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HIGH COURT OF CHHATTISGARH, BILASPUR
Hon'ble Shri Justice Rajendra Chandra Singh Samant

CRA No. 38 of 2000

Naresh Chand

Versus

The State of Madhya Pradesh (now Chhattisgarh)

CAV JUDGMENT

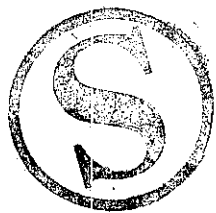
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Sd/-
Rajendra Chandra Singh Samant
Judge

17 /01/2017

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R.K. Jaiswal.



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NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 38 of 2000

Judgment Reserved on 07/12/2016

Judgment Delivered on 17/01/2017

- Naresh Chand S/o Mahadev Samantrai, aged about 45 years, Suspended Patwari, R/o Village Mahalpara, Saraipali, District Mahasamund (Chhattisgarh)

---- Appellant

Versus

- The State of Madhya Pradesh (now the State of Chhattisgarh) through Special Police Establishment, Lokayukt Office, Raipur (Chhattisgarh)

---- Respondent

For Appellant :	Shri Praveen Das, Advocate
For Respondent/State :	Shri R.K. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by Special Court (under Prevention of Corruption Act) in Special Case No. 32/1992 passed on 20/11/2000, whereby the appellant was convicted under Section 161 of Indian Penal Code and under Section 5 (1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 and sentenced to undergo RI for one year along with fine of Rs. 1000/- in each offences with default stipulation.

2. The case of prosecution is this, that in May 1988 appellant was posted as Patwari, in Patwari Halka No. 28, Amarkot,

Saraipali, District Raipur. Complainant Sadhav Patel (PW-9) is resident of village Mundha under the jurisdiction of Police Station, Saraipali. He had built a brick kiln on his land for manufacturing 50000 number of bricks. Appellant approached him and said, that he has illegally manufactured the bricks and demanded Rs. 500/- as bribe for giving him relaxation. After some bargaining appellant agreed to receive Rs. 150/- in bribe and asked the complainant to come to him on 26/05/1988 in village Amarkot.

3. Complainant Sadhav (PW-9) made a written complaint Ex.P/8 before the Special Superintendent of Police, Vigilance Office, District Raipur on 26/05/1988 . Witness B.S. Bais (PW-6) was summoned to the office of Special Police Establishment Lokayukta, Raipur, on the same day. In his presence the complaint by Sadhav Patel (PW-9) was verified and thereafter complainant produced one currency notes of Rs. 100/- and one currency note of Rs.50/-, the numbers of these notes were recorded. One Constable applied phenolphthalein powder on these notes. Pockets of complainant were searched and the phenolphthalein applied notes were kept in in the upper pocket of his shirt, with instruction not to touch the currency notes and not to shake hands with anybody before giving the bribe. He was also instructed to give signal by scratching his head after giving bribe. After this, a demonstration was done in presence of complainant and witness to show the reaction of phenolphthalein powder with solution of sodium carbonate, which was explained to them. Packets of sodium carbonate powder was prepared and sealed. A trap party



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was constituted consisting of complainant Sadhav (PW-9), witness B.S. Bais (PW-6), Inspector, Constable Ishwar, Kanhaiya Lal and Inspector B.I.R Naidu. A preliminary Panchnama Ex.P/9 was recorded.

4. At about 10.30 A.M. trap party arrived at village Amarkot where appellant was not present as he was gone to Saraipali and he was also informed, that appellant had instructed that complainant be sent to Saraipali. Trap party arrived at Saraipali Bus Stand. Complainant Sadhav (PW-9) and witness Kanhaiya along with shadow witness B.S. Bais (PW-6) went to Tahsil office at Saraipali. Complainant Sadhav (PW-9) found the appellant and had some conversation with him, during the conversation appellant asked for the bribe money, complainant took out the phenolphthalein coated currency notes from his shirt pocket and kept them in the right hand of the appellant. Appellant kept the currency notes in the pocket of his full pant, in the meanwhile complainant gave the signal, seeing which all the members of the trap party arrived on the spot. Members of the trap party introduced themselves to and the appellant. On asking about receiving the bribe money from the complainant appellant admitted about receiving the bribe money and keeping it in his left pocket of full pant.

