

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 593 of 1999

- Hemdas Bhaskar aged 46 years, s/o. Amoli Bhaskar by occupation Patwari, r/o. Hirri Mines, Tahsil Takhatpur, Distict Bilaspur (CG).

---- Appellant.

Versus

- State of MP (Now State of CG).

---- Respondent

For Appellant : Mr. V.G. Tamaskar, Advocate.

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

31-10-2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 30-1-1994 passed by Special Judge (First Additional Sessions Judge), Bilaspur, in Special Case No. 6/96, wherein the Special Court convicted the appellant under Sections 7 and 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988") and sentenced him to undergo RI for one year and fine of Rs.1,000/- for each offence with default stipulations.
2. Facts of the face, in brief, are that at the relevant time the accused/appellant was posted as Patwari of area Amsena/Chhtaura of Hirri Mines. Complainant Santosh purchased some land and for that he wanted to prepare

record of right (Bhumi Adhikar Pustika) and for that he contacted the accused/appellant. The appellant demanded Rs.3000/- as illegal gratification for preparing papers and after negotiations, he consented to prepare the same for Rs.1,600/-. Appellant received Rs.500/- on the same day and rest of the amount i.e., Rs.1100/- was to be paid after some time. It is alleged that complainant did not want to give this bribe amount to the appellant and made a request to Superintendent of Police, Lokayukt as per Ex.P/1. A trap was organised to trap the appellant on 15-7-1995. The trap party started from Bilaspur to Hirri Mines. Rs.1100/- were given to the appellant by the complainant and after receiving the amount appellant fled away from the spot, but subsequently caught by the trap party. When his hands and shirt were subjected to sodium carbonate solution, it turned into pink colour. Witnesses of trap were present at the time of search.

3. The matter was investigated. After completion of the investigation charge-sheet was filed, seizure of currency notes were made, certain records of rights and other articles were seized. All the seized materials were sent for chemical examination to FSL. Sanction for prosecution was obtained from the competent authority and thereafter charge-sheet was filed against the appellant. The trial Court framed

charges as mentioned above against the appellant, to which he did not plead guilty, therefore, trial was conducted and after completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C., was recorded. After completion of trial, the trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above.

4. Learned counsel appearing for the appellant submits as under:

- i) that the case of the prosecution is based on statement of complainant PW/7 Santosh Kumar Kaushik, but from his evidence, demand of illegal gratification and obtaining of money from him is not established;
- ii) that as per prosecution witnesses seizure of currency notes from the accused/appellant is not established and no one stated that currency notes were seized from the accused/appellant.
- iii) that the version of the prosecution witnesses is contradictory in nature and it is not possible to believe the same;
- iv) that the trial Court has over looked the version of defence witnesses which nullify the evidence of the

prosecution witnesses and the case of the prosecution is suspicious;

v) that as per evidence of prosecution witnesses currency notes were seized from one Rajaram (PW/4) and for that criminal liability cannot be fastened on the appellant.

5. As against the aforesaid submission, State counsel submits that the judgment of conviction and order of sentence is strictly in accordance with law and same is not liable to be interfered with invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.
7. To substantiate the charge, prosecution has examined as many as 15 witnesses. To nullify the charge, defence side examined two witnesses.
8. First point for consideration is whether accused/appellant was working as a public servant. Public servant has been defined in Section 21 of the Indian Penal Code, 1860 as follows;
Twelfth – Every person-
(a) in the service or pay of the Government or remunerated by fees of commission for the performance of any public duty by the Government.

(b) In the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956.

The present appellant was Patwari working in Revenue Department of the State Government, he is covered by the said definition.

9. Second point for consideration is whether the accused/appellant demanded illegal gratification other than his legal remuneration for rendering service to the complainant Santosh Kumar Kaushik.
10. As per version of PW/7 Santosh Kumar Kaushik, he had purchased 6.00 acres of land from one Dwarika of his village for consideration of Rs.50,000/- and the land was not mutated in his name, that is why he contacted Patwari for mutation. Accused/appellant demanded Rs.3200/- for the same and for negotiation he agreed to do the work for Rs.1600/-. As per version of this witness, he paid Rs.500/- to the appellant and rest of the amount i.e. Rs.1100/- was to be paid later on. As the appellant was not willing to pay the amount he approached to Lokayukt office and made a complaint against the appellant. He further deposed that one tape-recorder was given to this witness by the police authority and he reached to appellate and made conversation with him and there appellant again said that Rs.1600/- to be paid. This conversation was taped by him and he submitted the tape-recorder to Superintendent of Police of Loyakukt office which has been heard by the officers. This witness further

