

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Appeal No. 2716 of 1998

Judgment reserved on : 24.11.2016

Judgment delivered on : 04 .01.2017

State of Madhya Pradesh through Special Police Establishment,
Office of Lokayukt, Bhopal

---- Appellant

Versus

Laxmiprasad Yadav S/o. Veerbhadra Yadav, Aged 46 years,
Secretary Municipal Corporation, Rajnandgaon (M.P.) (Now
Chhattisgarh)

---- Respondent

For Appellant/ State :- Mr. Neeraj Sharma, Dy. Govt. Advocate

For Respondent :- Mr. Ashish Shrivastava and
Mr. Anurag Verma, Advocates

Hon'ble Shri Justice Anil Kumar Shukla

C A V judgement

1. This Criminal appeal is preferred by the State being aggrieved by the judgment dated 27.03.1998 passed by the Special Judge, Rajnandgaon in Special Case No. 2/05, whereby and whereunder the learned Special Judge acquitted the respondent of the charges framed against him under Section 7 read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act.

2. As per the case of the prosecution, the respondent was posted as Secretary in Nagar Palik Nigam (Municipal Corporation), Rajnandgaon. The house of Mantora Bai was situated in Rajnandgaon. After her death, her grand son complainant Rajkumar Gupta (PW-7) was residing in that house along with his family. For assessment of property tax of that house, father of the complainant had submitted an application in Nagar Palik Nigam Rajnandgaon. At the time of submission of that application, the respondent was serving as Secretary in Nagar Palik Nigam Rajnandgaon and was doing the job of assessment of property tax. When the complainant asked the respondent to make less assessment of property tax of that house, the respondent asked the complainant to pay him bribe of Rs. 500/-. The complainant did not want to give him any bribe, therefore, on 10.01.1991, he went to the office of Special Police Establishment, Lokayukt, Raipur and submitted a written complaint (Ex.P-1) to J.L. Verma, Deputy Superintendent of Police. After submission of the written complaint, the Special Police Establishment proceeded for trapping the respondent/ accused.

3. A trap was arranged. Currency note of Rs. 500/- was obtained from the complainant, its number was noted, the currency note was smeared with phenolphthalein powder and the complainant was asked to keep the smeared note in the pocket of his full pant. A demonstration of reaction of sodium carbonate solution and phenolphthalein was also made in

presence of witnesses. The details of demonstration including the smearing of phenolphthalein on the currency note handed over to the complainant were recorded in writing by way of memorandum (Ex.P-2). Thereafter, trap was laid in the house of the respondent. According to the case of the prosecution, bribe money was given to the respondent by the complainant which was accepted by the respondent and was kept in the pocket of his pyjama. The complainant came out of the house and gave signal to the trap team. Immediately thereafter, the trap team arrived at the spot and caught the respondent/accused read handed and recovered the currency note of Rs. 500/- from the pocket of the pyjama of the respondent/accused. It was found that the currency note recovered from the respondent was the same note whose number was earlier noted by the trap team. The hands of the respondent/complainant and witnesses were washed and hand wash were separately kept and sealed in bottles. Panchanama of trap was also prepared vide Ex.P-3 and FIR was lodged vide Ex.P-27. After usual investigation, sanction for prosecution against the respondent was obtained vide order dated 12.12.1994 vide Ex.P-19 and charge sheet was filed against him in the Court of Special Judge, Rajnandgaon. On the basis of the charge sheet and material contained therewith, the learned trial Court framed charges under Section 7 read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption

Act. The respondent abjured the guilt and therefore, he was put to trial.

4. In order to prove its case, the prosecution examined as many as 10 witnesses. The learned trial Court, vide its impugned judgment, acquitted the respondent/ accused holding that the charges framed against him are not proved against which present appeal has been filed.

