



IN THE HIGH COURT OF JUDICATURE AT JABALPUR

MISC. CRIMINAL CASE NO. 6984 OF 1998

CRIMINAL APPEAL NO. 226 OF 1998

APPELLANT : State of Madhya Pradesh

Versus

RESPONDENT : E Ramswarup Yadu son of Balaram Yadu, Food Inspector,
Food Office; Durg

APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 378(3/4) OF THE
CRIMINAL PROCEDURE CODE AND APPEAL UNDER SECTION 378(1) OF THE
CRIMINAL PROCEDURE CODE READ WITH SECTION 27 OF THE PREVENTION OF
CORRUPTION ACT 1988



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HIGH COURT OF CHHATTISGARH, BILASPUR

S.B.: **HON'BLE MR. PRITINKER DIWAKER, J.**

Criminal Appeal No. 286 of 1999

Appellant : State of Madhya Pradesh (Now Chhattisgarh)

Versus

Respondent : Ramswarup Yadu

Present: Shri SK Mishra, Panel Lawyer for the appellant/State.
Shri PR Patankar, counsel for the respondent.

J U D G M E N T

(Delivered on 01st July, 2015)

This acquittal appeal arises out of the judgment dated 13.5.1998 passed by the First Additional Sessions/Special Judge, Durg in Special Case No. 2/96 acquitting the respondent/accused of the charges under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

02. Brief facts of the case of the prosecution are that at the relevant time the respondent was working as Food Inspector with the State Government and was posted at Durg. It is alleged that complainant Abdul Lateef Khan had applied for foodgrain licence before the respondent and for granting the same, the respondent had demanded Rs.4000/- as bribe. As the complainant did not want to give any bribe to the respondent, on 24.4.1995 he approached Lokayukt, Special Police Establishment and gave a written complaint (Ex.P/1). After preparing preliminary Panchanama and completing all the formalities including that of applying phenolphthalein powder on the notes, the

trap party was constituted and after making entry in the police record, the said trap party left for the house of the respondent on 25.4.1995. In the house of the respondent, Rs.4000/- was kept by the complainant on the *diwan* (cot) and thereafter, other formalities were completed and it is said that the respondent had accepted the bribe amount of Rs.4000/-. After completing all the necessary formalities on 27.4.1995 numbered FIR was recorded vide Crime No.67/95 under Section 7 of the Prevention of Corruption Act (in short "the Act"). After completing the investigation, charge sheet was filed against the respondent on 19.7.1995 under Sections 13(1)(d) and 13(2) of the Act. However, while framing charge, the trial Court has framed charge under Sections 7, 13(1)(d) read with 13(2) of the Act.

03. So as to hold the respondent/accused guilty, the prosecution examined as many as 12 witnesses. Statement of the respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment acquitted the respondent/accused of all the charges leveled against him. Hence this appeal against his acquittal.

05. Learned counsel for the appellant/State submits as under:

- (i) that once Rs.4000/- from the house of the respondent was seized, the respondent should have been convicted.
- (ii) even if the complainant has turned hostile, for part of the story he

has supported the prosecution case and believing the same the trial Court ought to have convicted the respondent.

(iii) the trial Court should have seen the fact that had there been no demand by the respondent, there was no occasion for the complainant to make complaint and once the complaint was made and the trap was laid, the presumption goes against the respondent for demand of bribe.

(iv) that minor contradictions and omissions in the statements of prosecution witnesses ought to have been ignored by the trial Court.

06. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the respondent as under:

(i) when the complainant himself has not supported the prosecution case, the question of conviction of the respondent does not arise.

(ii) even the other witnesses have not supported the prosecution case as required under the law.

(iii) that the alleged currency notes were never handed over to the respondent and they were merely kept on the cot of the respondent and only on that basis the respondent cannot be convicted.

(iv) that on 26.4.1995 i.e. the second day of the alleged trap the complainant gave an affidavit stating therein that no bribe amount was ever demanded by the respondent and the respondent has been falsely implicated at the behest of some of the businessmen and he has been unnecessarily joined in the said trap. He has further stated that he could come to know about the trap subsequently when his signatures were obtained.

(v) that the prosecution has failed to file any document showing that any application was made by the complainant for obtaining licence.

(vi) that one application was produced by the prosecution which was made by some other person and not by the complainant.

(vii) that as per requirement of law, a person desiring foodgrain licence is required to first obtain Mandi licence whereas in the present case the complainant never applied for Mandi licence and therefore, grant of foodgrain licence to him does not arise and considering this aspect of the case, the trial Court has also granted benefit of doubt to the respondent.

(viii) that in the case of acquittal appeal, once a finding has been recorded by the trial Court, the same cannot be altered or varied till it is held by the appellate Court that the same is highly perverse. In the present case, the finding is not perverse and therefore, the scope of interference by this Court is very limited.

(ix) that the respondent has already retired from the government job and if his acquittal is reversed he may suffer an irreparable loss.

