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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 3049 of 1999

Judgement reserved on 23-10-2017

Judgement delivered on 21-11-2017

- Lakhan Lal Kathnal s/o.Kunjbihari Kathal, aged about 52 years, Assistant Director, Non-Formal Education Department, District Bastar at Jagdalpur (MP) now posted as Lecturer, Govt. Higher Secondary School, village Jai Jaipur, District Bilaspur (MP) r/o. Village Dur-pa, Post Office Sarhar via Baradwar, District Janjgir (o/o. District Bilaspur (MP).

---- Appellant.

Versus

- State of MP (now State of CG) through Special Police Establishment, Dividional Lok Ayaukta Office, Bastar (Jagdalpur) (MP) Thana V. Pu. Sthapana, MP, Bhopal..

---- Respondent

For Appellant : Mr. H. Ahluwalia, Advocate.

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate.

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

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 5-11-1999 passed by Special Judge/ Sessions Judge (under Prevention of Corruption Act, 1988), Bastar at Jagdalpur in Special Case No. 4 of 1996, 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, 1988 (for short, “the Act, 1988”) and sentenced him to undergo RI for one year and fine of Rs.1,000/- for each offence with default stipulations.

2. Facts of the face, in brief, are that at the relevant time i.e., on 22-6-1995 the accused/appellant was posted as Assistant Director, Non-

Formal Education in Jagdalpur Town in Bastar District and was a public servant. Complainant Daya Shankar Dubey was working as a Supervisor in the same department against whom one Meena Chauhan (Central Instructor of the same department) made a complaint to the Police Station Bodhghat, Jagdalpur. The appellant enquired the matter and submitted the report and thereafter on 22-5-1995 Joint Director directed the removal of Dayashankar Dubey from service. He made a representation before the Joint Director and on 9-6-1995 the authority directed reinstatement of of Dayashankar Dubey into his post. The accused/appellant demanded Rs.3000/- as illegal gratification for giving him reinstatement order. The complainant gave Rs.500/- to him and balance amount of Rs.2500/- was to be paid in the house of the accused/appellant. The complainant did not want to give this bribe amount and therefore, he made a complaint to Lok Ayukt Police . Upon a report of the complainant, trap party was organised on 22-6-1999 consisting of complainant, Dayashankar Dubey (PW/1), S.K. Tiwari, Asst. Engineer (PW/2) and Deputy Superintendent of Police S.R. Yuvne (PW/3). The complainant gave bribe amount to the accused/appellant and he kept the same in his lungi. On being signal given by the complainant, trap party entered into the house of the accused/appellant. Currency notes were seized from his possession and hands of the accused/appellant and complainant were immersed into sodium carbonate solution, it turned pink. Currency notes were also subjected to sodium carbonate solution

which also turned pink and all proceedings were recorded. Currency notes seized from the accused/appellant were tallied from preliminary panchnama which was prepared before trap and it was the same i.e. one currency note of 500 denomination and 20 currency notes of 100 denomination. Seizure memo was prepared during proceeding and the matter was investigated, sanction for prosecution was obtained from the State Government, all the seized materials were sent for chemical examination and certain documents were seized.

3. After completion of investigation charge-sheet was filed against the accused/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.

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

    i) that it is a case of false implication of the accused/appellant because Complainant Dayashankar Dubey was working under accused/appellant and his removal was based on enquiry report of the accused/appellant and after

removal from service the complainant threatened the appellant to see him in future and same is supported by PW/5 Meena Chouhan.

ii) that there is contradiction in the statement of the complainant Dayashankar Dubey (Ex.P/1) made before the Special Police Cell and demand of illegal gratification and acceptance is not corroborated by the independent witnesses, therefore, the case of the prosecution is not established.

iii) that the order of reinstatement of the complainant was passed on 9-6-1995 and for that demand of money on 20-6-1995 does not arise.

iv) that the accused/appellant was not authority to pass again reinstatement of the accused/appellant and there was no motive of such demand of illegal gratification.

v) that the alleged currency notes have not been seized from the possession of the accused/appellant and the currency notes were thrown and picked up by the trap party.

He placed reliance on the decisions of Hon'ble the Supreme Court and Hon'ble the High Courts in the matters of **Ram Kumar Verma vs. State of MP**[1], **Banarasi Dass vs. State of Haryana**[2],

[1] 2010 (1) CGLJ 68
[2] 2010 AIR SC 1589

Visheshwar Singh vs. State of MP[3], Lachman Das vs. State of Punjab[4], Ram Prakash Arora vs. State of Punjab[5], M.O. Shamshuddin vs. State of Kerala[6], State vs. K. Narasimhachary[7] V. Venkata Subbarao vs. State of AP[8], Sita Ram vs. State of Rajasthan[9], Anand Prakash and another vs. State of Haryana[10]

5. As against the aforesaid submissions, State counsel submits as under:

i) that the case of the prosecution is based on the direct evidence and complainant has proved factum of demand and witnesses of trap party have proved the acceptance of bribe.

ii) that when the hands of the accused/appellant were immersed in sodium carbonate solution, it turned pink and same process was adopted to complainant and his hands also turned pink and same is supported by the version of witnesses of trap party and that established that the accused/appellant has voluntarily accepted the bribe amount.

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[3]Crimes 1984 (3) MP 739
[4] AIR 1970 SC 450
[5] Cr.LJ. 1972(2) SC 1293
[6] Crimes 1995(2) SC 282
[7] Cr.L.J. 2006 SC 518
[8] AiR 2007 SC 489
[9] 1975 Cr.L.J SC 1224
[10] 2008(4) Crimes (P&H) 365

iii) that prosecution witnesses are firm and there is nothing on record to discard their testimonies

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

7. To substantiate the charge, prosecution has examined as many as …7 witnesses. To nullify the charge, defence side examined three witnesses.

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 working as Assistant Director in Education Department of the State Government, he is covered by the said definition.

9. Second point for consideration is whether cognizance of the case was taken as per enactment. Section 19 of the Prevention of Corruption Act, 1988 (for short, “the Act, 1988”) commands that

sanction for prosecution is a condition precedent for taking cognisance of offence under that Section.

10. As per version of PW/3 Yuvne, Deputy Superintendent of Police, he obtained permission from the State for prosecution of the accused/appellant and sanction for prosecution was granted as per Ex.P/10 which is an order passed by the Additional Secretary, Law Department, Government of MP, Bhopal. The order is a public document and it is in four pages in which all the facts have been mentioned regarding complaint, arranging a trap and after applying the mind to the facts the authority has granted sanction for prosecution. The order granting sanction is a public document as per Section 74 of the Indian Evidence Act, 1872 and it can be proved either by presentation of a public document or through witness who is acquainted with the facts. Public document is proved before the trial Court and the same is proved by the evidence of S.R. Yuvne (PW/3) and on the basis of sanction, the trial Court took cognisance of the case.

11. Next point for consideration is whether accused/appellant demanded illegal gratification other than his legal remuneration for rendering service to the complainant Dayashankar Dubey and received Rs.3000/- as illegal gratification.

12. Complainant PW/1 Dayashankar Dubey deposed that he was working as Supervisor in Non-Formal Education, Jagdalpur. One order was passed for his removal from service on the basis of some criminal case was pending against him. He further deposed that

when the department received the correct information, the authority ordered for his reinstatement. Accused/appellant demanded Rs.3000/- as illegal gratification other than legal remuneration for his joining in the work. When this witness has shown his inability, the accused/appellant first demanded Rs.500/- before giving the order of reinstatement and thereafter this witness has to give rest of the amount. As this witness was not willing to give the bribe amount, he made a request to Lok Ayukt Police. He further deposed that he submitted (20 in number) currency notes of 100 denomination and one of Rs.500/- denomination before the said officer. Phenolphthalein powder was applied to currency notes and powder made soluble in water and same turned pink. A trap was organised in which complainant Dayashankar Duney (PW/1), S.K. Tiwari, Asst. Engineer (PW/2) and S.R. Yuvne (PW/3) Deputy Superintendent of Police were members. As per version of this witness, they reached to the place of accused/appellant and he entered into the house of the accused/appellant where the accused/appellant has shown reinstatement order of the complainant and when complainant gave him Rs.2,500/-, he counted the same and kept the same in his lungi and thereafter he signalled the trap party and on seeing the members of trap party, accused/appellant threw currency notes from lungi and at the same time Police Officer caught hold him. When the hands of the accused/appellant were immersed into sodium carbonate solution, it turned pink and the same process was done to the complainant

and it also turned pink. Version of this witness is supported by the version of S..K. Tiwari (PW/2) and S.R. Yuvne (PW/3). Seized notes were tallied from preliminary panchnama before the trap party and it was tallied with panchnama. Currency notes and lungi of the accused appellant were seized and the matter was investigated. PW/4 Ramlal is a witness in whose presence Phenolphthalein powder was applied in currency notes. He also supported the proceeding of the trap. Version of this witness is unrebutted and supported by the documents and there is nothing on record to disbelieve the same.

13. When accused/appellant entered into witness box as defence witness No.1, he deposed that on the basis of his report the complainant was terminated but no such report has been filed before the trial Court and in absence of any report, it cannot be said that action was taken against the complainant on the basis of report made by this witness.

14. DW/2 Hari Prasad deposed that complainant was trying to give money to the accused/appellant but he was not taking the same and complainant and one other person tried to keep the currency notes in lungi of the accused/appellant and at the same time currency notes were fallen. But presence of this witness is not established by any of the prosecution witnesses or any of the document at the time of trap. He deposed for the first time after lapse of time and without any corroboration his presence on the spot is not acceptable.

15. DW3 Smt. Rama Naidu deposed in the same line that of Hari Prasad (DW/1) but her version is also not acceptable because there is no substance to link her presence in the house of the accused/appellant at the time of trap.

16. There is no force in the submission of learned counsel for the appellant that demand of bribe amount is not established. The case of the prosecution is based on direct evidence of the complainant and his version is not rebutted after searching cross examination. Again from the evidence of other three witnesses of trap, it is established that currency notes were kept by the accused/appellant in his lungi after counting the same and that is why the test of sodium carbonate solution was positive. It shows that accused/appellant has wilfully taken the bribe amount in his hand and kept the same in his lungi. Once it is proved that accused appellant has accepted the currency notes as illegal gratification, it shall be presumed that he accepted the illegal gratification as a motive or reward for rendering service as per Section 20 of the Act and from the evidence adduced by the accused/appellant the same is not rebutted. There is no force in the contention of learned counsel for the defence that because on the basis of the report of accused/appellant the complainant was removed from service, therefore, he has roped him in false charge. There is no such evidence that complainant has been removed on the basis of any report by the accused/appellant.

17. PW/5 Meena Chouhan deposed that she made a complaint in Police Station against the complainant for threatening but complaint lodged by Meena Chouhan is not relevant to the facts and circumstances of the present case. Any dispute between Meena Chouhan and Complainant has no bearing with demand and receipt of gratification by the accused/appellant from the complainant.

18. Considering all the facts and circumstances of the case and the evidence available on record, this Court is of the view that the case laws cited by learned counsel for the appellant are distinguishable to the facts and circumstances of the present case and the present case is based on direct evidence of demand and acceptance of bribe.

19. Minute scrutiny of the evidence goes to show that accused/appellant who was Asst. Director at the relevant time had demanded illegal gratification from the complainant for giving him reinstatement order and the matter was reported to Lokayukt Police and trap was organised and same was successful.

20. In view of the above, the findings of the trial Court appear to be inconsonance with the evidence of the witnesses available on record and the judgment which is well founded does not call for any interference in this appeal. The appeal being devoid of substance is liable to be and is hereby dismissed. The bail bonds of the appellant stand cancelled.

21. The appellant is reported to be on bail. The trial Court/Special Court/ Sessions Judge Bastar at Jagdalpur is directed to issue non-

bailable warrant against the appellant and after his arrest he be sent for serving out remaining part of the jail sentence.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju_