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22/02/17

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2105 of 1997

- Deocharan, Son of Puniram, aged about 42 years, Patwari, resident of Village Limtara (Sakti) Distt. Bilaspur (MP)

---- Appellant

Versus

- State of MP through the Special Police of Lokayukt Office, Bhopal.

---- Respondent

For Appellant : Shri VC Ottalwar, Advocate.
For Respondent/State : Shri Neeraj Mehta, PL.

Hon'ble Shri Justice Pritinker Diwaker

Judgment On Board

07/02/2017

1. This appeal is directed against the judgment dated 25.9.1997 passed by the Special Judge/First Additional Sessions judge, Bilaspur in Special Criminal Case No.10/1992 convicting the accused/appellant under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and sentencing him to undergo SI for 1 year and fine of Rs.1000/- on each count with default stipulations respectively.
2. The facts of case, in brief, are that at the relevant time the accused/appellant was working as Patwari and posted at Village - Khamariya, Chanadongri, Devri. It is alleged that the appellant demanded Rs.1000/- from the complainant Sunderlal Yadav



(PW-5) for partition of holdings. As the complainant did not want to give bribe to the appellant, he made a written complaint dated 25.9.1990 (Ex.P/1) addressed to Dy.S.P., Lokayukt stating therein that the appellant has demanded Rs.1000/- from him in lieu of doing partition of holdings, he is not interested to give him that bribe and therefore, requested that the appellant be trapped. Upon receipt of this complaint, two official witnesses PW-9 Kamannayan Banchu, Agriculture Development Officer and PW-1 RR Dubey, Assistant District Inspector Education, were summoned and initial panchanama (Ex.D/2) was prepared. These witnesses were introduced with the complainant; the complaint made by the complainant was verified; endorsement was made on the complaint; after making preparation, chemical test was demonstrated by applying phenolphthalein powder on ten currency notes of 100 denomination; numbers of the notes were recorded; said notes were put in the shirt pocket of the complainant. The complainant was specifically instructed to hand over these currency notes to the appellant in his hand only when he demands the bribe and not to touch the same before that. He was also instructed that after handing over the bribe amount, he should give signal to the trap party by coming out from the house of the appellant and lighting the matchstick on the pretext of smoking *bidi*. Likewise, both the official witnesses were also instructed to remain near the complainant as far as possible so that they can overhear the conversation and see the transaction between the complainant and the appellant. The solution was kept in sealed bottle and after completing all the formalities, the



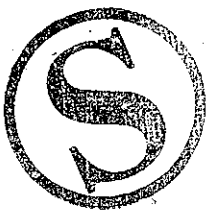
trap party proceeded for the house of the appellant. The appellant was found in his house, the complainant handed over the bribe to the appellant, which was kept by him in the register (Ex.P/6) and after receiving signal from the complainant, the trap party reached the spot, caught hold of the appellant, currency notes, which were kept in the register, were seized. Thereafter, hands of the appellant were dipped in the solution of sodium carbonate, on which colour of the solution turned pink which was kept in a separate bottle. Likewise, on being asked PW-9 Kamalnayan Banchu took out the currency notes from the register, its numbered were tallied from the initial panchanama and found to be the same. These notes were also dipped in the solution and colour of the solution turned pink. Page No.14 of the said register was dipped in the solution, on which its colour turned pink. All the solutions were kept in separate bottles and sealed. All these proceedings were duly recorded in trap panchanama Ex.P/7. Spot map Ex.P/8 was prepared. Unnumbered Dehati Nalishi Ex.P/13 was recorded on 25.9.1990 and thereafter regular FIR (Ex.P/14) was registered on 8.10.1990 under Section 7 of the Act, 1988 against the appellant. After obtaining sanction (Ex.P/17), the appellant was prosecuted.

3. The trial Court framed charge against the appellant under Section 7 and 13(1)(d) read with 13(2) of the Act, 1988.
 4. The prosecution in order to bring home the charges levelled against the accused/appellant examined 13 witnesses.
 - Statement of accused/appellant was recorded under Section 313
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Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and false implication in the offence. In his defence, he examined three witnesses. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as described above.