5. Solution of sodium carbonate was prepared, in which both the hands of appellant was dipped and washed, the colour of solution changed to pink which was preserved in a bottle. Again solution was prepared, in which both the hands of witness B.S.



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Bais (PW-6) were dipped, the solution remained colourless, which was preserved and sealed. B.S. Bais (PW-6) searched the appellant and found Rs. 150/- in the left pocket of his full pant, which was in currency notes of Rs. 100/- and Rs. 50/-. The recovered notes were matched with the previously recorded number of notes in Preliminary Panchnama (Ex.P/9). The hands of the appellant was dipped the solution of sodium carbonate, the colour of solution changed to pink, which was preserved and sealed. Recovered notes were dipped in the solution of sodium carbonate, the colour changed to pink, which was preserved and sealed again. Sodium carbonate solution was prepared in which the left side pocket of full pant belonging to appellant was dipped, the colour of solution changed to pink again preserved and sealed. Further sodium carbonate solution was prepared in which hands of complainant Sadhav (PW-9) were dipped, colour changed to pink, which was preserved and sealed. A trap panchnama Ex.P/10 was recorded.

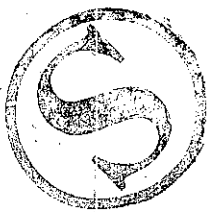
6. Recovered currency notes were seized vide Ex.P/11. Full pant of the appellant was seized vide Ex.P/12. Paper about seizure of bricks from the possession of complainant were seized vide Ex.P/13. One un-numberd FIR Ex.P/15 was recorded in Special Police Establishment, Raipur on the basis of which numbered FIR Ex.P/16 was recorded in Special Police Establishment, Bhopal on 10/06/1988. Seized articles and preserved solutions of Sodium Carbonate in different bottles were sent for FSL examination. As per the FSL report Ex.P/17, presence

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of phenolphthalein was found in the solution contained in the preserved bottles. Sanction for prosecution vide Ex.P/14 was obtained from Law Department, Madhya Pradesh. On completion of investigation, appellant was charge-sheeted.

7. Appellant was charged under Section 161 of IPC and under Section 5(1)(d) read with 5(2), of Prevention of Corruption Act, 1947. Appellant denied the charges. Prosecution examined 9 witnesses. Appellant on examination under Section 313 of CrPC, has denied all the circumstances against him in the prosecution evidence and pleaded, that he never demanded bribe for the complainant. It was submitted that complainant Sadhav (PW-9) had illegally manufactured bricks, which was seized by him and complainant was directed to deposit fine. Complainant got annoyed and has falsely implicated the appellant. He has pleaded innocence and submitted that on the date of incident complainant tendered the amount which was for payment of fine. Appellant refused to take saying that he has to give receipt of the amount from his office, even then complainant forcefully kept the money in his pocket. Appellant took out those currency notes from his pocket and was returning to complainant, who did not receive and for this reason he threw away the currency notes. Three witnesses have been examined as defence witness. On completion of trial impugned judgment has been passed in which appellant has been convicted and sentenced as mentioned in the first paragraph.

8. The grounds in appeal are these, that the judgment of trial Court is erroneous being not based on any evidence of



prosecution beyond reasonable doubt. It was not proved by the prosecution that the appellant demanded bribe from the complainant. Appellant had no motive for asking illegal gratification the statement of witnesses had been full of contradictions and omissions which has been ignored by the trial Court. Complainant had a grievance against the appellant because appellant had initiated action against the complainant regarding illegal manufacturing of bricks and he had an interest to falsely implicate the appellant. Defence witnesses have proved this ground in defence which was again ignored by the trial Court. Non-examination of other witness Kanhaiya had been fatal to the prosecution. It was the case of defence that appellant had tendered the money for deposit of fine which was wrongly rejected by the trial Court. Sanction for prosecution against the appellant was defective and not granted by proper authority which vitiates the trial. There is evidence on record that complainant was forcefully putting the money in pocket of the appellant, which appellant took out and throw on the ground indicates that he never demanded bribe, on these grounds it is prayed that impugned judgment be set-aside and appellant be acquitted

9. Counsel for the appellant has submitted that complainant Sadhav (PW-9) had illegally manufactured bricks and due to the action taken by the appellant his industry was jeopardized, because of which complainant has falsely implicated the appellant. At the time of incident the money tendered by the appellant was for payment of fine. As complainant was offering the money to

appellant in a wrong place, appellant did not receive the same and threw away the money. This fact can be observed from the evidence of prosecution as well as evidence of defence. The investigation officer in that case has not been examined, who had been a very essential witness and his non-examination had been fatal for prosecution. It is clear from evidence that the bottles containing solution were not intact and not kept in safe custody due to which the report of Forensic Science Laboratory is doubtful. The sanction for prosecution Ex. P/14 has not been granted by proper authority due to which the trial Court had no jurisdiction to entertain and try this truth.

