

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1172 of 2003

Judgement reserved on 24-10-2017

Judgement delivered on 21-11-2017

- Dwarika Prasad Anant s/o. Shri Kanhaiya Lal Anant, aged 42 years, Patwari (H.No.25) village Darbar Mokhni, Tahsil Patan, District Durg (CG r/o. Anand Chowk, Patan, District Durg (CG)

---- Appellant.

Versus

- State of Chhattisgarh through Inspector, Special Police Establishment, Lokayukt Office, Raipur Division, Raipur.(CG).

---- Respondent

For Appellant : Mr. Satish Chand Verma and
Mr. M.L. Sen, Advocates.

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 28-10-2003 passed by Special Judge/First Additional Sessions Judge (under Prevention of Corruption Act, 1988), Durg, in Special Case No. 2 of 2001, 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.500/- for each offence with default stipulations.
2. Facts of the face, in brief, are that on 7-6-2000 i.e., at the relevant time the accused/appellant was posted as Patwari Halka No.25 of village Darbar Mokhni, Tahsil Patan, District Durg. Gaukaran Prasad

Verma (PW/3) is the complainant in this case and is a resident of village Karra. When his father has died in whose name some agricultural land was recorded in the record of right and as sister of the complainant narrated that only name of the complainant be recorded against the name of their father, the complainant met the accused/appellant, who was Patwari at the relevant time for mutation. Accused/appellant demanded Rs.3000/- as illegal gratification and at last demanded Rs.1750/- for that purpose. The complainant was not willing to give the bribe amount to the accused appellant and he reported the matter to Lok Ayukt Police as per Ex.P/17. The matter was handed over to Police inspector R.K. Rao (PW/10) for verification of the complaint. The Inspector gave one tape-recorder with cassette to the complainant for recording conversation between him and the accused/appellant. The complainant reached to the accused/appellant, made conversation and recorded the same and submitted the tape-recorder and cassette to Lok Ayukt Office. The officers operated the cassette and and translation of the conversation was prepared as per Ex,P/2. Panch witnesses PW/1 G.K. Sharma and S.J. Limje (PW/2) were called for hearing the cassette. The complainant submitted 17 currency notes of 100 denomination and one currency note of 50 denomination in which one constable Jamal Das (PW/5) applied Phenolphthalein powder. Numbers of currency notes were recorded in preliminary panchnama and currency notes were kept in the upper pocket of the shirt of the complainant and

directed that after giving the currency notes he will signal to the trap party. The trap party was consisting of G.K. Sharma (PW/1), S.J. Limje (PW/2), complainant, Gokaran Prasad Verma (PW/3) and PW/4 Kanhailyalal and Virendra Sharma, Police Inspector (PW/7). Complainant reached to the house of the accused/appellant where the accused/appellant demanded bribe amount and directed the complainant to keep the same in drawer of his table. The currency notes were kept in the drawer of the table and thereafter the appellant was caught by the trap party. Currency notes were seized and tallied with preliminary panchnama and the same is tallied and when the drawer of the table was washed by sodium carbonate solution, it turned pink. 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 voice sample of the accused/appellant and the complainant was not taken and it cannot be said that what is recorded in tape-recorder is voice of the accused/appellant. The transcription in tape-recorder is not audible and the same cannot be used against the accused/appellant. Constable Charan Singh (PW/6) has stated that hands of the accused/appellant did not turn pink while immersing in sodium carbonate solution and the same is version of R.K. Rao (PW/10), but complainant Gaukaran Prasad Verma (PW/3) deposed that hands of the accused/appellant turned pink and looking to the contradictory statement they are unreliable.

ii) that mutation can be done by Patwari only after seeing the order passed by the Tahsildar or Naib Tahsildar and no status report was called from the office of Tahsildar, therefore, it cannot be said that accused/appellant was authorised for mutation and there was no motive for demanding money from the complainant.

iii) that as the amount is not seized from the hands of the accused/appellant, it cannot be said that he

accepted the money and no presumption can be raised against him.