5. Assailing the correctness, legality and validity of the impugned judgment of acquittal, Shri Neeraj Sharma, learned counsel for the State vehemently argued that the judgment of the trial court is contrary to the facts and evidence available on record. He further argued that the trial Court has not appreciated the evidence available on record in proper perspective. Therefore, the impugned judgment may be set aside and the respondent /accused may be convicted and sentenced in accordance with the evidence on record.

6. Shri Ashish Shrivastava and Shri Anurag Verma, learned counsel appearing for the respondent, supporting the impugned judgment of acquittal, argued that the acquittal of the respondent is based on minute scrutiny of the prosecution evidence by the trial Court. Learned counsel further submitted that the trial court has applied correct principles of law while appreciating the evidence available on record. Therefore, the impugned judgment of acquittal of the respondent is impeccable and does not warrant any interference by this Court.

7. I have heard learned counsel for the parties at length and have also perused the record with utmost circumspection.

8. The questions which arise for consideration before this Court are-

(i) Whether the respondent/accused demanded bribe from complainant Rajkumar Gupta (PW-7) for making less assessment of property tax of the house in which the complainant was residing?

(ii) Whether the accused/respondent on 10.01.1991 had voluntarily accepted the bribe from the complainant for making less assessment of property tax of the aforementioned house?

9. To constitute an offence under section 7 of the Act, it is necessary for the prosecution to prove that there was demand of bribe and the same was voluntarily accepted by the respondent/ accused.

10. Statement of complainant Rajkumar Gupta (PW-7) was recorded wherein he deposed that his ancestral property is situated at Bharkapara, Rajnandgaon. He received a notice in respect of property tax of the said house. The amount of tax in the notice was excessive, therefore, his elder brother Ravishankar met with the respondent/ accused in his office, where the respondent/ accused misbehaved with him. He further deposed that when he went to the office of respondent/accused for discussion in context of the property

tax, the respondent/accused demand bribe from him. Thereafter, the complainant went to Lokayukt Office for making complaint against the respondent/accused. This witness has further deposed that the respondent/accused misbehaved with his elder brother at the time of discussion of property tax, therefore, the complainant made a complaint against the respondent /accused in Lokayukt Office vide Ex.P-1. In the written complaint, Rajkumar Gupta (PW-7) alleged that the respondent demanded bribe of Rs. 500/- from him for making less assessment of property tax of the said house, whereas in the Court statement the complainant has stated that the respondent/ accused had committed misbehavior with him and demanded Rs. 500/- as bribe.

11. The written complaint made by Rajkumar Gupta (PW-7) vide Ex.P-1 before A.K. Verma, Deputy Superintendent of Police and the Court statement of the complainant are completely contradictory to each other.

12. In **Suresh Kumar Shrivastava vs. State of Madhya Pradesh, 1994 JLJ 247**, it has been observed that an FIR is not a substantive piece of evidence. It is only a former statement of its maker. The evidence led in the court cannot be disbelieved on the basis of contents mentioned in the FIR. Decision of the Court also cannot be based on such former statement. An FIR can be used only for the purpose of contradiction or corroboration of its maker.

13. The above observation makes it apparent that the written complaint (Ex.P-1) lodged by complainant Rajkumar Gupta (PW-7) does not bear any other importance except being his earlier statement and cannot necessarily be based for decision of the case. The complainant has stated that before making the complaint (Ex.P-1) against the respondent/ accused, he had never met with the respondent/ accused nor he had earlier demanded any bribe from him.

14. The complainant has also deposed in para-6 of the deposition that he had never met with Mr. Yadav (the respondent) earlier. The statement of Ravishankar (elder brother) of the complainant has not been recorded before the Court.

15. As far as the amount of bribe taken by the respondent/accused is concerned, on this point, the most reliable witness is Rajkumar Gupta (PW-7) himself. This witness went to the house of respondent/ accused along with the trap team, where he asked about the respondent/ accused from the woman who was present in the house. She replied that the respondent was in the adjacent room of the house. The complainant went to the said room and gave him the currency note of Rs. 500/- and asked him to complete his work. The respondent replied the complainant that the office work will be done in office itself and also asked the complainant to get out of his house. Thereafter, the members of the trap team

entered the house of the respondent and caught him red handed.