10. It is not in dispute, that appellant had been at the relevant time posted as Patwari, a Revenue Officer i.e. a public servant. Gokul Prasad (PW-1) has stated that complainant Sadhav (PW-9) had manufactured bricks on government lands. Appellant inspected the spot and seized the manufactured bricks of which seizure memo Ex.P/1, 2 & 3 were prepared, which was given on Supurdnama. Sannu Kotwar (PW-3) who has stated similarly. Bandobast (PW-2) is also a witness to the inspection and seizure of bricks from the spot.

11. Sadhav (PW-9) has stated, that appellant at the time of inspection alleged that the bricks were manufactured illegally and demanded Rs. 500/- from him, later on he agreed to receive Rs. 150/- and asked him to pay him in Saraipali. He intended to get appellant trapped accepting bribe, for this reason he approached

the office at Raipur and got an application written by a Clerk in the same office and handed over in the office. On asking of Clerk, he produced Rs. 150/- in shape of one note of Rs. 100/- and one note of Rs. 50/-, on which phenolphthalein powder was applied and those notes were kept in his pocket with instruction not to touch them. The Clerk who applied the powder on currency notes, his hands washed and he saw red colour in solution, when he himself washed hands in solution there was no colour change. He states about the recording preliminary Panchnama Ex.P/9. In cross-examination he has admitted, that appellant said that he has manufactured bricks without any permission for which he would have to pay fine and demanded him to pay fine. He further admits that he had not sought any permission for manufacturing bricks. He admits that he got prepared one application through one Constable of the office and he is not aware of the contents of that application.

12. B.S. Bais (PW-6) stated that he was summoned by Lokayukta office, Raipur in the morning at 6.30 a.m., where complainant Sadhav (PW-9) was present. One complaint Ex.P/8 was read out and verified from the complainant, after which complainant produced Rs.150/- which were notes of Rs. 100/- and 50/- these notes were kept in the pocket of shirt of the complainant giving him instruction that after giving bribe he has to give a signal. This witness has not further given details about the contents of panchnama (PW-9). With the permission of Court, the prosecutor has asked leading questions, to which he has answered that



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person who applied powder on notes, his hands were washed and the washing was preserved as Article-A, but no question was put to him about the rest of the demonstration procedure conducted at the time of preliminary enquiry. In cross-examination his statement regarding this part has remained un-rebutted. Investigating Officer Inspector B.I.R. Naidu could not be examined, as he had expired. Ex.P/9 was recorded and signed by Inspector B.I.R. Naidu. This has been proved by Inspector D.L. Singh (Retd.) (PW-8).

13. Sadhav (PW-9) has further stated that after the preliminary inquiry, he along with trap party came to Amarkot where appellant could not be found, information was received about the availability of appellant in Saraipali and the trap party came to Saraipali. Appellant was found present in Tahsil office. He approached him and told, that he has brought the money and asked him to take it. Appellant replied that he will take it later on, then he took appellant to the corner of Tahsil office and handed him the powdered notes, the appellant received the notes and kept them in pocket of his full pant. Thereafter he gave a signal by scratching his head, then the members of the trap party approached and caught hold of accused-appellant. In his presence the money was recovered from the pocket of pant of appellant which were washed, the colour changed into red. His hands were also washed and colour changed to red. Procedure panchnama Ex.P/10 was prepared and he affixed his signature. In cross-examination he has denied, that he forcefully put the bribe money into the pocket of appellant. He has also denied that money was thrown away by the appellant

saying that he does not want any money. His statement about rest of the proceeding remained un-rebutted. In cross-examination he has denied that since appellant had got his bricks seized, he has falsely implicated him and appellant never demanded from him any bribe. He has further denied that appellant had asked for money saying that he will give the receipt of the money in Tahsil Office.

