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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1150 of 1999

- Toman Singh Thakur, son of Mitra Singh Thakur, aged about 48 years, Resident of Aminpara, Chowk, Qr. No.26/440, Raipur, The Then, Branch Manager, State Bank of India, Sector-1, Bhilai, District Durg MP (Now CG)

---- Appellant

Versus

- The State of M.P. Through the Police of Special Police Force Establishment, Lokayukt office Raipur M.P. (Now CG)

---- Respondent

For Appellant	:	Shri ML Pastore, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board By

06/11/2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 16.4.1999 passed by the Special Judge(Prevention of Corruption Act, 1988), Durg (MP) (now CG) (for short the Trial Court), in Special Sessions Trial No.1 of 1992, wherein the trial Court has convicted the accused/appellant under Section 7 and 13 (1) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for 1 year; 1 year and to pay fine of Rs.1,000/-; Rs.1000/-, in default of payment of fine to further undergo R.I. for 3 months and R.I. for 3 months respectively with a direction to run the sentences concurrently.

2. The case of the prosecution, in brief, is that at the relevant time, the accused/appellant was posted as Branch Manager of State Bank of India, Sector-1, Bhilai. The Firm 'Raj Enterprises' supplied some telephones and STD locks to the State Bank of India, Branch, Sector -1 Bhilai and for that bill of Rs.1650/- was due towards the Bank. When Kanmal Jain (complainant) of the said Firm reminded the accused/appellant for payment of the bill, he demanded Rs.500/- as illegal gratification other than his legal remuneration for clearing/payment of the bill. It is alleged that the complainant do not want to pay this bribe amount to the accused/appellant and made a request to the Superintendent of Police, Lokayukt as per Ex. P/13. Thereafter, Inspector, O.P. Dubey was directed to take action against the accused/appellant. A trap was organized. Five currency notes of Rs.100/- denomination were subjected to phenolphthalein powder. Formalities were done and certain instructions were given to the complainant before the trap and for that preliminary Panchanama was prepared as Ex.P/4. After preliminary Panchanama, members of the trap party were reached to Bhilai. The complainant handed over the currency notes of Rs.500/- to the accused/appellant and signalled the trap party and thereafter, Police Inspector, O.P. Dubey caught the accused and when his hands were washed, the colour of water turned pink. Again currency notes were tallied from the preliminary Panchanama. Sanction for prosecution was obtained from the authorities as per Ex. P/10 and the matter the investigated.

3. After completion of investigation, charge sheet was filed before the trial Court. The trial Court framed charges against the accused/appellant as mentioned above, to which, he did not plead guilty. Thereafter, trial was conducted and after completion of the trial, the trial Court convicted and sentenced the accused/appellant as above.

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

(i) That there is no evidence that Kanmal Jain was working in the Firm Raj Enterprises and therefore, question of demand of money from the complainant does not arise.

(ii) That it is clear from the evidence that for previous transactions no demand was made by the accused/appellant and therefore, it cannot be inferred that the demand is made for a petty bill of Rs.1650/-

(iii) That there are inherent contradictions and omissions in the statements of the prosecution witnesses and no conviction can be rest on the basis of such unreliable evidence.

Learned counsel also placed reliance on (**2010) 2 SCC (Cri) 864, Banarsi Dass Vs. State of Haryana** and **AIR 2017 SC 3382, Mukhtiar Singh (since deceased) through his L.R. v. State of Punjab**.

5. *Per contra*, learned State counsel supporting the impugned judgment has submitted that the judgment of conviction and order of sentence is passed by the trial Court on the basis of evidence adduced by the prosecution and the same is well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. To substantiate the charge, prosecution has examined as many as 10 witnesses. Defence has not examined any witness. Statement of the accused/appellant under Section 313 of the Cr.P.C. was recorded, in which, he denied the charges levelled and the material brought against him. He pleaded innocence and false implication. After hearing both the parties, the trial court has convicted and sentenced the appellant as mentioned above.

7. I have heard counsel for the parties and perused the material available on record.

8. The first point for consideration is that whether the accused/appellant was working as a public servant.

9. '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 or 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 is covered by the said definition and there is no doubt that he was a Public Servant at the relevant time.

The present accused/appellant was working as a Manager in the nationalized Bank, i.e. State Bank of India and he is covered by the said definition of Public Servant defined under Section 21 of the I.P.C.

