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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2313 of 1998

Judgment reserved on : 11.01.2017

Judgment delivered on : 01.02.2017

Rishikesh Gupta, S/o. Rupram Gupta, Aged about 46 years, R/o. Village Jurda, Thana Chakradharnagar, Raigarh (C.G.)

---- Appellant

Versus

State of Madhya Pradesh (now Chhattisgarh), Through the District Magistrate Raigarh (C.G.)

---- Respondent

For Appellant	:	Smt. Hamida Siddiqui and Shri Raghvendra Verma, Advocates
For Respondent/ State	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 29.09.1998 passed by the Special Judge, Raigarh in Special Criminal Case No. 6/96, whereby the learned Special Judge convicted the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (henceforth 'the Act, 1988') and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs. 1000/-, in default of payment of fine, to undergo additional rigorous imprisonment for two months.

2. As per the case of the prosecution, complainant Damrudhar Patel was resident of village Barmuda. On the basis of forged signature, his elder brother had mutated his own name alone in the revenue record after death of his father. In this regard, a litigation was pending in the Court of Tahsildar in which the decision had gone against complainant Damrudhar Patel and the appeal of the complainant was pending before the Sub Divisional Officer (Revenue). Therefore, complainant Damrudhar Patel was in need of certified copy of the document B-1. In this connection, from 1-11-1996 to 10-11-1996, the complainant repeatedly requested the appellant, who was the Patwari of Patwari Halka No.15 to provide him certified copy of B-1, but the appellant demanded a sum of Rs. 250/- as bribe from him and stated that until the amount is paid, certified copy of B-1 would not be supplied to him. In this connection, the complainant filed a complaint (Ex.P-1) in the office of Lokayukt, Bilaspur and on the basis of the said complaint (Ex.P.-1), the Special Police Establishment (Lokayukt) instructed the Superintendent of Police, Raigarh to proceed further in the matter. The Superintendent of Police, Raigarh obtained approval from the Collector, Raigarh and thereafter a trap team was constituted.

3. The trap team constituted was consisting of Deputy Collector Prahlad Singh Sikarwar (PW-7), Sub Inspector Prakash Soni (PW-5), Independent witnesses Bhagwan Das Lahre (PW-2) and Naresh Sharma (PW-3). The Additional Superintendent of Police, Raigarh handed over five currency notes in the denomination of Rs. 50/- each with signatures of Sub Divisional Magistrate Prahlad Singh Sikarwar (PW-7) and S.D.O.(P) B.S. Dhruv (PW-9) to the complainant and instructed him that after handing over the amount to the appellant, the complainant shall give a signal by removing his shawl, then the trap team would reach the spot. A panchanama (Ex.P-2) was prepared in which signatures of witnesses Bhagwandas Lahre (PW-2) and Maheshchandra Yadav were obtained. Thereafter, the trap team proceeded to village Jurda and the Jeep in which they travelled was parked near the house of the appellant. Complainant Damrudhar Patel (PW-1) went to the house of the appellant and handed over to him the five currency notes of Rs. 50/- each. After some time, complainant Damrudhar Patel (PW-1) came out of the house of the appellant and gave a signal to the members of the trap team. Immediately thereafter, the members of the trap team entered the house of the appellant and S.D.O.(P) B.S. Dhruv (PW-9) introduced themselves and demanded the amount of bribe from the appellant. The appellant refused that he took any amount from the appellant, but, on assertion of the trap team, he brought out the amount from a full pant hanging on a hook affixed on the wall. The currency notes were seized vide Ex.P-3. Copy of application (Ex.P-12) and copy of form B-1 (Ex.P-13) were seized by S.D.O(P) B.S. Dhruv (PW-9).

4. After completion of investigation, sanction for prosecution against the appellant was obtained vide Ex.P-6 from Sub Divisional Officer (Revenue) Ved Prakash (PW-6) and thereafter charge sheet was filed against the appellant in the Court of Special Judge, Raigarh. The learned Special Judge framed charges against the appellant, he denied the guilt and claimed trial. The Special Judge, after hearing the parties and appreciation of evidence available on record, convicted and sentenced the appellant as aforementioned.