16. Rajkumar Gupta (PW-7) deposed in para 7 of the deposition that he put a note of Rs. 500/- in the pocket of the respondent/ accused forcibly and asked him to complete his work. Thereafter, the respondent/ accused was caught red handed by the members of the trap team. During the search, the trap team recovered a currency note of Rs. 500/- from the pocket of the respondent/ accused. This witness further deposed that the note which was recovered from the respondent/ accused was the same note which was kept by the complainant in his pocket and was already smeared with phenolphthalein powder. After recovery of the said note from the respondent, his hands were dipped in a solution prepared by the trap team. On dipping of the hands of the respondent in the solution, colour of the solution turned pink. From the evidence of Rajkumar Gupta (PW-7), it is evident that he put the note in the pocket of the respondent forcibly and the respondent did not voluntarily accept the same.

17. On the point of illegal demand of bribe and accepting the same voluntarily, the Hon'ble Supreme Court in **N. Sunkanna v. State of A.P., 2016 (1) CCSC 162 (Supreme Court)**, has held in paras 5, 6, and 7 as under:-

“5. We heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. A. Venkateswara Rao, learned counsel appearing on behalf of the respondent- State. The complainant K. Sudhakar Reddy was examined as PW-1 and he did not

support the prosecution case. He has testified that Exh.P-1 complaint is in his hand writing but the contents are not true and he wrote the same as dictated by the ACB officials and he gave the amount of Rs.300 to the accused with a request to purchase National Savings Certificates. The prosecution declared him as hostile. PW-2 N. Ravindranath Reddy, the Panch witness had testified that he was summoned by PW-7 DSP E. Damodar on 20.9.1993 and he went through the complaint and verified the contents from the complainant who acknowledged the fact that the accused had demanded a sum of Rs.300/- as illegal gratification. Though the complainant did not support the prosecution case it is on the aforesaid basis the trial court as well as the High Court held the offences as proved and in doing so they have also relied on the legal presumption under Section 20 of the Act.

6. The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of

acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayana Murthy vs. The District Inspector of Police and another [(2015 (9) SCALE 724)].

7. In the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent. The judgments of the Courts below are, therefore, liable to be set aside. For the aforesaid reasons the appeal is allowed and the conviction of the appellant under Section 7 and under Section 13(1)(d) read with Section 13(2) of the Act and the sentences imposed are set aside and he is acquitted of the charges. The bail bond, if any, furnished by the appellant be released.”

18. In the instant case, the prosecution has failed to prove demand and acceptance of bribe by the respondent /accused from the complainant. The evidence of Rajkumar Gupta (PW-7) is contradictory and not trustworthy and the same also appears to be doubtful. The other witnesses were the members of the trap team, who executed the proceedings of the trap and, therefore, their evidence is not reliable.

19. Mere recovery of money from the pocket of pyjama of the respondent/ accused by itself cannot be held to be a cogent evidence to prove the charges of the prosecution. In absence of evidence to prove demand of bribe or its acceptance, the prosecution case becomes weak.

20. In the light of above facts and circumstances, the evidence adduced by the prosecution miserably fell short of

proving the charges against the respondent/accused and so it must be held that the judgment of the trial Court is factually and legally sustainable.

21. In view of the foregoing discussion, I am of the considered opinion that the trial Court has not committed any illegality in acquitting the respondent/ accused of the charges framed against him under Section 7 read with Sections 13(1) (d) and 13(2) of the Prevention of Corruption Act.

22. Consequently, the criminal appeal preferred by the State fails and is hereby dismissed.

Sd/-
(Anil Kumar Shukla)
Judge