14. Shri B.S. Bais (PW-6) has stated that he and other members of the trap party approached the appellant-accused, who was present in the Tahsil Office. Complainant handed over bribe money to the appellant which was received by the appellant and kept in pocket of his pant, on the signal being given by complainant, Inspector B.I.R. Naidu and members of the trap party caught hold the appellant. Hands of the appellant were washed in the solution of sodium carbonate the colour changed to pink, the solution was preserved, then hands of this witness was also washed in solution of sodium carbonate, the colour remained unchanged which was preserved and sealed. He searched the pocket of pant of appellant and found Rs. 150/-, which was washed in the solution of sodium carbonate the colour changed into pink, this solution was preserved and sealed. The pant pocket of appellant was also washed in the solution of sodium carbonate, the colour changed into pink. The solution was also preserved and sealed. Procedure panchnama Ex.P/10 was recorded. The bribe notes were seized vide Ex.P/11 and pant were seized vide Ex.P/12. In cross-examination his statement has remained un-rebutted.

15. Inspector B.I.R. Naidu, who conducted the trap procedure could not be examined, because of his death. Pothiram (PW-4) helped in the investigation in getting the preserved solutions examined by the FSL. Upendra Barik (Retd. Patwari) (PW-5) has prepared spot map Ex.P/7. Inspector D.L. Singh (Retd.) (PW-8) proved the signatures of B.I.R. Naidu (dead) on all the memos recorded, the preliminary Panchanama Ex.P/9, Trap Panchnama Ex.P/10, Seizure Memo Ex.P/11, P/13 and P/14, un-numbered FIR Ex.P/16 and also stated that one FIR was also recorded in Special Police Establishment Bhopal.

16. Satyanand Sahu (DW-1) has stated that he was present in the office of Revenue Inspector at Saraipali and going to hotel, at the same time one person came near the appellant and offered the appellant to take the amount of fine for the bricks, on which appellant said that he should deposit the amount in Tahsil office and get receipt for it. Later on the same person came again and asked the appellant to accept the money and the person was putting the money in the pocket of appellant. Appellant removed his hands due to which, the notes fell down on the ground. At the same time, some other persons came there and caught hold the appellant, who introduced themselves as a party from Lokayukta office. In cross-examination he has stated that he does not know that on illegal manufacturing of bricks, it is the Mining Department which takes action, but he has stated on his own, that report is given by Patwari to Tahsildar. He has denied that Sadhav (PW-9) tendered the money which was accepted by appellant and kept in

pocket.

17. Neelamber (DW-2) has stated that appellant and complainant were having hot talks between them on some other occasion, when he arrived at the spot. Later on came to know that appellant was implicated. Kanhaiya (DW-3) has stated that complainant is his uncle. Complainant wanted to falsely implicate the appellant, because appellant has seized the bricks manufactured by him from the spot, for which reason he went to the office at Raipur and gave a false complaint to the officer. This witness accompanied the appellant in this event. He has stated that he was also present at the time of incident, when complainant approached the appellant and tried to give him money. Appellant refused to take the money and told the complainant to deposit the fine and get receipt. But complainant forcefully put the money in the pocket of appellant. In cross-examination he has stated that he was present at the time of the preliminary proceeding and denied that appellant accepted the bribe money from the complainant and kept in his pocket. He has denied rest of the suggestions given by the prosecution.

18. After going through the evidence of the prosecution and defence it is clear and admitted that appellant acted against the complainant Sadhav (PW-9) by conducting the procedure of seizure of bricks manufactured by him. Under Section 104 of Chhattisgarh Land Revenue Code the Patwari of a circle is assigned the duty of maintenance of correction of land record and such other duties as the State Government may prescribe. Patwari

has authorization to collect the land revenue and give receipt of it, there is no provision under the Land Revenue Code which empowers the Patwari to proceed against the illegal manufacturing of bricks by any person. Manufacturing of bricks involves mining, for which Mining Department of State is responsible to control the affairs and manufacturing of bricks is a concerned with Industries Department of the State. Under these circumstances, it is very clear that the appellant had no authority to act and proceed against the complainant as he has acted and proceeded.

