

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 28-7-2017

Judgment delivered on 16-8-2017

Criminal Appeal No. 1169 of 1998

Kumhar Singh s/o. Budhram Banjare aged 39 years, r/o. Patwari Halka No.12, Turenga, Tehsil Mahasamund, District Raipur (MP)

--- Appellant

Versus

The State of Madhya Pradesh through Special Police Establishment, Lok Ayukta Office, M..P., Bhopal (unit) Raipur (Now State of CG).

--- Respondent

For Appellant	:	Mr. Janak Ram Verma, Advocate.
For Respondent/State	:	Mr. Adiraj Surana, Dy. Govt. Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

Per Ram Prasanna Sharma, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 29-04-1998 passed by Special Judge/First Additional Sessions Judge, Raipur, in Special Case No. 27 of 1992 wherein the trial Court convicted the appellant under Section 161 of the IPC and Section 5(1)(d)/5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo RI for one year and to pay fine of Rs.1,000/- for each offence with default stipulations.
2. Facts of the case, in brief, are that at the relevant time the accused/appellant was posted as Patwari in Patwari Halka No. 12, Turenga, Tahsil Mahasamund, District Raipur. Complainant Chhabilal was allotted the land by the State Government and

record of right was issued in his favour. The appellant made an entry of the effect in the said book of record of right that the land is a Government land. When the complainant Chhabilal requested him to correct the entries, the appellant demanded Rs.1,000/- as illegal gratification for the said purpose. It is alleged that the complainant did not want to give this bribe amount to the accused/appellant and made a request to the Superintendent of Police, Special Police Cell, Lok Ayukt as per complaint (Ex.P/9). On receiving the said complaint, the matter was handed over to Police Officer C.K. Tiwari. Dehati Nalsi (Ex. P/13) was recorded on 4-5-1988 by the said officer. Demonstration of test by applying phenolphthalein powder on currency notes of 100 denomination was made and trap party consisting Inspector C.K. Tiwari (PW/12), R.K. Shukla (PW/1), Inspector Rajeshwar Singh, Complainant Chhabilal (PW/5) and Potiram was organised. The said party started from Raipur at about 15.45 pm and reached the rest house at Mahasamund by jeep at about 16.50 pm. When trap party reached near the office of Tahsildar, Mahasamund, the accused/appellant was standing in front of the said office. Complainant Chhabilal and Panch witness R.K. Shukla reached there, after handing over the amount to the accused/appellant, he gave signal to trap party, thereafter Inspector C.K. Tiwari and Inspector Rajesh Singh reached there. Fingers of the hand of the appellant was washed in sodium carbonate solution which turned into pink colour and the same was kept in a clean bottle of glass and sealed thereafter. When Panch witness R.K. Shukla searched

left pocket of the appellant's full pant, he found currency notes and same was seized and when compared the number with the previous panchnama, it was tallied to be the same as mentioned in the previous panchnama. Different solution of sodium carbonate was prepared and when notes were dipped in the solution, the same turned into pink and it was sealed in a separate bottle. When full pant of the appellant was removed and left pocket was washed by sodium carbonate, the same turned into pink and that is also seized and kept in a bottle. Seizure of the currency notes was made, complainant's book of record of right was seized as per Ex.P/4, P.5, P/6, P/15 and P/16 on 4-5-1988. The case was registered against the appellant as per Ex.P/4. All the seized materials were sent for chemical examination to Forensic Science Laboratory, Sagar and a report thereof was found positive as per Ex.P/18. Further investigation was taken up by the authorities. After examining the witnesses and obtaining consent to prosecute the appellant/accused, charge-sheet was filed on 30-9-1992,

3. To substantiate the charge, prosecution examined as many as 12 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges levelled against him and pleaded innocence and false implication in this case. This apart, DW/1 Khilawan and DW/2 Lalluram Sahu have also been examined by the defence in support of its case. After hearing both sides, the trial Court

convicted and sentenced the appellant/accused as mentioned above.

