

**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 514 of 2010**

The State of Madhya Pradesh (now Chhattisgarh)

**---- Petitioner****Versus**

Banvarilal Shrivastava S/o Suraj Prasad Shrivastava, Occupation Naib-Tehsildar (suspended) R/o Rajapara, Sakti, Tehsil Sakti, District Janjgir-Champa, CG

**---- Respondent**

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For Petitioner/State : Shri Ashish Shukla, Govt. Advocate

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**Hon'ble Shri Justice P. Sam Koshy****Order On Board****29/11/2016**

The present CrMP has been filed seeking for grant of leave to appeal against the judgment of acquittal dated 31.01.2000 passed by the Special Judge, Sarguja, Ambikapur in Special Sessions Trial No. 4/93 whereby the Court below has acquitted the respondent from the charges under Sections 5 (1) (d) and 5 (2) of Prevention of Corruption Act.

2. The present CrMP was filed on 19.06.2000 before the erstwhile High Court of Madhya Pradesh at Jabalpur. Thereafter, the matter came up for hearing on 11.07.2000 on which date the Govt. Advocate appearing for the State took time for curing the default and filing an appropriate application under Section 5 of the Limitation Act. The said application under Section 5 of the Limitation Act was entertained and allowed vide order dated 24.07.2000. Thereafter, though the matter was listed on 03.02.2016, the State counsel took time and the case is coming up for hearing before this Court for the first time today.

3. This Court is reluctantly hearing the case on merit for the reason that

the impugned order of acquittal was passed almost 17 years back in favour of the respondent which by efflux of time has impliedly attained finality. Another reason for hesitation of this Court in hearing the case on merit is that when the respondent was prosecuted in the year 1993, he was aged about 55 years and after elapse of about 23 years period today the age of the respondent would be somewhere around 78-79 years. Therefore, no fruitful purpose would be served if the appeal is now entertained at this belated stage or at the advance stage of life of the respondent. In spite of the peculiar facts and circumstances of the case, this Court heard the case on its merit.

4. State counsel referring to the impugned judgment submits that the Court below has not properly appreciated the evidence which has been adduced on behalf of the prosecution particularly the investigating agency which has tried to prove the offence beyond reasonable doubt. According to the State counsel, the Court below has on technical ground granted the benefit of doubt to the respondent and passed the impugned judgment of acquittal. State counsel took the Court through the evidence of the witnesses particularly PW-1 complainant Vishram and PW-6 the Investigating Officer R. Toppo and tried to emphasize on the fact that the statements of the complainant and the Investigating Officer are sufficient enough for establishing the case of the prosecution but the same has not been appreciated in its correct perspective and thereby the respondent has got the advantage of doubt by getting an order of acquittal in his favour. Thus, prayed for grant of leave to appeal against the impugned acquittal order.

5. However, a perusal of the impugned judgment and the evidences which have come on record what clearly reflects is the fact that from the deposition of the prosecution witnesses it has been reflected that the amount

alleged to have been demanded as bribe by the respondent was not a bribe but there was a receipt duly issued for the said amount. The amount paid by PW-1 complainant to the respondent was the fine amount of which there was entry made in the receipt and the cash book in the office of Naib Tahsildar which has not been rebutted in any manner by the prosecution witnesses and therefore the prosecution story becomes doubtful as is evident from paragraph 16 of the impugned judgment. Likewise, the Court below has also found a discrepancy in the case of the prosecution in as much as in the first Panchnama the date is mentioned as 20.08.1987 whereas the written complaint was made by the complainant on 21.08.1987. Thus, the Court below took an adverse reference in the prosecution case in as much as initially the complaint as admitted by the complainant himself was made on 21st August 1987 then how could the trap team prepare a Panchnama in respect of the application of Phenolphthalein powder on the currency notes one day before the complaint was made. This creates a great element of doubt again in the prosecution story. During the course of evidence it was also found that the Investigating Officer is said to have prepared Panchnama from a typewriter brought from the Block Office of Premnagar whereas there is an admission on the part of the prosecution witness itself that the Block Office did not have a type writer during the relevant period of time again creating doubt on the case of the prosecution so far as the preparation of the Panchnama and the place where the Panchnama was prepared. In addition, the statement of the Investigating Officer R. Toppo when compared to the statement of the other prosecution witnesses so far as the preparation of the Panchnama and the other proceedings drawn by the trap team are concerned, there are great element of contradictions and omissions in the statement made by the prosecution witnesses further creating doubt in the mind of the Court

regarding the veracity of the prosecution story. Last but not the least the Court below took note of the fact that the scribe of the written complaint made by PW-1 i.e. Dilip was not examined during the course of the evidence for the reasons best known to the prosecution which all the more creates doubt in the case of the prosecution and also creates a doubt in the mind of the Court so far as the proof which is required for establishing the charges which have been levelled against the respondent accused.

6. For all the aforesaid discrepancies and doubts which have been created in the mind of the Court below, this Court does not have any hesitation in reaching to the conclusion that the Court below has not committed any illegality or infirmity in granting the benefit of doubt and acquitting the respondent from the charges under Sections 5 (1) (d) and 5 (2) of Prevention of Corruption Act.

7. Thus, this Court is of the opinion that no strong case is made out for grant of leave to appeal against the impugned judgment of acquittal. Accordingly, the present CrMP being devoid of merit stands dismissed.

**Sd/-**  
**(P. Sam Koshy)**  
**JUDGE**