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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 768 of 1996

1. Y.Janardhan Rao, son of Late Ramkrishnayya, aged 56 years, Section Officer, Finance Section, Bhilai Steel Plant, Bhilai, resident of Qr. No.1-C, Street No.8, Sector-4, Bhilai Nagar, Bhilai, District Durg.

---- Appellant (On bail)

Versus

- State of Madhya Pradesh (now CG).

---- Respondent

For Appellant
For Respondent

Shri Rakesh Thakur, Advocate
Shri Kishore Bhaduri, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

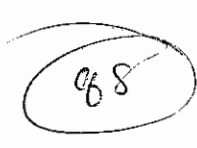
22/11/2016

1. This appeal is directed against the impugned judgment dated 24.4.1996 passed by the 5th Additional Sessions Judge & Special Judge for CBI Cases, Jabalpur in Special Case No.31/90 convicting the accused/appellant under Sections 7 & 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and sentencing him to undergo RI for 6 months & fine of Rs.1,000/- and RI for 1 year & fine of Rs.1,500/-, plus default stipulations, respectively.
2. Facts of case, in brief, are that at the relevant time the accused/appellant was posted as Section Officer in the Finance Section of Bhilai Steel Plant, Bhilai. The complainant, who was also working as Technician in ACVS Department of Bhilai Steel Plant, submitted an application for grant of Leave Travel Concession (LTC) advance as he intends to go to Bangalore along with his family. Said application was forwarded to the Wages Zone



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No.4 for sanction, however, despite lapse of sufficient time when no order has been passed on it, the complainant contacted the accused/appellant and asked about his application. The accused/appellant told him that if he wanted to get the advance amount, he would have to pay Rs.50/- to him (accused/appellant). The complainant replied to accused that he will pay the said amount to him after receipt of his salary and therefore the accused asked him to come on 9.1.1990. Since the complainant had no desire to pay the bribe money, so he approached the officers of C.B.I., who were staying at that time in Room No.5 of Railway Retiring Room, Durg and lodged written report of Ex.D-2. On report being lodged, M.C. Sahni (PW-5) constituted a trap party and preparation was made to complete the formalities. Trap witnesses namely M.K. Chouhan (PW-2) & K.M. Ramarao (PW-3) were called and apprised with the illegal demand made by accused/appellant and thereafter they accompanied the investigating officer (PW-8). Test was demonstrated by applying phenolphthalein powder on two currency notes of 20 denomination and one currency note of 10 denomination to the trap party. Said notes were put in the shirt pocket of the complainant with the instruction to take out those notes only when demand was made by the accused. M.K. Chauhan (PW-2) was instructed to go to the office of accused/appellant along with complainant and observe & hear whatever transpired between the complainant and the accused. After completing the formalities, panchnama (Ex.P-3) was prepared which was duly signed by the witnesses and thereafter the trap party went to the office of accused/appellant. Complainant entered the office of appellant, whereas M.K. Chouhan (PW-2) stood at the door of chamber of accused/appellant. The complainant handed over him the money demanded by accused/appellant and thereafter came out of the office and gave pre-



decided signal to the trap party. After signal being given, the trap party entered the office of accused/appellant, disclosed their identity to the accused, caught hold of his hands and seized the bribe money from him which he kept in his pant pocket. On washing hands and pant of accused/appellant, the colour of solution turned pink. Spot map (Ex.P-5) was prepared. Documents relating to LTC were seized vide Ex.P-6. FIR (Ex.P-12) was recorded on the spot itself and after reaching the office of CBI, the same was registered as Ex.P-13. Other documents were also seized vide Ex.P-14 & P-15.

