as aforementioned.

6. I have heard counsel for both the parties and perused the judgment impugned including record of the trial Court.

7. Learned counsel for the appellant vehemently argued that conviction is based on the evidence of witnesses in trap party, but, their evidence does not inspire confidence and trustworthy as there are major and material contradictions in their statements. Prosecution has totally failed to prove that there was any demand of gratification from the complainant and in absence of any cogent and clinching evidence by convicting and sentencing the appellant in the above manner, the trial Court has committed an illegality.

8. On the other hand, learned State counsel opposing the appeal submitted that evidence adduced by the prosecution witnesses is sufficient for drawing an

inference that the appellant is guilty for demanding and accepting the illegal gratification other than legal remuneration.

9. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the impugned judgment and the evidence available on record.

10. It is well settled that proof of both demand of bribe and acceptance thereof is necessary to uphold conviction (kindly see **Suresh Kumar Shrivastava vs. M.P.State, AIR 1994 SC 245, Surajmal vs. State (Delhi Administration), AIR 1979 SC 1408**). It is also well settled that burden is upon the prosecution to prove its case beyond reasonable doubt. These principles are so well settled that elaborate discussion on these is not necessary.

11. As regards complicity of the appellant in crime in question, conviction is substantially based on evidence of complainant - Preetram (P.W.3) and members of trap party, namely, Mannulal (P.W.5), H.R. Kanwar (P.W.6), Pothiram (P.W.7 and G.L.Tamboli (P.W.9).

12. Shashibhushan (P.W.1) is the Patwari of Patwari Circle No.6, who stated that he was prepared spot map Ex.P.1. He deposed that he was not a member of trap party. John Verghese (P.W.2) is the Constable, who stated that in the year 1987 he was posted as a Constable in the Office of Lokayukt and was entrusted to treat three currency notes in denomination of Rs.100/- with the phenolphthalein powder. On the contrary, complainant (P.W.3) stated in his evidence that in his presence three currency notes of the denomination of Rs.50/- Rs.20/- and Rs.10/- were treated with phenolphthalein powder, thereby contradicting the statement of John Verghese (P.W.2).

13. Complainant Preetram (P.W.3) stated in his evidence that for demarcating the land, accused/appellant demanded Rs.40/- and thereafter for preparation of Khasra and map, he further demanded Rs.80/-, which he did not want to give him.

Therefore, he complained against the appellant before the Lokayukt Police. In his statement, he never stated that accused demanded any bribe or gratification and in his written complaint (Ex.P.2) also he did not complain that the accused/appellant demanded any gratification or bribe. There is no such substantial evidence of this witness to substantiate his version. About trap party, he stated that after reaching Ghumka village at about 7.00 pm, he met the accused/appellant, who demanded Rs.80/- for giving Khasra and map. The complainant gave him currency notes treated with phenolphthalein powder, then trap party had caught the accused/appellant red handed. In cross-examination, he deposed that place of occurrence was dark, therefore, complete proceedings were done at Police Station.

14. The other witness, who is a member of trap party, is Mannulal (P.W.5), Head Constable. He stated that complainant was sent to the house of accused/appellant and while complainant was offering bribe money to him, he was caught hold red handed. In cross-examination, he deposed contrary to his earlier statement wherein he stated that bribe money was given outside of the house of the accused/appellant. His statement itself is contradictory. He further stated that all the written proceedings were done on the spot whereas the complainant Preetram (P.W.3) contradicted the version of Mannulal (P.W.5). Preetram further stated that there was dark across the place, but, this witness stated again that there was street-light near the place of occurrence and denied that there was any electricity light on the spot. H.R. Kanwar (P.W.6) is also a member of trap party. He stated in his cross-examination that all proceedings were done on the spot under the electricity light. This witness further stated that accused had kept the bribed money in his pocket but the complainant Preetram (P.W.3) and Mannulal (P.W.5) stated that the currency notes were in the hand of accused/appellant, whereupon, he caught the accused/appellant red handed. A perusal of evidence adduced by them clearly reveals that there are major and material contradictions in the evidence adduced by the prosecution witnesses about the denomination of the currency

notes and other trap proceedings being done, as has been discussed above.

15. Preetram (P.W.3) has denied in his cross-examination that accused/appellant reported against him about the encroachment of government land, but, Ex.D.3, Ex.D.5 and statement of defence witnesses - Bisahuram (D.W.2), Suraj Sahu (D.W.3), Dilip Kumar Mishra (D.W.5), Revenue Inspector, shows that accused has already proceeded against the complainant on the ground of encroachment of government land prior to the trap proceedings. It shows that the complainant, in order to involve the accused/appellant, made a false complaint against the accused/appellant.

16. In absence of any vital and reliable evidence led by the prosecution, no prima facie case attracting provisions of P.C. Act can be drawn against the appellant. The evidence adduced by the prosecution witnesses, being contradictory to each other, is not reliable. There is no corroboration in the statements of prosecution witnesses. There is major contradiction regarding the denomination of currency notes, place of occurrence and the place where written proceedings took place. This apart, there is no reliable evidence about the demand of gratification. There is no material on record to show that the accused/appellant demanded illegal gratification and accepting the bribed money. Prosecution has completely failed to establish the necessary ingredients of Section 7 and Section 13(1)(d) read with Section 13(2) of the P.C. Act.

17. Considering the facts and circumstances of the case and the manner in which the trap party proceeded, I am of the considered opinion that there has been clear indication of fabrication in the trap proceedings and prosecution has not proved its case beyond reasonable doubt that the appellant had demanded and accepted the bribe money from the complainant. I am of the further considered opinion that no offence is proved against the accused/appellant beyond reasonable doubt.

18. Consequently, the appeal is allowed. Conviction of the appellant under Section 7 and 13(1)(d) read with Section 13(2) of the P.C.Act and the sentence awarded thereunder are hereby set aside. Appellant is acquitted of the charge framed against him. However, order as to disposal of case property is maintained.

19. It is stated that the appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
(I.S. Uboweja)
JUDGE