deposed that Rs.1100/- of 100 denomination were deposited by him in Lokayukt Office and on the next day, officers of Sales Tax Department, Officers of Vigilance Department were present and Panchnama was prepared for currency notes and currency notes were subject to phenolphthalein powder. When the hands of the complainant were washed, it gave no colour. Phenolphthalein powder was subjected to in the currency notes by Jaiman Ekka (PW/15) and when his hands were washed, it gave pink colour and that colour was kept in a sealed bottle. Rs.1100/- were kept by this witness in the upper pocket of his shirt and one officer made hint to him that he will signal after giving currency notes to the appellant. Proceeding was recorded in panchnama (Ex.P/2). This witness further deposed that at about 8.00 a.m., they started for Hirri Mines by jeep, five persons were members of the trap party and police officer accompanied in the jeep. This witness further deposed that he went to the house of the appellant by cycle and after 10 – 15 minutes accused/appellant came to his house and at the same time one Rajaram of village Amsen reached there. When this witness asked about preparation of record of rights of land, appellant told him that signature of Tahsildar is still awaited. He further deposed that at the same time accused/appellant asked him about money and then he gave Rs.1100/- in the hand of the accused/appellant and thereafter he went out from the back door of his house. Officers ran after accused/appellant and when his hands were washed it turned into pink but the amount was not

recovered. He further deposed that appellant had given currency notes to one Rajaram (PW/4).

11. PW/4 Rajaram deposed that when he reached to the house of the appellant, complainant Santosh and one Parameshwar were sitting there and complainant Santosh gave him currency notes and thereafter accused/appellant kept currency notes in his pocket and thereafter left the place and gone inside the house. He further deposed that appellant was washing his hands inside the house. He found that 11 currency notes of 100 denomination were counted by him. He further deposed that on the next day, when he picket up his bag from cycle, then he found currency notes of Rs.1100/- in a plastic packet. He further deposed that currency notes were same which were given to him by accused/appellant for counting. Version of both the witnesses were subjected to incisive and searching cross examination, but nothing could be elicited in favour of the appellant. Version of this witness is again supported by version of M.G. Taapas (PW/1), Dr. Anup Chatterjee (PW/2), Baiksakuram (PW/5), Parmeshwar (PW/6), Head Constable, Vijay Kumar Ekka (PW/10), Police Constable, Ramdayal Uikey (PW/11), Brajraj Chaturvedi (PW/13), Rameshwar Dayal Mahaur (PW/14) and Asst. Sub Inspector, Jaiman Ikka (PW/15).
12. From the evidence of the aforesaid witnesses it is clearly established that on information of the complainant which is in writing as per Ex.P/1, preliminary panchnama was prepared as per Ex.P/2 and

thereafter currency notes were subject to phenolphthalein powder and seizure panchnama of solution after washing hands in sodium carbonate solution was prepared as per Ex.P/3 and after seizure of shirt of the appellant it was again subject to sodium carbonate solution which turned into pink and for that solution seizure Ex.P/4 was prepared and hands of the appellant were subjected to sodium carbonate solution which also turned into pink and for that panchnama Ex.P/5 was prepared. Again record of right of the complainant was seized as per Ex.P/6 and when currency notes were subjected to sodium carbonate solution, it turned into pink and for that seizure was prepared as per Ex.P/7.

13. From the evidence of all the prosecution witnesses, there is direct evidence against the appellant that he demanded illegal gratification for rendering service regarding mutation of land which was purchased by the complainant again from the evidence of the complainant and other two witnesses namely Rajaram and Parameshwar, it is established that accused/appellant accepted the bribe amount.
14. True it is that currency notes were not seized when it was searched by trap party but from the evidence of the complainant Santosh, Parameswar and Raja Ram, it is established that appellant received currency notes in their presence. When there is direct evidence by receiving the said amount, seizure of the same is immaterial because after receiving the same it can be eliminated by various ways and for that prosecution cannot be faulted with. Argument advanced by

learned counsel for the appellant is not sustainable looking to the ample direct evidence collected against the appellant.

15. There is a rider for taking cognizance under Sections 7 & 13 of the Act, 1988 that sanction of the authority who can remove the public servant from office must be obtained. In this case, sanction is granted by the State Government and that has been proved by D.R. Yadav (PW/3). As per version of this witness, all the relevant materials were placed before the Additional Secretary, Law and Legal Affairs Department, MP, Bhopal and after applying his mind the authority gave sanction for prosecution. Ex.P/8 is the sanction order which is in four pages in which factual matrix of the case was placed before the authority elaborately and after considering the facts, authority had granted sanction and on the basis of the sanction, cognizance was taken in the case.
16. Minute scrutiny of the evidence goes to show that accused/appellant who was Patwari at the relevant time had demanded illegal gratification from the complainant for mutation in his name of land purchased by him and the matter was reported to Special Police (Cell) of Lokayukt and trap was organised and same was successful.
17. In view of the above, the findings of the trial Court appear to be inconsonance with the evidence of the witnesses available on record and the judgment which is well founded does not call for any interference in this appeal. The appeal being devoid of substance is

liable to be and is hereby dismissed. The bail bonds of the appellant stand cancelled.

18. The appellant is reported to be on bail. The trial Court/Special Court (First Additional Sessions Judge) Bilaspur is directed to issue non-bailable warrant against the appellant and after his arrest he be sent for serving out remaining part of the jail sentence.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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