10. The second point for consideration is that whether cognizance of the offence is taken as per command of the Act. Section 19 provides that cognizance can be taken only on the basis of sanction granted by the authority. R.P. Shrivastava(PW6) is the General Manager of the State Bank of India, Bombay. He deposed that sanction for prosecution was given by the Managing Director (Personnel) Shri K. Ruknuddin as per Ex. P/10. On perusal of Ex.P/10 it appears that all relevant materials were placed before the authority for granting sanction and after applying his mind over the facts submitted before him, the authority granted permission. The order is elaborate and it established that after satisfying with the facts, sanction was granted and on the basis of the said sanction, the Special Court took cognizance of the case.

11. The next question for consideration is that whether the accused/appellant demanded illegal gratification other than his legal remuneration for rendering services to the complainant and whether he accepted the bribe amount.

12. Kanmal Jain(PW9) is the complainant of the case. He deposed that telephone instruments were supplied to the State Bank of India, Sector-1, Bhilai Branch and bill was given to the Manager of the said Bank. The accused/appellant was Manager of the Bank. Some amount was paid against the bill, but Rs.1650/- was balance. When he requested for payment of the balance amount, the accused/appellant demanded Rs.500/- as illegal gratification. As per version of this witness, he was not inclined to pay the bribe amount to the accused/appellant and that is why he made complaint before the Lokayukt, Raipur as per application annexure P/13. He further deposed that the office of the Lokayukt asked him to come next day with Rs.500/- and he reached there next day with Rs.500/- and gave this amount to them. The currency notes of Rs.500/- were subjected to some chemicals and then it were kept in the pocket of his shirt and he was directed that the currency notes should be touched only when it will be given to the accused/appellant. The members of the trap party proceeded to Bhilai and they reached near the house of the accused/appellant and he gave Rs.500/-. After giving the currency notes, he came out and signalled the trap party and thereafter, members of the trap party reached there. Version of this witness is supported by the version of Omprakash Singh (PW8). He deposed that preliminary panchanama was prepared before him and samples of phenolphthalein powder and sodium carbonate were prepared and members of trap party reached to the house of the accused/appellant. When the complainant signalled them, he, Inspector O.P. Dubey and G.R. Khadgare rushed there and currency notes of Rs.500/- denomination were seized and when same were subjected to sodium carbonate solution, it turned pink. The currency notes were tallied with preliminary panchanama and the same were found to be the same. He further deposed that when hands of the accused/appellant washed, the solution turned pink and when bed sheet and handkerchief in which the currency notes were kept subjected to sodium carbonate solution, colour of the solution turned pink. Ex. P/5 is the seizure memo of currency notes and bill of Raj Enterprises for Rs.1650/- was seized as per Ex. P/7. Version of this witness is supported by the version of G.R.Khadgare(PW4), who deposed on same line that of Omprakash Singh (PW8). Again version of this witness is supported by the version of Inspector O.P. Dubey (PW10). Version of these witnesses were subjected to incisive and searching cross examination but nothing could be elicited in favour of the accused/appellant.

13. No one is examined to say that the complainant Kanmal Jain was not working for Raj Enterprises. When the version of the complainant is unrebutted, it is established that he was working for Raj Enterprises and had made request to the accused/appellant for clearance of the bill and for that he demanded bribe and thereafter, complaint was made to the Police authorities and the trap was successful against the accused/appellant.

14. There is no substance in the arguments made on behalf of the accused/appellant that he never demanded money for earlier transactions, therefore, it cannot be believed that the accused/appellant demanded bribe for clearance of the bill. Question for determination is very limited regarding demand and acceptance of bribe amount and for that the prosecution has adduced ample evidence and there is nothing on record to say that anyone of the prosecution witness has any grudge against the accused/appellant to rope him in a false charge. Demand and acceptance is proved by direct evidence and it is not a case where the case is based on circumstantial evidence. The case laws cited by the counsel for the appellant are clearly distinguishable from the facts and circumstances of the present case.

15. On a careful scrutiny of the evidence, it is established that the accused/appellant who was Branch Manager of State Bank of India at the relevant time had demanded illegal gratification from the complainant for clearance of his bill and thereafter, the matter was reported and trap was organized and the bribe amount was seized from the accused/appellant.

16. In view of the above finding of the trial Court, appears to be inconsonance of the evidence of the witnesses available on record and the judgement impugned is well founded and it does not call for any interference by this Court.

17. Accordingly, the appeal being devoid of any substance is liable to be and is hereby dismissed. The appellant is reported to be on bail. His bail bond shall stand cancelled. The trial Court (Special Judge under the Prevention of Corruption Act, 1988) is directed to issue a non-bailable warrant of arrest against the appellant and after his arrest, he be sent to jail for serving the remaining part of the jail sentence.

Sd/

(**Ram Prasanna Sharma**)
JUDGE

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