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

(i)	That the complainant Chhabilal has sold his land mentioned in record of right, therefore, the question of demanding money for correction of entry in record does not arise;
(ii)	That the appellant had not taken any illegal gratification and the alleged seizure of said money was nothing, but it is a managed affair.
(iii)	That none of the prosecution witnesses supported the prosecutions case and their version is self-contradictory and it is impossible to believe the same.
(iv)	That the trial Court ought to have believed the defence of the appellant.
(v)	That the finding arrived at by the trial Court is not in the fitness of factual matrix and legal aspect of the matter, therefore, the same is liable to be quashed.

In support of his arguments he placed reliance on the decisions of Hon'ble Supreme Court and the High Courts in the matter of **Satvir Singh vs. State of Delhi, through CBI¹, B. Jayaraj vs. State of A.P.² Banarsi Dass vs. State of Haryana³ T. Subramanian vs. State of Tamil Nadu⁴, D. Shanmukha**

¹ 2015 (2) CCSC 882 (SC)
² 2014 (3) CCSC 1189 (SC)
³ (2010) 4 SCC 450
⁴ (2006) 1 SCC401

Sundaramma vs. D. Suneetha and others⁵ and in the matter of Dinesh Kumar Kannoje vs. State of Madhya Pradesh (Now State of Chhattisgarh) (Criminal Appeal No. 2619 of 1998 decided by this Court on 17-2-2012.

5. *Per contra*, State counsel supporting the impugned judgment of the trial Court has submitted that the finding arrived at by the trial Court is just and proper and there is no illegality or infirmity in it warranting any interference by this Court.
6. I have heard counsel for the parties and perused the material on record. In order to appreciate the arguments advanced by learned counsel for the parties, I have examined the evidence adduced on behalf of the parties.
7. PW/10 A.K. Behar was Naib Tahsildar at the relevant time at Mahasamund. He deposed that appellant was posted under him as Patwari in village Turenga and he has been assigned the work of preparing record of right book as per original record. He has stated that in Ex.P/5 and P/6, the land was recorded as Bhumiswami/Moursi/Government Pattadar, but in the said book a number of over writings were made and Bhumiswami was mentioned and the same was struck off and below to that signature of the appellant is found. He has stated that 5.83 hectares of land was recorded in the name of the complainant and out of total land bearing khasra No.189/1 area 0.42 acres and land bearing khasra No. 189/1 area 0.92 acres was sold. Version of Nai Tahsildar is unrebutted and it is established from his

⁵ (2009) 3 SCC 787

statement that the appellant was working as Patwari under him and was employee of the Revenue Department and he was carrying out the function of the State and in that respect salary was paid to him from the State exchequer. He was also assigned the duty of preparing the record of right book and loan account book of the farmers.

8. Section 21 of the IPC, 1860 provides that every person in the service or pay of the Government for the performance of any public duty is a public servant. The present appellant is covered by the said definition. There is no doubt that he was a public servant at the relevant time. Now, I shall consider whether it is established that accused/appellant demanded and obtained illegal gratification from the complainant Chhabilal (PW/5).
9. As per statement of Complainant Chhabilal (PW/5), the appellant was Patwari of his village. He is in possession of the land allotted by the Government and book of record of right and loan account book have been prepared in his name. One Suhan Singh's land was adjacent to the land of the appellant and he was selling his land and appellant demanded his record of right book/patta, therefore, he gave the book to the appellant. When he returned to home, his son after seeing the book asked him as to who made entry in this book showing his land as Government land. When he enquired from the appellant regarding this kind of entry, the appellant said him that entry will be corrected and he demanded Rs.1,000/- for the said purpose. He gave Rs.500/- to the appellant and assured him that balance amount will be paid later.

Thereafter, he reached to Lok Ayukt's office with one Chhaganlal and made an application (Ex.P/9) and the same was submitted before Lok Ayukt. As per version of this witness, five notes of 100 denomination were given to him from Lok Ayukt's office after applying some powder on it and he reached Mahasamund at about 3.00 pm. He handed over the amount to the appellant and after receiving the amount, the appellant kept the same in his pocket of full pant and when the hand of the appellant was washed in sodium carbonate, it turned into pink colour. Version of this witness is supported by the panch witnesses of trap party R.K. Shukla (PW/1). M.S. Ghosh (PW/2), Inspector C.K. Tiwari (PW/12), Chandrapal Singh (PW/7) and Chaganlal (PW/8) have supported the version of complainant Chhabilal regarding demand of illegal gratification. From the evidence of R.K. Shukla (PW/1), it is established that the amount was received by the appellant. Version of this witness is unshaken during cross examination at length and there is nothing to disbelieve the same. Version of this witness is supported by preliminary panchnama (Ex.P/1), seizure memo (Ex.P/2) and Ex.P/3. Seizure of record of right book and loan account were made as per Ex.P/4, P/5 and P/6. On perusal of Ex.P/5, it is clear that there is cutting and over writing in the said book of the complainant and it was signed by the appellant. Version of this witness is again supported by trap panchnama (Ex.P/7). In written complaint (Ex.P/9), it is clearly mentioned that demand of illegal gratification was made by the appellant and requested for appropriate action against him. Based on the above

complaint, trap was organised and the same is proved by the prosecution witnesses as mentioned above.

10. It is contended on behalf of the appellant that the complainant had already sold his land, therefore, the question of demand of bribe does not arise. After perusal of book of record of right, the submission seems to be without substance. In the book of record of right total area of land is 5.83 acres and only land of one survey number less than two acres was sold and rest of the land is still in the name of the complainant, therefore, it cannot be said that the complainant had already sold the land in question. It is further submitted on behalf of the defence side that the prosecution witness Dava Ram (PW/6) has not supported the version of the prosecution, therefore, case of the prosecution becomes doubtful. The argument advanced by the defence side is without substance as PW/6 Dava Ram has stated that the appellant had not demanded money before him. It is not the case of the complainant that appellant demanded money in his presence. Dava Ram (PW/6) was not present at the time of demand of money and he is not real witness of the incident and his testimony is insignificant for this purpose.
11. DW/1 Khilawan and DW/2 Lalluram deposed that the appellant was in his Saloon for shaving at the time of incident and when one person had tried to give him money, he denied to take the same, but the person thrust currency notes in his pocket on 6-4-1988. The statement of the accused/appellant under Section 313 of the Cr.P.C was recorded on 4-9-1997 and in his statement the

appellant/accused has nowhere mentioned that money was thrust into his pocket, therefore, the story of thrusting money is developed only after recording the statement of the appellant/accused and the same cannot be believed and from their evidence version of prosecution witnesses cannot be disbelieved.

12. Minute scrutiny of the evidence goes to show that the appellant/accused who was Patwari, at the relevant time, had demanded illegal gratification from the complainant for correction of entries in his book of record of right and the matter was reported to Special Police Cell of Lok Ayukt and trap team was arranged and the same was successful. Once it was proved that the money was received by the appellant, the appellant was under obligation to justify acceptance of money which he is not able to justify through cross examination of the prosecution witnesses or by adducing any convincing evidence. Case laws cited by the defence side are distinguishable on the facts and circumstances of the present case.
13. In view of the aforesaid discussion, the findings of the trial Court appear to be in consonance with the evidence of the witnesses available on record, therefore, the judgment being well founded does not call for any interference in this appeal. Accordingly, the appeal being devoid of any substance is liable to be and is hereby dismissed.
14. The appellant is on bail. His bail bonds shall stand cancelled. The trial Court (First Additional Sessions Judge, Raipur), is directed to

issue non-bailable warrant against him and after his arrest he be sent to jail for serving out the remaining part of the jail sentence.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju