

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 392 of 2002

Judgement reserved on 25-10-2017

Judgement delivered on 21-11-2017

- Rupendra Kumar Prabhakar s/o. Shri Babulal Prabhakar aged about 29 years, Pawari r/o. Village Chhatwan, PS Bilaigarh, Tahsil Kasdol, District Raipur (CG).

---- Appellant.

Versus

- State of Chhattisgarh through Police Station, Special Police established (Lokayukt) Bhopal, Unit Raipur (CG).

---- Respondent

For Appellant : Mr. Sourabh Dangi, 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 28-3-2002 passed by Special Judge/First Additional Sessions Judge (under Prevention of Corruption Act, 1988), Bilaspur, in Special Case No. 5 of 2000, 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 the accused/appellant was posted as Patwari Halka No.24 of village Maldi. Kangluram Yadu is the complainant in this case and he

purchased some land through registered sale deed. He wanted mutation of the land in the record of the rights. For mutation one camp was organised at village Turma where he attended for the said camp and where he gave sale deeds to the accused/appellant for mutation and at that time accused/appellant called him in his office. After 10 – 12 days he went to the accused/appellant and there accused/appellant demanded Rs.4500/- as illegal gratification other than his legal remuneration and on negotiation he demanded Rs.1800/- for the said purpose. Complainant was not willing to pay the bribe amount that is why he visited the office of Lokayukt Police situated at Raipur with one teacher namely Lakshmi Chand Verma. The officers of Lokayukt asked him to file an application and thereafter teacher Lakshmi Chand Verma prepared application as per saying of the complainant which is marked as Ex.P/8. Again the officers asked the complainant that voice of the accused/appellant be tape-recorded and for that they gave one tape-recorder and cassette and made him understood the procedure of operating the tape-recorder. First the accused/appellant asked the complainant to give the amount to Kotwar, but thereafter he said that the amount should be given to him. Upon receiving tape-recorder, police authorities arranged a trap on 20-7-1999. The trap party was consisting of Kangluram Yadu (PW/7), Satish Chandra Agrawal, Asst. Commercial Tax Officer (PW/6) and Vireendra Sharma, Police Inspector (PW/9). Accused/appellant received currency notes from the complainant and

kept the same on a table. When hand of the accused/appellant was immersed in the sodium carbonate solution, it turned pink and same process was adopted to complainant and his hand also turned pink. Currency notes seized from the table of the accused/appellant were tallied from preliminary panchnama and found to be the same. 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) As per version of Pool Singh Netam (PW/3) who was Sub Divisional Officer, Bhatapara, that the land which is not in dispute the power lies with Patwari to carry out mutation proceeding, but in cases of disputed matter, Patwari is required to inform and

seek instructions from higher officials and in the present case Patwari was not authorised for mutation, therefore, question of demand of illegal gratification does not arise.

ii) that it is stated by the defence witness Kamal Narayan Coubey (DW/1) that one encroachment proceeding case was submitted by accused/appellant against Lakshmi Chand Verma (PW/4) and he has grudge against the accused/appellant, therefore, he instigated the complainant to rope the accused/appellant in false charge.

iii) that the version of the prosecution witnesses namely Satish Chandra Agrawal (PW/6), Kangalu Ram (PW/7) is contradictory in nature regarding proceeding of trap and their version cannot be acted upon.

iv) that as per version of the witnesses, currency notes were seized on the table and as per version of Govind Ram (DW/2), the complainant intentionally planted the currency notes on the table and at that time this witness objected and version of defence witness falsified theory of receiving illegal gratification;

v) that from the evidence of the complainant, demand of illegal gratification is not established and

recovery of tainted money is not sufficient to convict the accused/appellant under the aforesaid Sections. He placed reliance on the decisions of Hon'ble the Supreme Court in the matters of **A. Subair vs. State of Kerala¹**, **Kishan Chandar vs. State of Delhi²**, **C.M. Girish Babu vs. CBI Cochin³**, **Mukhtiar Singh vs. State of Punjab⁴** **State of Kerala vs. C.P. Rao⁵** **Meena vs. State of Maharashtra⁶** **Subash Parbat Sonvane vs. State of Gujrat ⁷** **Bal Krishan Sayal vs. State of Punjab⁸**. Tape-recorded conversion which has been made the basis for holding demand of the money is not admissible as evidence under law as the same has not been proved to be free from tampering neither the voice sample is matched and there is every possibility of tampering with the same. In this regard, learned counsel for appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **R.M. Malkani vs. State of Maharashtra⁹**, **Ram Singh vs. Col. Ram Singh¹⁰**,

¹ (2009) 6 SCC 587

² 2016 (3) SCC 109

³ (2009) 3 SCC 779

⁴ (2017) 8 SCC 136

⁵ (2011) 6 SCC 450

⁶ (2000) 5 SCC 21

⁷ (2002) 5 SCC 86

⁸ AIR 1987 SC 689

⁹ (1973) 1 SCC 471

¹⁰ 1985 Supp SCC 611

**Ashish Kumar Dubey vs. State through CBI¹¹,
Subhash Chand Chauhan and another vs. CBI¹².**

(vi). Complainant repeatedly offering the money to the accused/appellant and tempting him to take money does not amount to demand. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Ramjanam Singh vs. State of Bihar¹³**.

Vii). Accused/appellant has not been provided an opportunity of explanation about the matter recorded in evidence as per Section 313 of the Cr.P.C and it would vitiate the trial. He placed reliance on the decision of Hon'ble Supreme Court in the matter of **Aaraf Ali vs. State of Assam¹⁴**

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 it is sufficiently proved that accused/appellant demanded illegal gratification and received the same.