5. Counsel for the appellant submits that-

- the appellant has been falsely implicated in this case as neither demand nor receipt of amount is proved by the prosecution as required under the law.
- that the bribe amount has not been seized from the possession of the appellant and it was found in the register. The appellant had never accepted any bribe.
- that from the register bribe amount has been taken out by PW-9 Kamalnayan Banchu and in that eventuality, after washing his hand in the solution, colour of the solution should have turned pink, but as per the prosecution case when hands of other prosecution witnesses were washed, colour of the solution did not turn pink and it is only after washing the hands of the appellant and the complainant that the colour turned pink.
- that the appellant was not authorized to do partition of holdings and it was Tehsildar Anjani Kumar Nath (PW-12) who was competent to do this and this fact has been admitted by the Tehsildar.
- that considering the contradictions in the statements of the important prosecution witnesses, involvement of the appellant in accepting the bribe appears to be doubtful and thus he is entitled



to be acquitted of the charge by giving him benefit of doubt.

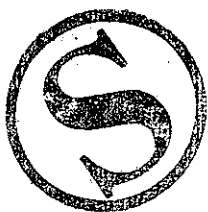
- lastly he submits that the Court below has completely overlooked the statements of defence witnesses.
6. On the other hand, supporting the impugned judgment, counsel for the State submits that the demand and acceptance has been duly proved by the prosecution and the trial Court after due appreciation of the entire evidence has rightly convicted and sentenced the appellant, which warrants no interference by this Court. He submits that PW-12 has nowhere stated that it is only Tehsildar who was to perform the work, for which bribe was demanded and accepted by the appellant. It has been argued that the statement of Tehsildar is to be read as a whole and not in part.
7. Heard counsel for the parties and perused the material available on record including the impugned judgment.
8. PW-1 RR Dubey was working as Assistant District Inspector, Education Department, at the relevant time. He was independent member of the trap party. He has stated that on 25.9.1990 he went to Vigilance Office, Bilaspur on the instructions of Protocol Officer, Bilaspur where he met Shri Gaur, Dy.S.P. who introduced him with the complainant Sunderlal Yadav. The complaint written by the complainant was read by him. Solution of sodium carbonate was prepared and their hands were washed with that solution, on which colour of the solution remained the same. The complainant informed them that the appellant is
- demanding bribe of Rs.1000/- for partition of holdings. The



complainant gave ten notes of 100 denomination, total Rs.1000/-. Thereafter, one constable Rambahadur applied phenolphthalein power on those currency notes and kept the same in the shirt pocket of the complainant. The complainant was instructed to hand over the said amount to the appellant only when he demands for the same and not to touch it before that. After completing the necessary formalities, they left for Village Devri at about 6.30 pm by jeep and stopped the jeep a bit ahead of the village and from there the complainant along with constable went on foot to the residence of the appellant. The complainant was instructed that after giving bribe amount to the appellant, he should give them signal by lighting the matchstick after coming out from his house. On such signal being given, the trap party entered the house of the appellant, who at that time was wearing lungi and vest. There separate solutions of sodium carbonate were prepared and hands of all the members of the trap party were washed, however, colour of the solutions remained the same. When the hands of the appellant were washed, the colour turned pink. The solutions were kept in separate bottles and sealed. The bribe amount was kept in the register at page No.14, the said page being washed in the solution, colour of the same turned pink and likewise, when the bribe amount was dipped in the solution, its colour turned pink. He is also a witness of complaint Ex.P/1, preliminary panchanama Ex.P/2, seizure memos Ex.P/3, Ex.P/4, Ex.P/5, Ex.P/6 and trap panchanama Ex.P/7. In cross-examination, he remained firm and reiterated as to the manner in which the trap

proceedings were conducted.

