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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.938 of 2001

Judgment Reserved on : 11.8.2017

Judgment Delivered on : 6.11.2017

Devendra Kumar Sahu, son of Late Bhagat Ram Sahu, Rajaswa Nirikshak, (As mentioned in the Impugned Judgment) Investigator, Special Area Development Authority, Bhilai, District Durg

---- Appellant

versus

State of Chhattisgarh through Police of Special Police Establishment (Lokayukta), Raipur (Chhattisgarh)

--- Respondent

For Appellant	:	Mr. Rishi Rahul Soni and Mr. Vivek Verma, Advocates
For Respondent/State	:	Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 26.9.2001 passed in Special Case No.3 of 1997 by the 1st Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Durg convicting and sentencing the accused/Appellant as under:

Conviction	Sentence
Under Section 7 of the Act of 1988	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default additional Rigorous Imprisonment for 3 months
Under Section 13(1)(d)(i) read with Section 13(2) of the Act of 1988	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default additional Rigorous Imprisonment for 3 months The jail sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that on the relevant date and time, accused/Appellant Devendra Kumar Sahu was working as a Revenue Inspector in Special Area Development Authority (SADA), Bhilai. Complainant Rajendra Kumar alias Raju Dubey (PW7) had owned a plot in Supela, Bhilai. One Patiram had encroached the way to his plot due to which movement of Raju Dubey (PW7) on the said way towards his plot was closed. Raju Dubey submitted an application to the Chief Executive Officer, SADA, Bhilai, District Durg on 30.8.1996 to remove the encroachment. On this, the Revenue Superintendent directed the accused/Appellant to remove the encroachment. It is alleged that for removal of that encroachment, the accused/Appellant demanded bribe of Rs.1,000/- from the Complainant. Since the Complainant did not want to fulfill the demand of bribe made by the accused/Appellant, he submitted a written complaint (Ex.P15) to the Superintendent of Police, Lokayukta Office, Raipur on 8.5.1997. The Superintendent of Police, Lokayukta Office, Raipur forwarded the said complaint to Deputy Superintendent of Police N.S. Kanwar (PW10) for further action. On 8.5.1997 itself, the Complainant was given a tape recorder and a blank cassette for recording the conversation to be made between him and the accused/Appellant. A panchnama thereof (Ex.P1) was prepared. Out of the bribe money of Rs.1,000/-, the Complainant gave currency notes of Rs.500/- in the denomination of Rs.100/- each to the accused/Appellant in his SADA office on 9.5.1997 and he also recorded the conversation made between him and the Appellant in the tape recorder provided to him therefor and thereafter handed over the same to N.S. Kanwar (PW10). During the conversation, the Appellant asked the Complainant to give him the remaining bribe money of Rs.500/- on