He placed reliance on the decisions of this Court in the matters of **Krishna Kumar Shukla vs. State of Chhattisgarh (CRA No. 490 of 2002) decided on 30-3-2010** and **Arun Kumar Pandey vs State of Madhya Pradesh (Now CG) (CRA No. 159 of 1997) decided on 16-6-2010.**

5. As against the aforesaid submissions, State counsel submits 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 and the judgment of the Special Court is well founded which is not liable to be interfered invoking jurisdiction of the appeal.
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 10 witnesses. To nullify the charge, defence side examined one witness.
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. 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. PW/9 Vishwanath Swarnakar, who was working as Asst. Grade-III of Law Department, Government of Chhattisgarh deposed that all the materials of the facts regarding present case were submitted before the Additional Secretary, Law Department who applied his mind and after due consideration granted sanction for prosecution. The order Ex.P/.20 is in four pages in which it is clearly mentioned that all the documents, statements of the witnesses and report were duly perused and facts were considered and thereafter sanction was granted. 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 Vishwanath

Swarnakar (PW/9) 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 Gokaram Prasad Verma (PW/3) and received Rs.1750/- as illegal gratification.
12. PW/3 Gokaran Prasad Verma who is the complainant had deposed that nine acres of agricultural land was recorded in the name of his father and after death of his father , the said land was recorded in his name and his sister's' name. His sisters consented for recording the land solely on the name of this witness. When he met accused/appellant with consent letter of his sister. accused/appellant demanded illegal gratification of Rs.3000/- for said purpose and when accused/appellant has shown his inability to pay the amount, accused/appellant demanded Rs.1750/- at last. Complainant was not willing to pay the amount and he approached the office of Lokayukt, Raipur and submitted an application as per Ex.P/17.. As per version of this witness 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 conversation 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 G.K. Sharma (PW/1), S.J. Limje (PW/2),

complainant, Gaukaran Prasad Verma (PW/3) and PW/4 Kanhaiyalal and Virendra Sharma, Police Inspector (PW/7). As per version of Gaukaran Prasad Verma (PW/3), he gave currency notes 17 in number of 100 denomination and one currency note of 50 denomination to the accused/appellant and after taking the notes he kept the same in the drawer of his table. 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 Kanhaiyalal (PW/4), who had accompanied the complainant and in his presence accused appellant asked the complainant to keep the money in drawer of his table and thereafter money was kept in the drawer of the table. From the evidence of both the witnesses, it is established that accused/appellant demanded bribe money wilfully and consciously. Version of both the witnesses is supported by the members of the trap party G.K. Sharma (PW/1), S.J. Limje (PW/2), Kanhaiyalal (PW/4), Virendra Sharma (PW/7) and R.K. Rao (PW/10) All the witnesses have categorically stated that the amount was seized from the drawer of the table in the house of the accused/appellant and currency notes seized from the drawer of the

table were tallied with the numbers of currency notes mentioned in panchnama before trap.

13. In the present case, since the accused/appellant has not touched the currency notes, his hands did not turn pink while immersing his hands in sodium carbonate solution but from direct evidence of PW/3 Gaukaran Prasad Verma and PW/4 Kanhaiyalal, it is established that the accused demanded bribe amount and received the same and directed the complainant to keep the same in drawer of the table. From their evidence it is sufficiently proved that accused/appellant demanded bribe amount and received the amount from the complainant. Version of all the prosecution witnesses is unshaken during searching cross examination and nothing could be elicited in favour of the appellant.
14. There is no force in the submission of learned counsel for the appellant that tape-recording is not done as per norms and the same is not audible, therefore, the case is not made out. In view of this Court, case of the prosecution is based on direct evidence and there is direct evidence of demand and acceptance of bribe and number of witnesses cited by the prosecution have deposed the factum of demand and acceptance of bribe. It is not necessary that any public servant must be competent to pass any order for which the amount is taken. 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.

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, Durg 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_