5. Smt. Hamida Siddiqui and Mr. Raghvendra Verma, learned counsel appearing for the appellant argued that the conviction imposed upon the appellant under Section 7 of the Act, 1988 is contrary to the facts of the case. It is further argued that from the evidence of complainant Damrudhar Patel (PW-1), the fact of demand of bribe has not been proved and the currency notes of Rs. 250/- were not recovered from the exclusive possession of the appellant but were seized from the full pant which was hanged on a hook affixed on the wall of a room of the joint family. It is further argued that the prosecution has not used the phenolphthalein powder before the trap and after the trap at the time of preparing memorandum and seizure. Therefore, the case of the prosecution becomes doubtful. It is further argued that the complainant had never applied for supply of certified copy of form B-1 (Ex.P-13) and the same was seized from Pradhan Patwari of Halka No. 15 and not from the Patwari of Halka No. 14 and it is not the job of the Patwari to provide certified copy of B-1 to the complainant. It is further argued that neither the Panchanama (Ex.P-2) nor the seizure of the alleged bribe money have been proved by the prosecution. The members of the trap team have not been searched. The sanction order (Ex.P-6) issued against the appellant is illegal as no document in support of the application for sanction was placed before the Sub Divisional Officer for the sanction. It is further argued that the sanction has been accorded by the Sub Divisional Officer without application of his mind. Hence, the impugned judgment is not sustainable and the appellant deserves to be acquitted of the charge framed against him.

6. On the contrary, Shri Suryakant Mishra, learned Panel Lawyer appearing for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Special Judge do 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 sanction for prosecution under Section 7 of the Act,1988 against the appellant is legal and justified?
>
> (ii) Whether the appellant had voluntarily accepted the sum of Rs. 250/- as bribe money from complainant Damrudhar Patel (PW-1) for supplying him certified copy of form B-1?

9. To hold the appellant guilty, the prosecution examined complainant Damrudhar Patel (PW-1), Bhagwandas Lahre (PW-2), Naresh Sharma (PW-3), Shyamlal Sidar(PW-4), Sub Inspector Prakash Soni (PW-5), Sub Divisional Officer (Revenue) Ved Prakash (PW-6), Sub Divisional Magistrate Prahlad Singh Sikarwar (PW-7), Brindaram (PW-8) and Sub Divisional Officer (Police) B.S. Dhruv (PW-9). The appellant, in his defence, has examined Revenue Inspector Sitaram Bantara (DW-1).

10. So far as the sanction for prosecution under Section 7 of the Act,1988 against the appellant is concerned, the sanction letter (Ex.P.-6) was given by Sub Divisional Officer Ved Prakash (PW-6).

11. Ved Prakash (PW-6) deposed that he was posted as Sub Divisional Officer (Revenue) at Raigarh from 1996. According to Ex.P-5, the appellant was posted as Patwari of Patwari Halka No. 15 and he was in additional charge of Patwari Halka No. 14. Sanction letter (Ex.P.-6) was issued for filing of charge sheet against the appellant before the Court. Ved Prakash (PW-6) further deposed that Sub Divisional Officer (Revenue) is the appointing authority of a Patwari. Superintendent of Police (City) Raigarh had sent him a letter dated 17.12.96, referred to in the sanction order (Ex.P-6) and no other material was sent to him other than the said letter for issuance of the said sanction order (Ex.P-6). In cross-examination, this witness has deposed that the sanction was sought for filing of charge sheet against the appellant and he had not asked for any document to examine before issuance of the sanction order. Ved Prakash (PW-6) further deposed that on 17.12.1996 letter No./Up/151/96 was only submitted before him for issuance of the sanction order and not any other document. The said letter dated 17.12.96 was not produced before the Court. On perusal of the sanction order (Ex.P-6), it reveals that for issuing the sanction for prosecution what was the basis therefor is not mentioned in the said sanction order. Therefore, the sanction accorded by the Sub Divisional Officer (Revenue), Raigarh is without application of mind. In this context, para-13 of the judgment delivered in **State of Maharashtra through C.B.I. v. Mahesh G. Jain, 2013 AIR SCW 3174** states as under:-

> "**13**. From the aforesaid authorities the following principles can be called out:-
>
> (a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
>
> (b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.
>
> (c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.
>
> (d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima-facie reach the satisfaction that relevant facts would constitute the offence.
>
> (e) The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.
>
> (f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

> (g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexations litigations, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity."

12. In the instant case, the above referred to norms regarding sanction for prosecution against the appellant have not been followed by the Sub Divisional Officer (Revenue) Raigarh. Thus, in light of above judgment passed by the Bombay High Court, sanction for prosecution accorded by the Sub Divisional Officer (Revenue) Raigarh is held to be not in accordance with law.

