

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.273 of 1999

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

=====

DEVA NAND JHA @ DEONARAIN JHA SON OF LATE VIDYA NAND JHA,
RESIDENT OF VILLAGE-JETAILI, P.S. BIHARIGANJ, DISTRICT-
MADHEPURA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

Appearance:

For Amicus Curiae : Mrs. Soni Shrivastava, Adv.
Mr. Ravi Bhardwaj, Adv.

For Vigilance : Mr. Ramakant Sharma, Sr. Adv.
Mr. Kedar Singh, A/c to Law Officer, Vigilance

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-01-2017

Sole appellant Deva Nand Jha @ Deonarain Jha has been found guilty for an offence punishable under Section 7 as well as 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and further, sentence to undergo R.I. for three years and also to pay fine of Rs.2000/- in default thereof, to undergo sentence of six months, additionally under Section 7 of the Prevention of Corruption Act however, no sentence has been inflicted for the remaining vide judgment of conviction dated 27.09.1999 and order of sentence dated 29.09.1999 passed by the Special-Judge (Vigilance) North Bihar, Patna in Special Case No.14 of 1990 arising out of Khazanchi Hat P.S. Case No.420 of 1988.

2. PW.1, Upendra Narayan Singh had filed petition before the District Magistrate (PW.2) disclosing therein that Treasury Clerk is insisting upon to gratify him by way of asking Rs.100/- as bribe in order to pass two treasury bills which were kept by him while two other bills were



passed. The District Magistrate had a conversation with aforesaid Upendra Narayan Singh, got rupees one hundred signed it and then called PW.3 an Executive Magistrate, Nazarat to accompany in order to apprehend the culprit red hand. As per instruction, PW.1 and PW.3 gone to treasury office where PW.1 called the appellant, and after having some sort of conversation with him, he handed over rupees one hundred bearing signature of District Magistrate. Thereafter, he disclosed to PW.3 who along with PW.1 came at the chamber of Sub-Treasury Officer where appellant was called on and further, he handed over rupees one hundred as directed by PW.3 as well as PW.4, the Sub-Treasury Officer. Then, thereafter all of them gone to District Magistrate where PW.3 had filed written report. After going through the same, the District Magistrate (PW.2) ordered to launch a case and accordingly, PW.3 launched the case annexing the relevant annexures, the germane of present proceeding.

3. It is evident from the lower court record that initially Khazanchi Hat P.S. Case No.420 of 1988 was instituted under Section 161 of the IPC and 5 of the Prevention of Corruption Act then thereafter, special case was instituted thereupon an investigation was taken up by CW-1, Mritunjay Jha who at that very moment was S.P. After conducting and concluding the investigation charge sheet was submitted at his end facilitating order of cognizance facilitating trial ultimately concluded by way of recording guilt of appellant, hence this appeal.

4. The defence case as is evident from mode of cross-examination as well as statement having been recorded under Section 313 of the Cr.P.C. is of complete denial of the occurrence. Furthermore, it has also been pleaded that appellant was not at all concerned with the affair of the PW.1 and on account thereof, there was no occasion for the



appellant to ask for bribe and to receive the same. At the other end, it has also been pleaded that appellant happens to be active member of the union and was protesting highhandedness of PW.2, the District Magistrate whereupon he has been victimized. In order to substantiate the same, defence had also examined three DWs.

5. Because of the fact that learned counsel for the appellant failed to appear, on account thereof, Smt. Soni Shrivastava, Advocate was requested to assist the court as an Amicus Curiae which she consented and at the present moment Smt. Soni Shrivastava, learned Amicus Curiae assisted by Ravi Bhardwaj, learned counsel have fairly sailed the instant appeal.

6. While assailing the judgment of conviction and sentence, it has been submitted at the end of the appellant that instant proceeding is suffering from basic infirmities and on account thereof, the finding so recorded by the learned trial court would not persist.

7. Further elaborating such submission, it has been submitted that there happens to be complete absence of positive, conclusive evidence over demand nor investigation proceeded on that very score. When there was no demand, mere recovery, even accepting the prosecution case for an argument sake, will not fix the appellant to be victimized under the prevention of corruption act. It has also been submitted that there also happens to be deficiency at the end of the prosecution over substantiating the theme of recovery of rupees one hundred which, as per prosecution, was paid to the appellant and, simultaneously recovered.

8. Apart from this, it has also been submitted that neither the Treasury Officer, PW.4 had concluded that this appellant was entrusted



with passing of the bill relating to PW.1. At this juncture, the learned Amicus Curiae assisted by learned Ravi Bhardwaj, Advocate has submitted that DW-3 was examined on this very score who had admitted that he was entrusted with passing of the bill relating to the PW.1 and an objection was there which, till the alleged date was not at all removed. Prosecution had not controverted the same. Therefore, having receipt of rupees one hundred for getting the bill passed not at all going to give any additional support to the prosecution in the aforesaid facts and circumstances of the case.

9. Apart from this, in the background of absence of seizure list when the theme of presence of rupees one hundred currency note is taken up, it is apparent from the evidence of PW.1 that it was the District Magistrate who on his own handed over rupees one hundred bearing his signature affixed while PW.2 District Magistrate had stated that it was PW.1 who had handed over rupees one hundred. So, the authenticity of presence of rupees one hundred is also found shaky and the cumulative effect thereupon, nullifies the prosecution case.

10. Refuting the submission having been made on behalf of learned Amicus Curiae assisted by learned Advocate Ravi Bhardwaj it has been submitted by Sri Ramakant Sharma, Senior Advocate, Vigilance that though the prosecution lacks with positive evidence on the score of demand but recovery from the possession of the appellant is found conclusively proved from the evidence of PW.1, PW.2, PW.3 and PW.4. It is also beyond controversy with regard to deployment of appellant in the treasury office on account of on going strike. Therefore, conviction and sentence recorded by the learned trial court needs no interference.

11. In order to substantiate its case, the prosecution had



examined altogether five PWs out of whom PW.1 is Upendra Narayan Singh, PW.2 is Ram Sevak Sharma, PW.3 is Balbhadra Singh, PW.4 is Logen Chandra Das and PW.5 is Anant Prasad Sinha. CW.1 is Mritunjay Jha, Investigating Officer has been examined after closure of the prosecution case. Defence has also examined three DWs as DW-1 is Laxmi Narain, DW.2 is Rajdeo Prasad Chourasia and DW.3 is Rajendra Paswan. In likewise manner prosecution had also exhibited Ext.1 to 2- Loan and Search order, Ext.3-Endorsement compliance, Ext.4-Endorsement, Ext.-5 Endorsement, Ext.6-Fardbeyan, Ext.-7-Written Report, Ext.8-Written Report, Ext.9-Objection on bill.

12. Now coming to evidence of the PWs, it is evident that save and except PW.1 none others have come to support the theme of demand that appellant Deva Nand Jha had ever demanded rupees one hundred as bribery. At the present moment it looks desirable to see whether there was any occasion for the appellant to demand and for that, evidence of PW-4, the treasury officer is to be taken note of. He in his examination-in-chief at para-12 had exhibited the bill and further disclosed that objection memo no.1,2 and 3 happens to be in the pen and writing of Rajendra Paswan who was deployed at the treasury office on deputation. Aforesaid eventuality is found duly substantiated from the evidence of DW.3 Rajendra Paswan and in the aforesaid background, it could be, which the prosecution failed to place that the appellant Deva Nand Jha was ever entrusted to pass the aforesaid bill on account thereof, having an opportunity to impress upon PW-1 illegally for the purpose of gratification and for that succeeded in having rupees one hundred for getting the bill passed. It is not the case of the prosecution that demand was made to facilitate passing of bill by aforesaid Rajendra Paswan.



13. Now coming to other aspect, none save and except PW.1 is over aspect of payment of rupees one hundred. Though PW.3 and PW.4 have stated that one hundred currency note was handed over by the appellant but whether aforesaid event is inspiring confidence more particularly in the background of inconsistency amongst the evidence of PW.1, para-8 whereunder he spoken that District Magistrate himself had offered rupees one hundred after putting his signature is found duly controverted by the District Magistrate PW.2. Para-4 wherein he had deposed that after obtaining rupees one hundred, from PW.1 he put his signature. Apart from this, had there been voluntary presentation of note at the end of appellant, the report submitted by PW.3 to PW.2 would have contained its number. Not only this, seizure list would have been made at the first instance, having signature of appellant. The evidence of I.O. C.W., also negatives the same.

14. Furthermore, from the evidence of PW.1 it is evident that door of office was closed, appellant's presence was procured through a peon, but the prosecution did not trace out aforesaid peon even at initial stage at the trial. So having presence of appellant at the other side of door being recipient of rupees one hundred became suspicious one.

15. Apart from this, it is found from the evidence of PW.4, Treasury Officer that strike was going on and on account thereof, staff from different department were deployed which happens to be properly corroborated by DW.1 as well as DW.2 who also deposed over status of appellant. In the background, when the evidence in its entirety is taken together, the manner whereunder mode of payment as well as recovery has been alleged, is found not above board.

16. That being so, the judgment of conviction and sentence



recorded by the learned trial court did not justify its prevalence whereupon is set aside. Consequent thereupon, appeal is allowed. Appellant is on bail hence is discharged from its liability. First page and last page of the judgment be handed over to the learned Amicus Curiae so that she be able to get proper remuneration.

(Aditya Kumar Trivedi, J)

PN/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	13.01.2017
Transmission Date	13.01.2017

