

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 60 of 2002

- Pandri Rao Sawalkar, aged about 43 years, S/o Shri Shyam Rao Sawalkar, Caste – Maratha, Patwari, Resident of Danganda, Raipur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh, through P.S. Vishesh Police Sthapna, Lokayukt.

---- Respondent

For Appellant	:	Mr. Pawan Kesharwani, Advocate
For Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Passed on : 21/07/2015

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 26.12.2001 passed by the Special Judge (Prevention of Corruption Act, 1988), Raipur in Sessions Criminal Case No. 19/1998 whereby the appellant has been convicted for having committed offences punishable under Section 7 and 13(1) (d) along with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') and sentenced to undergo R.I. for one year and to pay fine of Rs. 1,000/- under each of the provisions i.e. total fine of Rs. 2,000/-, in default of payment of fine to undergo further S.I. for two months.

- 2) The facts, briefly stated, are as under :-

Complainant - Ganeshram (PW-2) had applied for ratification of his purchased land. Accused/appellant was posted as

Patwari of village Kushalpur, Raipur, Patwari Circle No. 106. During the period of 30th January, 1998 to 4th March, 1998, it is alleged by the prosecution that the appellant being a public servant and by virtue of power of such post demanded Rs.500/- from Ganesh Ram (PW-2). On being demand made by the appellant, complainant handed over to appellant Rs.100/- currency note assuring that rest amount will be paid in later stage. Being aggrieved by the act of the appellant, Ganesh Ram (PW-2) approached the Office of Lokayukt, Raipur and complained about this demand of illegal gratification. A trap was organized and a tested micro tape-recorder with cassette and Rs.400/- currency notes were handed over to him duly smeared with phenolphthalein powder and after preparing the necessary memos for handing over of currency notes, he was instructed to tape the conversation of demand & offer the same to the accused and to give signal to the rest of the trap party which includes the Assistant R.T.O. The trial Court found that the complainant Ganesh Ram approached the accused/appellant, he demanded money and Ganesh Ram paid Rs.400/- to him and the appellant kept the same in his pant pocket, at the relevant time, he was raided by the trap party of police and the money was recovered from the pant pocket of the accused/appellant. The hand of the appellant was put in the solution of sodium carbonate for wash which turned into pink colour and the same was sealed in a bottle. Similar pocket

wash was also taken and sealed when it turned into pink colour. The Court found on evidence of Ganesh Ram and other witnesses that this appellant was a public servant, he demanded an illegal gratification, obtained it and thus committed offences under Section 7, 13(1) (d) and 13(2) of the Act.

- 3) The main grievance in the grounds of appeal filed on behalf of the appellant is that prosecution has not proved his case that accused has demanded Rs.500/- from Ganesh Ram and acceptance of same by him.
- 4) Per contra, learned counsel appearing for the State has supported the judgment and opposed the appellant's argument.
- 5) It is well settled that both demand of bribe as well as acceptance of bribe by the accused have to be proved before recording conviction under the Act. See the case laws – **Bimal Kumar Gupta v. Special Police establishment Lokayukt**, 2001 (1) JLJ 276 - Demand of bribe should be proved by substantive evidence merely recovery of money divorced from the circumstances under which the same was paid is not enough, **Suresh Kumar Shrivastava v. State of M.P.**, 1994 JLJ 247 - Certainly demand of bribe must also be proved by substantive evidence, **Banarsi Dass v. State of Haryana**, (2010) 4 SCC 450 - mere recovery of money from the accused by itself is not enough in absence of substantive evidence of

demand and acceptance and **B. Jayaraj v. State of A.P.**, 2014 LawSuit (SC) 217 - in the absence of proof of demand, no offence be fasten for mere possession.

- 6) Complainant Ganesh Ram (PW-2) has stated that for ratification of his sale deed he met accused and he demanded Rs.500/- towards it, then he gave Rs.100/- to him and enquire about it. He came to know that no amount is required for same. In this case prosecution has not examined any single witness to whom complainant was enquired. In cross-examination, he admitted that he has not applied for ratification and also admitted that accused assured him after election duty he will do the ratification work, this admission shows that accused was willingly co-operating the complainant, his intention was not to interrupt him. No other supporting oral evidence has been produced by the prosecution *inter-alia* prosecution has presented tape recorder evidence, but transcript thereof shows that there was no evidence of demand of bribe and no evidence of partially Rs. 100/- gave to accused. Therefore, solely oral evidence of complainant towards demanding bribe is not believable, there is no cogent and reliable evidence towards bribe demand.
- 7) Taking into consideration all the aspects of the matter, I am of the considered opinion that prosecution has totally failed to prove that any demand of bribe was done by accused.

Complainant has proved that he has presented complaint (Ex.P-15) against the accused for demand of bribe. He stated that trap party remained stay outside of Tehsil Office, Raipur and he entered in accused office room, on demand he gave four hundred rupee (testing currency) to accused, he put in his pant pocket, then he gave a signal to trap party as it was decided prior, trap party came there and seized bribe amount from the accused, He stated that accused had turn out bribe currency from his pant pocket which was same numbering.

- 8) Assistant Commercial Tax Officer, Vinay Kumar (PW-1) who was one of the members of trap party, has stated different from complainant version. He stated that firstly complainant went to accused room and after five minutes accused and complainant came out from room, thereafter, trap was done, but complainant never said that he and complainant came out from accused room thereafter trap was done out of the room. Complainant said that trap was done inside the room and Vinay Kumar said that it was done outside the room. Another difference is that officer was turn out the currency from accused pocket, but complainant said that it was turn out by accused himself, so this is a big difference in both witnesses statement which is fatal for prosecution.
- 9) Leader of the trap party D.S.P., Dilip Singh Rathore (PW-8) has stated that firstly complainant went to accused room in Tehsil

Office, thereafter he came out from Tehsil Office with one person, thereafter complainant gave money to that person and that person put the same in his pocket, after indication of complainant accused was trapped.

- 10) Complainant never said that he had given bribe money outside the Tehsil Office, he said that money was given in the room of the complainant and one other important witness Vinay Kumar (PW-1) said that the amount was given outside the room. So, it is clear that all witnesses are giving contradictory statements; therefore, they are not believable towards the incident of trap, whereas Dilip Singh Rathore (PW-8) has stated that he has seized the bribe currency, but he has not cleared that who has turn out currency from accused pocket. Vinay Kumar (PW-1) and complainant (PW-2) had given contradictory statement about who turn out the currency from accused pocket. So seizer of bribe currency from accused is also suspicious, it was not proved beyond reasonable doubt. Therefore, it is also not clearly proved that bribe currency was seized from the possession of accused/appellant.
- 11) In the facts and circumstances of the case in which clear indication of fabrication in the trap proceedings has been there, prosecution has totally failed to prove any demand of bribe was from accused side and also recovery of bribe does not inspire confidence.

- 12) Taking into consideration all the facts and circumstances of the case and on minute scrutiny of the evidence, I am of the considered opinion that no offence is proved against the appellant beyond reasonable doubt and the Court below while convicting and sentencing the appellant, has not considered all the relevant aspects of the matter and thereby committed illegality. Appeal merits to be allowed.
- 13) Consequently, the appeal is allowed. Appellant is acquitted of all charges against him. However, order as to disposal of case property is maintained.

Sd/-
(I.S.Uboweja)
JUDGE