3. After completion of the investigation, the matter was submitted before the sanctioning authority and the sanction came to be accorded vide Ex.P-9. M.C. Sahani (PW-5) filed the charge sheet against the accused/appellant for the offences under Sections 7 and 13 (1) (d) r/w 13 (2) of the Act of 1988. The prosecution in order to bring home the charges levelled against the accused/appellant examined 05 witnesses. Statement of accused/appellant was recorded under Section 313 Cr.P.C. in which he denied the charges levelled against him and pleaded innocence & false implication in the offence. He has examined two defence witness in support of his case.
4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as described above.
5. Heard counsel for the parties and perused the material available on record including the impugned judgment.
6. Counsel for the appellant submits that;
 - neither demand nor receipt of amount is proved by the prosecution as required under the law.
 - LTC advance has already been sanctioned to the complainant on 8.1.1990 which is evident from document Ex.P-1 and therefore there

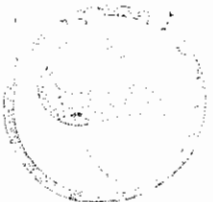
was no question of demanding illegal gratification from the complainant on 9.1.1990.

- there is no proper and valid sanction by the competent authority to launch prosecution against the appellant.
- though the independent witnesses have supported the prosecution case but if their entire evidence is seen, they appear to be shaky witnesses and therefore it will not be safe for this Court to uphold conviction of appellant on the basis of their statements.
- copy of FIR has not been forwarded to the Special Judge, as required under the law and this makes the entire prosecution story doubtful and unreliable.
- It is alternatively submitted that appellant had undergone agony & trauma since the litigation has been going on for the last about 26 years; he was 50 years old when the incident occurred and now more than 80 years and he has suffered custody for more than 1½ month. In these circumstances, he may be sentenced to the period already undergone by him. He placed reliance in the matter of T.M. Joseph vs. State of Kerala; AIR 1992 SC 1922 & K.P. Singh vs. State of NCT of Delhi; 205 Law Suit (SC) 890.

7. On the other hand supporting the impugned, counsel for the State submits that the demand and acceptance has been duly proved by the prosecution and the witnesses have categorically supported these two things i.e. demand and the acceptance. He further submits that valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. He further submits that both the recovery witnesses have supported the prosecution case in its entirety and there is no reason for this Court to disbelieve them.

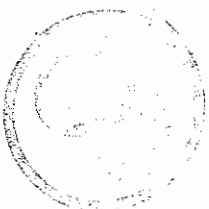
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8. Heard counsel for the parties and perused the material available on record including the impugned judgment.
9. Complainant Shatrughan Ram (PW-1) has stated that he has applied for grant of LTC advance as he intends to go to Bangalore along with his family. Such application normally gets approved in 15-20 days, however, when nothing has been heard by him even after lapse of about 1½ months, he enquired about it and came to know that his application has been forwarded to Wages Section Zone-4. On 2.1.1990 when he contacted the accused/appellant and asked about his application, the accused/appellant told him that if he wanted to get the LTC advance quickly, he would have to pay Rs.50/- to him. On being told that at present he does not have money and he can pay the said amount only after receipt of his salary, the accused/appellant asked him to come after the salary is received. He has further stated that having coming to know about the presence of officers of CBI at Ispat Bhawan, Bhilai Steel Plant, on 8.1.1990 he approached them and lodged a written complaint to them on which he was called on 9.1.1990 at Room No.5 of Railway Station Retiring Room. Next day he met PW-5 M.K. Shahni at Room No.5 of Railway Retiring Rooms, Durg where demonstration of use and detection of phenolphthalein powder was given to him. Thereafter PW-5 asked him whether he is having the decoy amount to be given as a bribe to accused. He informed that he is having two 20 rupee notes & one 10 rupee note and handed over them to him. Thereafter, panchnama of Ex.P-3 was prepared in which numbers of said currency notes were recorded. The officer of CBI applied a chemical powder on those three currency notes and gave it to him with a instruction not to touch the same and he was further instructed to take out the same only when the demand was made by accused. He has further stated that he was instructed to give signal by