9. PW-6 Rambahadur, Head Constable, who was also a member of the trap party has fully supported the prosecution case. He has stated that on 25.9.1990 he was called by Shri Toppo, was introduced with the complainant, SS Gaur, Shri Parmeshwar Singh and Sitaram. Chemical test was conducted in the office, however, colour of the solution did not turn pink. The trap party proceeded for the house of the appellant at about 6 pm and after reaching the spot, he along with the complainant went to the house of the appellant, however, he stood outside the house whereas the complainant went inside the house. After some time the complainant came out of the house and gave signal to the trap party by lighting the matchstick, on which the trap party reached there. He and one Parmeshwar caught hold of hands of the appellant, on being asked by Shri Toppo about the bribe amount, the appellant informed that it is in the mutation register. Thereafter on being asked by Shri Toppo, he prepared the solution of sodium carbonate, hands of all the members of the trap party were washed in that solution, however, the colour of the solution did not change and when hands of the appellant were washed, the colour turned pink, which was kept in a separate bottle. On being tallied, number of the bribe amount were found the same which were handed over to the complainant. The said currency notes were also washed in the solution and the colour turned pink, which was kept in a separate bottle. Likewise, when hands of Shri Banchu (trap party member)



and the complainant were washed, the colour of the solution turned pink. In cross-examination, he has stated that the bribe amount kept in the register were taken out by Shri Banchu. When the paper of the register where the bribe amount was kept was washed in the solution, the colour turned pink. He also remained firm in his cross-examination and nothing could be elicited from him to render his evidence untrustworthy or doubtful.

10. PW-9 Kamalnayan Banchu, an independent trap witness, was working as Agriculture Development Officer at the relevant time. While supporting the prosecution case he has stated that he was called by Dy. Director to the Vigilance Office, Bilaspur, on which he went there and met the complainant and other police officers. He states that he was informed by Shri Toppo (PW-11) that the appellant is demanding Rs.1000/- from the complainant as bribe and therefore, he is to be caught red handed. He read the complaint made by the complainant and satisfied himself about its contents by enquiring from the complainant. He is a witness to complaint Ex.P/1. Chemical test proceedings were demonstrated before him and the solutions were sealed. The complainant gave ten notes of 100 denomination, numbers of which were noted by him and he then handed over the currency notes to Shri Toppo. Thereafter, one constable applied phenolphthalein powder on those notes and kept the same in the pocket of the complainant with an instruction to give the same to the appellant only when he demands for it and not to touch the same before that. All the



trap members' hands were washed in the sodium carbonate solution, on which colour of the solution did not turn pink. Personal search of all the members was made and no objectionable thing was found in their possession. All this was recorded in the preliminary panchanama Ex.P/2, which bears his signature. After completing the necessary formalities, the trap party proceeded for the residence of the appellant at about 6.30 pm by jeep and stopped the jeep at the outskirts of the village and from there the complainant went towards the house of the appellant. Rest of the members of the trap party took their position and waited for the signal of the complainant. After about 15 minutes the complainant came out of the house and gave the pre-decided signal to the trap party, on which they entered the house. The appellant was caught hold by Shri Singh and another constable. On being asked, the appellant admitted to have accepted money from the complainant for mutation and informed that the same is kept in the register on the table. Thereafter, solution of sodium carbonate was prepared, hands of the trap party members were washed, however, the colour of the solution remained the same. When the hands of the complainant, the page of the register where the bribe amount was kept, the bribe amount and hands of the appellant were washed in the solution, the colour turned pink and the solutions were kept in separate bottles and sealed. When his hands were washed in the solution, the colour of the same turned pink. The seized currency notes bore the same serial number as were mentioned in the preliminary panchanama. All the relevant documents were

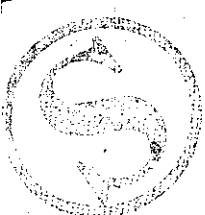
seized vide Ex.P/3 to P/6. In cross-examination, defence could not elicit anything from him which could impeach his credibility.