13. The next question for consideration is whether the appellant demanded bribe money of Rs. 250/- from the complainant and voluntarily accepted the same for supplying him certified copy of B-1.

14. Complainant Damrudhar Patel (PW-1) made the complaint (Ex.P-1) against the appellant in the office of Special Police Establishment, Lokayukt Office, Bilaspur. On perusal of the record, it appears that the entire proceeding of trap was not conducted by the Special Police Establishment, Lokayukt, whereas the Special Police Establishment, Lokayukt sent letter dated 13.11.96 (Ex.P-11) to the Superintendent of Police, Raigarh for taking necessary action in the matter. This fact has been proved by Sub Divisional Officer (Police) B.S. Dhruv (PW-9).

15. Damrudhar Patel (PW-1) deposed that he made complaint (Ex.P-1) in the office of Special Police Establishment, Lokayukt Bilaspur. Thereafter, a member of the Special Police

Establishment gave him a closed envelop saying that the same be handed over to the Superintendent of Police, Raigarh. The said envelop was handed over to the Superintendent of Police, Raigarh by him and after reading of the said envelop, the Superintendent of Police, Raigarh directed him to hand over the same to the Collector, Raigarh. The Collector, Raigarh called the Superintendent of Police, Raigarh and the Additional Superintendent of Police, Raigarh on phone and handed over the said envelop to the Additional Superintendent of Police, Raigarh and requested him to deal with the matter. Damrudhar Patel (PW-1) has further deposed that on the next day, i.e, 16.11.1996 at about 6.00 AM, the Additional Superintendent of Police, Raigarh, called the complainant and took five currency notes in the denomination of Rs. 50/- each from him and noted the numbers of the said notes and prepared the Panchanama (Ex.P-2).

16. Before conducting the trap proceedings regarding demand of Rs. 250/-, neither the members of trap team had ensured that the appellant demanded Rs 250/- for supply of certified copy of B-1 nor had the complainant submitted any copy of application in respect of supply of certified copy of B-1. The application was submitted on 04.11.1996 before the Head Copyist of Revenue Office, Tahsil Raigarh for supply of certified copy of B-1, in which the name and signature of the complainant should have been put but in place of the name and signature of the complainant, name and signature of other person namely Mateen has been put in the application. Certified copy of B-1 was related to Patwari Halka No. 14 and from document Ex.P-5 it is clear that the appellant was in additional charge of Patwari Halka No.14.

17. Sitaram Bantara (DW-1) deposed that he was posted as Revenue Inspector and the appellant was posted as Patwari under him. Certified copy of revenue records can never be supplied to anyone directly. For obtaining the same, an application should be there. This witness has further deposed that the copy of document could not be given to others except the original person i.e. the brother of the complainant. Thus the complainant in any case could not get copy of the document of his brother from the Patwari directly. The complainant was supposed to take a copy of the said document by filing an application before the Head Copyist of the office of Revenue Department.

18. The complainant did not file the application for the certified copy in his own name but in the name of one Mateen vide Ex.P.-12 on 04.11.1996. It is clear from the record that the Patwari/ appellant was not competent and authorized to supply the desired certified copy. Therefore, the members of the trap team should have ensured before making trap whether the appellant had demanded the sum of Rs. 250/- as bribe or not?

19. Damrudhar Patel (PW-1) deposed that he went to village Jurda in a Jeep along with the members of the trap team the members of the trap team left him in the village and thereafter, the complainant went to the house of Patwari/ appellant and gave him the sum of Rs. 250/- and after coming out from the house of appellant, he gave a signal to the trap team by removing his shawl. The members of the trap team entered the house of the appellant, caught the appellant and seized the currency notes of Rs. 250/- from the pocket of the full pant which was hanging on a hook affixed on the wall and thereafter prepared a Panchanama there. In the pocket of the full pant, a bunch of keys, a brown handkerchief, a tobacco box and currency notes of rupees 50, 20 and 10 were found and seized by the trap team before witnesses Virendra and Shyamlal.