07. Heard counsel for the respective parties and perused the material available on record.

08. PW-5 Abdul Lateef Khan is the complainant. He has stated that for obtaining foodgrain licence he had gone to the Food Office at Durg and there he had given an application to one clerk Choubey and then also met the respondent/accused, who demanded the amount for providing the said licence and as he did not want to give any amount to the respondent, alongwith his friend he had gone to the office of Lokayukt and there the formalities were completed and his signatures were obtained on various papers. He has stated that along with the trap party he reached the house of the respondent, however, money was kept on

the cot. In cross-examination he has stated that he never gave any amount in hand of the respondent, the amount was kept on the cot and the respondent asked him to stay there but he came out of the house. He has further stated that he never applied for Mandi licence nor has filed any such application and before reaching the house of the respondent along with the trap party he had never seen the respondent nor had any talk with him. He has stated that today in the Court he is seeing the respondent for the second time. He has further clarified that the respondent had never demanded any amount from him.

09. PW-1 NV Naik, Assistant Sales Tax Officer has proved Ex.P/1 to P/7 i.e. the written complaint made by the complainant and other documents relating to pre-trap and post-trap proceedings. He too has stated that when the trap party reached the house of the respondent, the amount was kept on the cot and at that time the respondent was not there, he had gone to attend the nature's call. PW-2 HN Dwivedi who is the Food Inspector at the relevant time working at Durg, has not stated anything specific. PW-3 Harvind Kumar Pateriya was working as Food Controller at the relevant time. He has proved Ex.P/8, P/9 and P/10 i.e. the appointment order of the respondent and the work distribution orders. He has stated that for obtaining foodgrain licence, one must have Mandi licence and that no such application of the complainant was there nor there is any entry in the official record. He has further stated that when the matter was enquired from the Lokayukt he had informed that no such application was filed by the complainant. PW-4 Kejuprasad Choubey was at the relevant time working as clerk in the office of Food Inspector, Durg. He has stated that he received the application from the

complainant but did not make any entry of the same in the official record. He has admitted that whenever the applications are made for obtaining licence, entry of the same is made in the register but in the case of the complainant, it was not entered in the register. He has further admitted that in document Ex.P/4 there is no mention of Abdul Lateef Khan. PW-6 Upendra Kumar Saxena has stated that unless someone has Mandi licence, his application for grant of foodgrain licence is not entertained and no such application was made by the complainant. PW-7 Chandrahas Shrivastava has proved Ex.P/12, P/13 to P/17 and has not stated anything specific against the respondent. PW-8 S.K. Bisen is the Inspector in the Lokayukt department and was a member of the trap party. He has stated that after trap when hands of the respondent were washed, color of the solution turned pink and thereafter, other formalities were completed. PW-9 Harishankar has not stated anything specific against the respondent. PW-10 Haridayal Mourya, Inspector in the Lokayukt department, prepared pre-trap Panchanama and completed other formalities like recording of FIR, preparation of site plan by the Patwari and sending of seized articles for chemical examination to FSL. PW-11 Prem Singh, retired Dy.S.P., Lokayukt, had received the written complaint made by the complainant on 24.4.1995 and then he had directed H.D. Mourya, Inspector to complete the formalities. PW-12 Jaiprakash Dubey, the investigating officer has duly supported the prosecution case.

10. Close scrutiny of the evidence makes it clear that the complainant (PW-5) Abdul Lateef Khan has turned hostile and has not supported the prosecution case. He categorically stated that he never gave any bribe to the respondent and the amount so seized was kept on the cot of the



respondent. Further, he has stated that he had never met the respondent before the trap and no such bribe was given by him to the respondent. Considering his categorical statement, it cannot be said that the prosecution has proved its case on the basis of statement of the complainant. The witnesses have also categorically stated that for obtaining foodgrain licence, one must have Mandi licence whereas no such Mandi licence in favour of the complainant was there. The prosecution has utterly failed to prove that any such application was made by the complainant before the respondent. Thus, considering the entire evidence it is apparent that the prosecution has miserably failed to prove demand and acceptance of the bribe amount by the accused/appellant.

11. Yet another important aspect of the case is that on the second day of the incident, an affidavit was given by the complainant stating therein that he never made any complaint against the respondent, no bribe amount was ever demanded by the respondent, the respondent has been falsely implicated at the behest of some of the businessmen and he has been unnecessarily joined in the said trap. Further, the trial Court has noticed the discrepancy in the name of the complainant and his father. The trial Court also noticed the fact that despite the notes not being handed over to the respondent when his hands were washed, colour of the solution turned pink. The trial Court also noticed that the documents have been seized after delay. After considering all these points, the trial Court arrived to the conclusion that the prosecution has failed to prove its case beyond all reasonable doubt and therefore, acquitted the respondent of all the charges leveled against him.



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12. I find no reason to interfere in the judgment of acquittal particularly the view taken by the Court below is one of the possible view. It is a settled position of law in relation to cases against acquittal, in an appeal against acquittal if two views are possible on the basis of evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of the acquittal by the appellate Court taking the other possible view into consideration is not permissible in law. This Court is of the view that the judgment impugned acquitting the respondent of the offences as alleged is just and proper and does not warrant any interference by this Court.

13. This Court finds no error in the judgment of acquittal passed by the trial Court. The appeal is bereft of any substance, the same deserves to be and is hereby dismissed.

Sd/-
Pritinker Diwaker
Judge

Khan