11. PW-11 RJ Toppo, at the relevant time was working as Inspector. He has stated that upon receiving complaint from complainant Sunderlal Yadav he recorded unnumbered FIR under Section 7 of the Act (Ex.P/13) and forwarded the same for registration to Bhopal and received back the same after registration of Crime No.104/90 under Section 7 of the Act. He states that after receiving complaint, two government witnesses namely Shri Kamalnayan Banchu (Agriculture Development Officer) and Shri RR Dubey (District School Inspector, Bilaspur) were summoned and they were introduced with the complainant. These witnesses read the complaint and after enquiring from the complainant satisfied themselves about its contents and accordingly, made endorsement to this effect. Demonstration of the chemical test was made before these witnesses. He has made almost similar statement as have been made by PWs-1, 6 & 9 regarding the trap proceedings. He has duly proved the seizure memos and trap panchanama. He has stated that all the bottles containing solutions of sodium carbonate were sent for chemical examination to FSL vide Ex.P/15 and the report of FSL is Ex.P/16. He has stated that sanction for prosecution of the appellant was duly obtained vide Ex.P/17. In his cross-examination, he remained firm and the defence could not point out any infirmity in the prosecution case.



12. PW-2 Hardevlal, brother of the complainant, has stated that the his brother/complainant had planted eucalyptus plants in the land admeasuring 3.14 acres and for its fencing and irrigation they wanted to have loan from the bank. When the complainant approached the bank officials, they advised him to have separate possession of his land and only then he could get loan and accordingly, stamp paper of Rs.5/- was prepared which was signed by him also. PW-3 Makhanlal, Revenue Inspector, prepared the spot map Ex.P/8. PW-4 Saripunnisa Khan, clerk in the Tehsil Office, Takhatpur, has proved service record of the appellant.

13. PW-5 Sunderlal, complainant, has stated that he has 16.97 acres of land, which is recorded as joint holdings and in partition, he got 3.14 decimal of land, on which he has planted 5000 eucalyptus plants. He states that for obtaining loan he approached the bank, on which the bank official advised him to produce document regarding his possession of 3.14 decimal of land and therefore, he contacted the appellant for partition of holdings. The appellant demanded Rs.3000/- for this purpose, however, after negotiation, the matter was settled at Rs.1000/-. As he did not want to give any bribe to the appellant, he approached Sarpanch Salikram and informed him about that illegal demand by the appellant and then both of them came to Bilaspur on 25.9.1990. The complaint was written by Salikram at his instance and the same was given to Dy.S.P., Vigilance Office. Thereafter, the officials witnesses were summoned, they



enquired from the complainant about the contents of the complaint and after satisfying themselves put their signature on the complaint. This witness has also stated about demonstration of chemical test, recording of serial number of the currency notes, applying of phenolphthalein powder on the same, keeping it in his pocket and the instructions given to him about the use of those currency notes. He has proved the preliminary panchanama Ex.P/2. He has categorically stated that when he reached the house of the appellant, the appellant asked him whether he has brought money and when he (complainant) requested for sparing Rs.200/- for himself, the appellant told that he has to give Rs.1000/- and not less than that, otherwise his work would not be done. Thereafter, he gave Rs.1000/- to the appellant, which was counted by him and kept in the register on the table. Then he gave the pre-decided signal to the trap party by smoking *bidi* and they reached there and the appellant was caught. Thereafter, the currency notes were seized from the register, hands of the appellant and the currency notes were washed in the solution and the colour of the solution turned pink. The said solutions were sealed in separate bottles. In his cross-examination, he has denied all the adverse suggestions put to him by the defence and categorically stated that the appellant had demanded bribe from him for doing the partition of holdings and accepted the bribe amount from him.

14. PW-7 Salikram is a witness to whom the complainant had approached first and along with this witness had gone to the



vigilance office for making complaint against the appellant. He has partly supported the prosecution case. PW-10 Sitaram, Constable in the office of Lokayukt has helped the prosecution agency at the time of initial panchanama. PW-12 Anjani Kumar Nag, Tehsildar, has stated that for partition of holdings, application is filed and in case such partition is disputed, either notices are issued or publication is made but in case it is not disputed, application can be filed before the Patwari through certifying officer and even in that eventuality, the parties are summoned by publication of notices. He states that any such work which is being done by the Patwari, is official work. He has stated that mutation is done by the revenue officer and after order of the revenue officer or inspector, corrections are made in Rin Pustika and revenue records and Rin Pustika is signed by Patwari, inspector and revenue officer. PW-13 DR Yadav has proved sanction Ex.P/17.