20. Statements of Bhagwandas Lahre (PW-2) and Naresh Sharma (PW-3) were recorded before the Court below. These are seizure witnesses. Bhagwandas Lahre (PW-2) deposed that the appellant denied that he had taken any money from the complainant. He further deposed that currency notes in the denomination of Rs. 10/-, 20/- and 50/- were found in the full pant hanged on a hook affixed on the wall. He states that he does not remember how many currency notes of Rs. 50/- were recovered. In cross examination, Bhagwandas Lahre (PW-2) deposed that the money had been seized in village Jurda itself and thereafter the members of trap team had put their signatures on the seized currency notes and the seizure memo in village Jurda itself. He states that at the time of preparation of Panchanama (Ex.P-2) currency notes were not signed by any member of the tram team. In para-4 of the cross-examination, Bhagwandas Lahre (PW-2) further deposed that lots of people were present in the house of the appellant at the time of raid and the full pant was seized by the members of the trap team from the hook affixed on the wall and due to rush in the house it was not possible for him to see that what was happening there. Thus, it is not clear from the evidence of Bhagwandas Lahre (PW-2) that from whom the currency notes were seized.

21. Naresh Sharma (PW-3) deposed that the members of trap team seized the currency notes from the full pant which was hanged on a hook affixed on the wall and from the full pant, 5 -6 currency notes in the denomination of Rs. 10/-, 20/- and 50/-, a tobacco box, a bunch of keys and a brown handkerchief were found and seized before the members of the trap team. In para-3 of his deposition, Naresh Sharma (PW-3) deposed that the room in which he entered was a combined room of the family members of the appellant. The members of the trap team seized the full pant hanged on a hook affixed on the wall. Teknath Gupta, who was the elder brother of the appellant had said that the full pant in which the bunch of keys, handkerchief and the tobacco box were found belonged to him. Thus, from the evidence of Naresh Sharma (PW-3), it is clear that the alleged currency notes were seized from a combined room and the said room was adjacent to the appellant's room.

22. Neither phenolphthalein powder was smeared on the currency notes before making raid nor was phenolphthalein powder found on the currency notes seized from the full pant. Thus, use of phenolphthalein powder which is necessary in a proceeding for a trap has not been made by the trap team in this case. Therefore, there is no transparency and fairness in the proceedings of the trap team. On this point, learned counsel for the appellant has placed reliance on para-11 of the judgment in **Raghbir Singh v. State of Punjab 1976 AIR SC 91,** which reads as under:-

> “ 11. It is clear from the aforesaid discussion that the evidence led on behalf of the prosecution is not such as to inspire confidence in the mind of the court and we must say that we are not at all satisfied that the appellant either demanded bribe of Rs. 50/- from Jagdish Raj or that jagdish Raj paid bribe of Rs. 50/- to the appellant by handing over five marked currency notes to him or that five marked currency notes of Rs. 10/- each were recovered from the pocket of the appellant when his person was searched by the raiding party. We may take this opportunity of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency notes which are used for the purpose of trap, are treated with phenolphthalein powder so, that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. It is but meet that science oriented detection of crime is made a massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt. Vide Som Prakash v. State of Delhi, AIR 1974 SC 989.

23. If the argument of learned counsel for the appellant regarding the recovery of currency notes from the pocket of full pant of the appellant is accepted, the offence alleged against the appellant is not proved. Learned counsel in support of her contentions has relied upon **Suraj Mal v. State (Delhi Administration) (1979) 4 SCC 725,** wherein it is held as under:-

> "2. ...... Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. ..."

24. Therefore, from the above evidence, it appears that the prosecution has not been able to prove its case against the appellant and the sanction issued for prosecution of the appellant was without perusal of any document and without application of mind. The prosecution has also not been able to prove whether the appellant was authorized to issue certified copy of the document B-1 or not. Neither the prosecution has produced any evidence regarding demand of Rs. 250/- as bribe from the complainant nor has proved any conversation between the appellant and the complainant regarding the alleged demand. The complainant has not stated that where was the bribe money kept by the appellant after accepting the same. While as per the prosecution case the trap team entered the house of the appellant soon after giving the currency notes to the appellant within a minute. In the circumstance, it becomes doubtful that the full pant which was hanged on the hook affixed on the wall belonged to the appellant, especially when one of the members of the trap team, Bhagwandas Lahre (PW-2) has deposed that signatures on the seized currency notes were put by the members of the trap team after the raid and seizure.

Therefore, from the above discussion, I find that the prosecution has failed to prove its case beyond doubt.

25. For the foregoing reasons, the appeal is allowed. The impugned judgment of conviction and sentence passed by the Court below is set aside. The appellant is acquitted of the charge framed against him.

Sd/-
(Anil Kumar Shukla)
Judge

santosh