scratching his head. After completion of the formalities, they started for Bhilai Steel Plant in a Jeep and on reaching there, he along with M.K. Chouhan (PW-2) got down from the Jeep at some distance and after reaching the table of accused, he asked him about his work. The accused then asked him about money. He took out the tainted money from the pocket of his shirt and tendered it to the accused. The accused accepted the amount by right hand and kept it in the right pocket of his pant and thereafter said "you go, your work will be done soon". After coming out from the chamber of accused/appellant, he gave the signal by scratching his head and thereafter the raiding party rushed to the table of accused, disclosed their identity and the panch witnesses to the accused and informed him that he has been trapped because of demand being made by him for sanctioning LTC advance amount to the complainant. He has further stated that on washing the hands of accused the colour of solution turned pink. Being asked by CBI officer, the accused replied that the amount was kept by him in the right pocket of his pant. The tainted amount of Rs.50/- was recovered from the pant pocket of the accused. Numbers of currency notes tallied with the numbers which were noted in the pre-trap panchnama (Ex.P-3) which was prepared in the retiring room. Phenolphthalein test of the pant of the accused/appellant was conducted which proved positive. The solution used to different testing was separately taken over and it was closed and sealed in separate bottles. In the lengthy cross-examination this witness remained very firm and nothing incriminating could be elicited which makes his testimony unreliable or untrustworthy.

10. M.K. Chouhan (PW-2) is the trap witness who at the relevant time was working as Junior Vigilance Inspector in the HSCL, Bhilai. He has stated that having been directed by the Controlling Officer, on 9.1.1990 he met



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the investigating officer (PW-5) at Room No.5 of Retiring Room of Railway Station where PW-5 introduced the complainant to him and also shown the complaint (Ex.P-2) lodged by the complainant. He has further stated that he was informed about the contents of the complaint filed by the complainant. He has further stated that demonstration of use and detection of power was given to all of them and thereafter on demand being made by officer of CBI, the complainant produced two currency notes of 20 denomination and one currency note of 10 denomination for laying the trap. After completing the formalities, the raiding party reached SMS Welfare Building where the chamber office of accused is situated. The complainant went to the table of the accused/appellant and he was standing at the door. After reaching the table of the accused, the complainant asked him as to whether he had done his work. The accused/appellant demanded Rs.50/- for sanctioning the LTC advance from the complainant which the complainant paid to him. Accused accepted the amount and kept it in right pocket of his pant. He has further stated that the complainant gave pre-decided signal and thereafter the raiding party reached on the spot, introduced themselves and informed the accused that he has accepted bribe of Rs.50/- from the complainant for sanctioning the LTC advance and caught hold of his right hand. Thereafter the officers took the accused to a cabin and there phenolphthalein test of right hand and right pocket of pant of accused/appellant was conducted which proved positive. Phenolphthalein powder was also detected on the hands of the complainant. Tainted money of Rs.50/- was recovered from the possession of the accused and the numbers on these notes tallied with the numbers noted in the pre-trap memorandum. He has further stated that the solution used for testing the hands, notes, pant were kept in different bottles and they were properly

closed and sealed. He has further stated that separate seizure memo of the proceedings was prepared, signature of accused obtained on it and a copy of the same was given to the accused. Nothing could be brought by the defence in the cross-examination of this witness to discredit his testimony.

11. K.M. Ramarao (PW-3) is the another trap witness who at the relevant time was working as Office Superintendent in HCSL, Bhilai and he has also corroborated the prosecution case in all respect. He has been cross-examined in detail but nothing incriminating could be elicited to discredit his testimony.
12. R.K. Patariya (PW-4) is the person who proved the sanction granted by the Managing Director, Bhilai Steel Plant, Bhilai on 10.8.1990.
13. M.G. Agrawal (PW-5) is the investigating officer who has duly proved the prosecution case.
14. Lakhanlal Yadu (DW-1) was working with accused/appellant in Wages Zone-4 (Finance) Section, Bhilai Steel Plant, Bhilai. According to this witness, on search being made by the officers of CBI nothing incriminating was recovered and even after washing hands of accused the colour of solution did not turn pink. He has further stated that accused/appellant was taken to a nearby room and there further action was taken and formalities were followed. However, he was not permitted to enter in the said room.
15. N.K. Dubey (DW-2), retired Deputy Superintendent of Police, CBI, Jabalpur, has been examined to prove that the information regarding registration of FIR was not passed on to the Special Judge concerned.
16. Minute scrutiny of the evidence available on record makes it clear that on 9.1.1990 the accused/appellant, who was working as Section Officer, Wages Section, Zone-4, Finance Department, Bhilai Steel Plant, Bhilai,

