NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1050 of 1998

- Balkrishna Kariya son of late Shri Mohanlal Karioya, aged about 54 years, occupation Manager, Dena Bank, Kanker (Bastar) presently posted at Divisional Office, Raipur (CG).

---- Appellant.

Versus

- State of Madhya Pradesh (Now State of Chhattisgarh) through Station House Officer, Police Station Kanker, District Bastar (CG).

---- Respondent

For Appellant	:	Mr. Alok Dewangan, Advocate.
For Respondent/State	:	Mr.. Luv Sharma, Panel Lawyer

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

30-10-2017

2. This appeal is directed against the judgment of conviction and order of sentence dated 25-4-1998 passed by Special Judge, Bastar at Jagdalpur in Special Case No. 1/94, 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 (For short, "The Act, 1988") and sentenced him to undergo RI for one year and fine of Rs.1,000/- and RI for one year and fine of Rs.1,000/- with default stipulations.

3. Facts of the face, in brief, are that the accused/appellant was posted as Branch Manager of Dena Bank, Kanker. Complainant Balmukund Tiwari was an unemployed graduate who applied for sanction of loan of Rs.35,000/- and for sanctioning the loan, the appellant demanded 10 – 15% commission of the total amount.

Complainant was not willing to pay the same and presented a written complaint before the Sub Divisional Officer Police and the matter was entrusted to Police Officer Shri Kushwaha. Trap party was organised in which one Deepak Mukherjee and Tahasildar Shri Dhruv were included. Signatures of Police Officer Shri Kushwaha were put into currency notes of denomination of Rs.100/- & Rs.50/- which were to be given to the accused/appellant. Currency notes 5 in number of Rs.100/- denomination and currency notes 58 in number of Rs. 50/- denomination were kept in one envelope and given to complainant Balmukund to hand over the same to the appellant. It was directed to the complainant that as soon as the amount received by the appellant, he will give signal to the Investigating Officer. Complainant Balmukund went to the appellant and gave envelope to the appellant which was kept by him in the drawer of his table and on receiving the signal, Investigating Officer Shri Kuhwaha and Tahasildar Shri Dhruv and Deepak Mukherjee caught hold the appellant and seized currency notes. Sanction for prosecution was obtained from the General Manager (Personnel) of the Head Officer of Dena Bank, situated at Bombay.

4. After completion of the investigation 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.

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

   i) that the demand of illegal gratification and acceptance of the amount is not established by the prosecution witnesses and no conviction can rest on the basis of such statement;

   ii) that the version of all the witnesses is contrary in nature regarding demand and seizure of the currency notes and the same cannot be acted upon.

   iii) that the complainant is having criminal record and some criminal cases are pending against him before the court and the amount given to the accused/appellant is margin money of loan applied for.

6. 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.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.

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 Manager of Dena Bank which is a Nationalised Bank and, therefore, he is covered by the said definition and it is established that he was a public servant at the relevant time.

9. Second point for consideration is whether the accused/appellant demanded illegal gratification other than his legal remuneration from the complainant Balmukund Tiwari. PW/1 Balmukund Tiwari deposed that he applied for loan of Rs.35,000/- for opening Central Unit and for that department of industry has sent an application to the Bank in which appellant was Manager. As per version of this witness he requested the appellant that his papers are correct and loan should be sanctioned to him. He further deposed that the appellant demanded 10% commission of the loan amount and again when he met the appellant after 2 - 4 days he again demanded the same.

After that he reported the matter to Sub Divisional Officer, Police Shri Kushwasha and the said Police Officer arranged trap against the appellant. As per version of this witness some currency notes in his possession were signed by Police Officer Kushwaha and thereafter he reached the accused/appellant and gave one envelope containing Rs.3,400/-. The appellant received the same and kept the same in the drawer of his table and thereafter Police Officer Kushwaha and Tahsildar Dhruv and others entered into the office of Dena Bank and currency notes were seized. Version of this witness is supported by the version of Deepak Mukherjee (PW/2). As per version of this witness, Tahsildar Dhruv and Police Officer Kushwaha were present during seizure of amount from the appellant and version of this witness is again supported by the version of Tahsildar Dhruv (PW/3) and Police Officer Anil Kushwaha (PW/4).

10. It is contended on behalf of the appellant that the amount given by the complainant was margin money of the loan amount, therefore, no case is made out against him. Anil Kushwaha (PW/4) deposed that the appellant had not stated at the time of seizure that the said amount is margin money of loan amount. The defence side has examined R.N. Haldar (DW/1) as defence witness but he is not in a position to explain whether the amount was margin money and he is not aware of the fact that margin money was demanded by the appellant. From the evidence of the prosecution witnesses and the evidence of defence witness, it is not established that the appellant

has ever asked about margin money to the complainant and there is nothing on record to conclude that the said amount was given as margin money of the loan.

11. From the evidence of the complainant, it is established that the accused/appellant demanded illegal gratification other than his legal remuneration twice and thereafter he reported the matter to Police and trap was organised, gratification was received by the accused/appellant and same was recovered from him in presence of all the witnesses cited by the prosecution. Once the seizure is established from the appellant, the appellant was under obligation to explain on what count he has received the amount but his explanation is not acceptable regarding margin money and it can be easily inferred that he received the amount as illegal gratification. There is no force in the argument of learned counsel for the appellant that sanction against the appellant is not proved by any witness. Sanction can be proved either by submitting original sanction in which it should be clarified that all the materials were placed before the sanctioning authority and sanctioning authority after applying his mind granted sanction for prosecution. Order of the sanctioning authority is in two pages where details of the fact submitted before him is mentioned after applying his mind he has granted sanction and the same is compliance of the provisions under the Act and the prosecution of the appellant cannot be faulted with in that respect. It is established from the oral and documentary evidence that the

accused/appellant was a public servant and demanded illegal gratification and accepted the same. Th act of the appellant falls under Sections 7, 13 (i)(d) read with Section 13(2) of the Act 1988, for which the Special Court convicted the appellant and the same is not liable to be interfered with invoking jurisdiction of the appeal and the conviction is hereby affirmed.

12. Heard on the point of sentence. Special Court awarded sentence of one year and fine of Rs.1,000/- which is minimum and that cannot be said to he harsh, disproportionate or unreasonable looking to the provisions of the Act. Sentence part is also just and proper which is not liable to be interfered with.

13. Accordingly, the appeal fails and same is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

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