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

¹¹ 2014 SCC Online Delhi 1437

¹² 2005 SCC Online Delhi 10

¹³ AIR 1956 SC 643

¹⁴ (2008) 16 SCC 328

iii) that after satisfying with the complaint, the police authorities arranged to lay a trap and independent offices were members of the trap party.

iv) that Phenolphthalein powder was applied in currency notes and the same was received by the accused/appellant and when his hand was immersed in the sodium carbonate solution, it turned pink which shows the receipt of bribe amount which is demanded from the complainant.

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 9 witnesses. To nullify the charge, defence side examined two 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 Patwari working in Revenue Department of the State Government, he is covered by the said definition.

9. As per version of PW/3 Phool Singh Netam, Sub Divisional Officer (Revenue), accused/appellant was posted as Patwari Halka No.23 and for that he has issued an order as per Ex.P/7. Version of this witness is unrebutted and supported by the official order and there is nothing on record to disbelieve the same. It is established that present appellant was working as Patwari in Revenue Department of the State Government and he is covered by the definition of public servant.
10. 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. PW/8 Ran Bhahadur who was Assistant Grade III, in Legal Affairs Department of Government of Chhattisgarh deposed that sanction for prosecution was granted by the Additional Secretary of the Department and the same is Ex.P/23. The order is in three 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 Ran Bhahadur (PW/8) 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 Kangalu Ram and received Rs.1800/- as illegal gratification.
12. PW/7 Kangalu Ram who is the complainant had deposed that he purchased some land at village Turma and for that he wanted mutation of land in record of right and one camp was organised at village Turma for mutation proceeding and he attended the same where the accused/appellant asked the complainant that mutation will be done at his office. When he visited the office of the accused/appellant, he demanded illegal gratification of Rs.4,500/- for said purpose and when accused/appellant has shown his inability to pay the amount, accused/appellant demanded Rs.1800/- at last. Complainant was not willing to pay the amount and he approached the office of Lokayukt, Raipur with one teacher namely Lakshmi Chand Verma (PW/4). When both reached to the office of Lokayukt, the officer asked to file an application. As per version of this witness and Lakshmi Chand Verma (PW/4), Lakshmi Chand Verma (PW/4), prepared an application as directed by the complainant as per Ex.P/9. Kangalu Ram (PW/4) further deposed that one tape recorder was given to him with cassette by the police authorities for taping the

conversation between the complainant and the accused/appellant and they reached to the accused/appellant and made conversion with him. The conversation was taped by him and he submitted the same to Police Authorities. Taped conversation was heard by the authorities and then they arranged a trap consisting of Kangalu Ram (PW/7) Satish Chandra Agrawal (PW/6) and Virendra Sharma (PW/9). As per version of Kangaluram (PW/7), he gave currency notes 18 in number of 100 denomination to the accused/appellant and after taking the notes he kept the same on the table (para 10). He further deposed that upon his signal, members of trap party entered there and caught hold the accused/appellant and thereafter seized currency notes from the table of the accused/appellant and when hands of the accused/appellant immersed with sodium carbonate solution, it turned pink and the same process was adopted to the complainant and same also turned pink. Version of complainant is supported by the version of Satish Chand Verma (PW/6) that when accused/appellant was asked as to where currency notes are kept, he indicated the table and thereafter currency notes were seized and when hands of the accused/appellant were subject to sodium carbonate solution, the same turned pink. He further deposed that currency notes were 18 in number of 100 denomination and tallied with papers previously prepared and found that currency notes were the same for which earlier panchnama was prepared before the trap. Version of both the witnesses is again supported by PW/9 Virendra Sharma, Inspector

and version of all the three witnesses is unshaken after incisive and searching cross-examination.

13. There is no force in the submission of learned counsel for the appeal that any report was made by the accused/appellant against PW/4 Lakshmi Chand Verma and therefore, he has been falsely roped with the charge.. PW/4 Lakshmi Chand Verma is not complainant in this case. The case is based on direct evidence of the complainant Kangalu Ram (PW/7) and member of trap party. Accused/appellant has not proved any report made by him. Again there is no force in the contention of learned counsel for the appellant that voice of the complainant is not tested and therefore, tape-recorder and other evidence is not reliable. In the present case, recording of conversation is done before arrangement of trap by the police authority only to satisfy themselves whether the complainant is firm with his complaint and tape-recording was done before trap only to ascertain that trap should be organised or not. The Police authority after satisfying with the complaint and conversation in tape recorder decided to proceed with the case. The case of the prosecution is not based on conversation in tape-recorder and case is based on direct evidence of their witnesses regarding demand and acceptance of bribe amount.
14. There is no force in the argument of learned counsel for the appellant that accused/appellant has not been provided opportunity to explain the facts recorded against him as per Section 313 of the Cr.P.C. The trial Court asked 48 questions from the accused/appellant including

questions regarding demand of bribe and acceptance of the same, to which he simply denied and the prosecution established the case beyond suspicion. There is no force in the contention of learned counsel for the defence that currency notes were kept on the table without knowledge of the accused/appellant. As per version of Govind Ram (DW/2), hands of the accused./appellant turned pink immersed with sodium carbonate solution, the same proves that the currency notes were taken by the accused/appellant consciously and wilfully.

15. 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.
16. Minute scrutiny of the evidence goes to show that accused/appellant who was Patwari at the relevant time had demanded illegal gratification from the complainant for mutation in his name of land purchased by him and the matter was reported to the office of Lokayukt and trap was organised and same was successful.
17. 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.

18. The appellant is reported to be on bail. The trial Court/Special Court/First Additional Sessions Judge Raipur 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_