19. The statement of complainant Sadhav (PW-9) and supporting witness B.S. Bais (PW-6) has clearly established that the complainant intended, approached and made a complaint in the Lokayukta office at Raipur. After preliminary proceeding Ex.P/9 a trap procedure was conducted, in which appellant received the bribe amount from complainant and kept in the pocket of his pant, which was recovered in the trap procedure.

20. The story of defence that appellant refused to take money and threw the money on ground is not believable, as it is very clear statement of B.S. Bais (PW-6) that he searched the appellant and money was recovered from the pant pocket of the appellant. Similarly evidence of defence that complainant intended to falsely implicate the appellant is also not believable. The defence witness Satyanand (DW-1), who have stated to have been present at the time of trap proceeding, but no question was put to trap witnesses about his presence at the time of trap. Kanhaiya (DW-3) was cited as prosecution witness but not examined by prosecution. His

statement for defence is total contradictory, hence unbelievable. Under these circumstances it is very clear that defence story is made up and has no force of probability. Hence, the defence evidence as appreciated and rejected by the trial Court does not suffer from any infirmity which has been rightly rejected by the trial Court.

21. Appellant has relied on judgment of this Court in **Baraturam Verma v. State of Chhattisgarh, 2011 (2) CGLRW 322**, in which it was held, that the prosecution is required to prove 'demand of illegal gratification', which is *sine qua non* for eviction mere acceptance shall not be a ground for holding conviction. Reliance has been placed in judgment of **Nohar Singh Sahu v. State of C.G., 2013 (1) CGLJ 473** in which Court has held, that demand and acceptance of bribe by the accused was not proved by the prosecution, in that case complainant turned hostile. Similarly reliance has been placed in **V. Venkata Subbarao v. State, (2006) 13 SCC 305** wherein the Apex Court has held, that merely on the basis of acceptance the demand cannot be presumed. The judgment of Apex Court in **B. Jayaraj v. State of A.P., Criminal Appeal No. 696 of 2014** decided on 28/03/2014 is also on the same point that proof of demand is essential in cases of recovery of money in trap procedure.

22. In such cases, usually the proof of demand is very limited. Firstly, the statement of complainant establishes that there is demand, secondly, acceptance of bribe by accused persons confirms the evidence of demand. It is a case in which

complainant had stated that appellant demanded from him money in the form of bribe, for the purpose of giving him relief from the action taken by him, though he had no authorization to act in such a manner. The ground and defence that money tendered by complainant was for payment of fine is totally without substance. For recovery of fine a case about breach of any provision of law has to be initiated at first and by a lawful order of a person having authority can make an order for payment of fine subject to the provisions of law concerned. If any proceeding was drawn under the procedure of law for payment of fine by the complainant, then the copy of record of such proceeding could have been produced in defence, mere oral submission is of no consequence.

23. It was submitted by appellant that there was no motive to demand bribe, this submission has also no substance, it is clearly found that appellant had no authority to proceed against the complainant even then he proceeded, the only purpose of such proceeding seems to be very clear was to demand illegal gratification. Non-examination of Investigating Officer and the remaining independent witness also does not effect the credibility of the witnesses who have been examined by the prosecution. It is the quality of the evidence which has to be looked into and not the quantity of evidence as requirement of proof.

24. This objection has been raised as well, that seal of preserved articles i.e. bottles of solution were not intact, no such objection was raised before the trial Court and no such question was put to the witnesses examined before the trial Court.

Constable Pothiram (PW-4) took charge of the bottles containing solutions for sending them to FSL Laboratory, has not been asked about the intactness of seals of bottles in his cross-examination. Hence, this ground of defence is totally without basis.

25. Lastly, the ground in appeal that no proper legal sanction was obtained for prosecution of appellant is altogether baseless, the sanction for prosecution vide Ex.P/14 is on record, which has been duly proved. In what manner the sanction is improper and affects the legality or regularity of the trial conducted against the appellant has not been made clear. Presence of sanction of prosecution itself is sufficient and valid for Court to take cognizance to conduct the trial. The sanction was drawn properly or not is not a question to be decided by the trial Court. Hence, this ground of defence also fails.

26. After considering all the aspects in this case and for the reason aforementioned, it is found that this appeal is without any merits, hence the appeal is dismissed accordingly.

Sd/-
Rajendra Chandra Singh Samant
Judge