had demanded bribe of Rs.50/- from the complainant for expeditious clearing of his LTC advance which he was supposed to do in discharge of his official duty. Evidence on record also speaks that the complainant passed on this information to the CBI people and on the fateful day, the complainant along with CBI officials came to the accused/appellant and keeping the officials away at some distance he gave the said amount to the accused/appellant which he kept in his pant pocket. The complainant has given the categorical description of currency notes given to the accused which were of 20 & 10 denomination. All the legal and procedural formalities were undertaken by the prosecution and on receiving the pre-decided signal from the complainant, the CBI people approached the appellant and recovered the said currency notes from the possession of the accused. This giving and taking of the amount has not even been disputed by the defence and on the said currency notes being treated chemically, the phenolphthalein solution turned pink. Thus, the prosecution has proved its case by leading every possible cogent and clinching evidence in support of its case and no legal flaw is there on their part.

As regards the submission of counsel for the appellant that there is no proper and valid sanction. The competent authority to give sanction to launch prosecution is the authority competent to remove one from service. In the present case, the authority competent to remove the accused/appellant from service is the Managing Director, Bhilai Steel Plant, Bhilai and it is the Managing Director who gave the sanction by order dated 10.8.1990 (Ex.P-9) after considering the whole record and proper application of mind. The accused/appellant failed to demonstrate that the order of sanction is suffering from non-application of mind etc. In these circumstances, the trial Court cannot be faulted in taking the view

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that there was an order of sanction for prosecution from the competent authority.

The court below has also taken into consideration each and every aspect of the case coupled with the evidence of witnesses while recording a finding to the effect that the accused/appellant had demanded and later accepted Rs.50/- as illegal gratification for carrying out the task which he was supposed to do in his official capacity. Even the defence has not produced any evidence to the contrary on the basis of which a conclusion other than the conviction can be recorded by this Court. Being so, the conclusion drawn by the court below holding the accused/appellant guilty under Section 161 IPC & Section 5 (1) (d) r/w 5 (2) of the Act of 1947 being based on due appreciation of the evidence on record is not liable to be interfered with. Impugned judgment is thus receives affirmation in this appeal.

Even if the argument of the counsel for the accused is taken to be true regarding not sending the copy of FIR to the Magistrate concerned, considering the fact that the prosecution has proved recovery of bribe money from the accused; the accused has not given plausible explanation in the statement recorded under Section 313 Cr.P.C.; the F.I.R. was actually recorded without delay and there is no other infirmity brought to notice of this Court, this Court is of the opinion that it would not have any negative impact on the case of prosecution and it is just a technical requirement not coming in the way of final conclusion of the case.

17. As regards the submission regarding reduction of sentence to the period already undergone by the accused, the trial Court has already imposed the minimum sentence prescribed under Sections 7 & 13 (1) (d) of the Act of 1988 i.e. 6 months & 1 year respectively, and this Court has no option

to reduce the sentence of imprisonment from the minimum sentence prescribed under the statute. The judgment relied upon by the accused/appellant in this regard is distinguishable on facts as in that case the accused/appellant had already undergone 7½ months against the statutory minimum of 6 months imprisonment.

18. In the result, the appeal fails and is dismissed. Impugned judgment is hereby affirmed. Accused/appellant is reported to be on bail. Bail bonds of the appellants are cancelled and he is directed to be taken into custody forthwith to serve out the remainder of sentence.

Sd/-
Pritinker Diwaker
Judge

roshan/-