15. DW-1 Jethuram, brother of the complainant, has stated that they are five brothers, he had raised objection on the application of the complainant that name of the complainant should not be recorded alone in respect of the land of their mother. He states that to his knowledge, the complainant was after the Patwari/appellant to get his name recorded. However, in cross-examination he states that partition of the ancestral land has already been done, his share has already been recorded in his name and in the joint account, names of his brother and mother are recorded.



16. DW-2 Tarandas, Kotwar, has stated that on the date of incident he was sitting opposite to the house of the appellant on a platform along with six other persons. The complainant reached there and by that time the appellant came out from his house carrying a bucket and met the complainant, who told the appellant that he has some work with him. The appellant then told the complainant to sit in his house, the complainant went inside the house and thereafter, the trap party entered the house of the appellant and after some time, the appellant came and went to his house. DW-3 Manendra Tiwari, has made almost similar statement as has been made by DW-2.

17. Close scrutiny of the evidence makes it clear that for the purpose of partition of holdings the complainant (PW-5) had approached the appellant, who at the relevant time was working as Patwari and he demanded Rs.3000/- for doing this work, however, after negotiation the same was settled at Rs.1000/-. A written complaint (Ex.P/1) was made by the complainant to Dy.S.P., Lokayukt. After receipt of complaint, official witnesses PW-9 Kamannayan Banchu, Agriculture Development Officer and PW-1 RR Dubey, Assistant District Inspector Education, were summoned, they were introduced with the complainant and informed about the complaint made by him. After reading the complaint and enquiring from the complainant they recorded their satisfaction on the complaint about its genuineness. After making preparation, test was demonstrated by applying phenolphthalein powder on ten currency notes of 100



denomination; numbers of the notes were recorded; said notes were put in the shirt pocket of the complainant with an instruction to hand over these currency notes to the appellant in his hand only when he demands the bribe and not to touch the same before that. He was also instructed that after handing over the bribe amount, he should give signal to the trap party by coming out from the house of the appellant and lighting the matchstick on the pretext of smoking *bidi*. The complainant in the Court has fully supported the prosecution case. The other prosecution witnesses PW-1, PW-9, who are independent witnesses and members of the trap party as well as PW-11 while supporting the prosecution case have categorically stated about the manner in which trap proceedings were conducted, the appellant was caught red handed, his hands being washed in the solution, its colour turned pink and seizure of the currency notes and other relevant documents. Even when the page of the register where the bribe amount was kept, was washed, the colour of the solution turned pink.

18. All the legal and procedural formalities were undertaken by the prosecution and on receiving the pre-decided signal from the complainant, the members of the trap party approached the appellant and recovered the said currency notes from his possession. 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 argument of the appellant that when the bribe amount was taken out from the register by PW-9 Kamalnayan Banchu, in that eventuality, after washing his hand with the solution, colour of the solution should have turned pink but it has not turned pink, the same is without any substance because PW-9 has specifically stated in his evidence that when his hands were washed, the colour of the solution turned pink. Moreover, no such suggestion was given to any of the witnesses by the defence in their cross-examination. The defence taken by the appellant through examination of defence witnesses is not as such on which basis the entire prosecution case can be doubted. Though the defence has examined brother of the complainant, but even from his statement the appellant cannot draw any benefit. This apart, no plausible explanation has been offered by the appellant in his statement recorded under Section 313 of Cr.P.C.

19. 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.1000/- as illegal gratification from the complainant. 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 Sections 7, 13(1)(d) read with 13(2) of the Act, 1988 being based on due appreciation of the

evidence on record is not liable to be interfered with.

20. In the result, the appeal being without any merits is liable to be dismissed and is dismissed as such. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of the sentence.

Sd/-
Pritinker Diwaker
Judge

Khan