14.5.1997. Transcription of the conversation made between the Complainant and the Appellant on 9.5.1997 was prepared vide Ex.P3. On 14.5.1997, Independent (Panch) Witnesses J.L. (Jailal) Pankaj (PW4) and T.D. Patel (PW9) were called, they were introduced with the Complainant, the written complaint (Ex.P15) was shown to them and the transcription of the conversation recorded between the Complainant and the Appellant on 9.5.1997 was also read over to them. The Complainant had brought 5 currency notes each in the denomination of Rs.100/-. Numbers of those 5 currency notes were recorded in the preliminary panchnama (Ex.P6). Constable Narayan Prasad (PW2) smeared those 5 currency notes with phenolphthalein powder. On 14.5.1997 itself, the currency notes smeared with phenolphthalein powder were given back to the Complainant and he was asked to keep the same in the pocket of his shirt. The Complainant was again given a tape recorder and a blank cassette for recording of the conversation to be made between him and the Appellant during giving remaining amount of bribe money of Rs.500/-. The Complainant was also tutored about a hint which was to be given by him to the trap party after giving the bribe money to the Appellant. Thereafter, on 14.5.1997 itself, the trap party went to the office of the Appellant. The Complainant was sent to the Appellant to give the bribe money. At that time, the Appellant was not found in the office. At about 1:00 p.m., the Appellant came there on his motorcycle. After parking of the motorcycle in the gallery of the office, a conversation took place between the Appellant and the Complainant regarding the remaining amount of bribe money. The Complainant recorded the conversation made between him and the Appellant. The Appellant demanded the remaining amount of bribe money. The Complainant gave him the 5 currency notes of Rs.100/- each, i.e., total sum of Rs.500/-, already smeared with phenolphthalein powder. The Appellant took the bribe money in his hands. Thereafter, the Complainant gave the hint to the trap party. N.S. Kanwar (PW10) immediately reached there and caught both wrists of the Appellant from behind. At that time, the 5 currency notes each in the denomination of Rs.100/- smeared with phenolphthalein powder were in the hands of the Appellant. Post trap proceedings were conducted. Hands of the Appellant were washed with sodium carbonate solution which turned into pink colour after the wash. The bribe money was recovered from the Appellant. The numbers of the 5 currency notes each in the denomination of Rs.100/-, i.e., the bribe money recovered from the Appellant were compared with the numbers already noted in the preliminary panchnama (Ex.P6). On comparison, the numbers matched. The recovered currency notes were also dipped into a solution of sodium carbonate which turned into pink colour after the dip. Those currency notes were seized vide Ex.P8. The tape recorder and the cassette in which the conversation of the Complainant and the Appellant was recorded on 14.5.1997 was also seized vide Ex.P13. Transcription of the said conversation was done vide Ex.P12. A panchnama of the trap proceedings conducted on the spot was prepared vide Ex.P10. Spot-map (Ex.P14) was also prepared. Relevant documents were seized vide Ex.P16. Departmental Order dated 1.7.1996 (Ex.P17) relating to the Appellant issued by the SADA, Bhilai was also seized. First Information Report (Ex.P18) was registered. The sodium carbonate solutions used during the trap proceedings were seized and sent for chemical examination vide Ex.P19. FSL

Report thereof is Ex.P20. Sanction for prosecution of the Appellant was obtained from the competent authority vide Ex.P15A. A charge-sheet was filed against the Appellant under Sections 7/13(1) and 13(2) of the Act of 1988. Charges were framed against him under Sections 7 and 13(1)(d)(i) read with Section 13(2) of the Act of 1988.

3. In order to prove the guilt of the accused/Appellant, the prosecution examined as many as 10 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the circumstances appearing against him. He claimed to be innocent and pleaded false implication in the case.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant argued that the prosecution has not been able to prove the demand and acceptance of illegal gratification. The evidence of Raju Dubey (PW7) is not reliable. It was further argued that the Appellant was neither a public servant nor he was discharging the duties of removal of encroachments. At the relevant point of time, he was serving as an Investigator on daily wages. He was not appointed on the post of Revenue Inspector. Therefore, it should have been held that the Appellant has not discharged the duties of ejection of the person from encroachment and, therefore, the Trial Court should have held that it is not a case of illegal gratification in discharge of duties of his office. It was further argued that the sanction order (Ex.P15A) does not contain the date on which the same was written and signed by S.B. Singh (PW8).

6. On the other hand, Learned Counsel appearing for the State opposed the arguments raised on behalf of the Appellant and supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the material available on record including the impugned judgment minutely.

8. As regards validity of the sanction (Ex.P15A), S.B. Singh (PW8), Chief Executive Officer, SADA, Bhilai, who accorded the sanction (Ex.P15A), has specifically deposed that after a careful examination of the documents produced and evidence led by the Lokayukta, Raipur and after considering the case for grant of sanction, he accorded the sanction (Ex.P15A). The sanction order clearly reveals that after a careful examination of the material available before Chief Executive Officer S.B. Singh, he accorded the sanction. The sanction order also consists of brief facts of the offence which shows that after considering the material placed before him, the sanctioning authority has accorded the sanction. Therefore, mere non-mention of the date of sanction on the sanction order (Ex.P15A) does not show that there was no application of mind in its grant and issuance.

9. It was the argument of Learned Counsel appearing for the Appellant that the Appellant was not posted as a Revenue Inspector and he was a daily wager only and was discharging the duties of an Investigator and since he was not working as a

Revenue Inspector, he had no authority to remove the encroachment in question. In this regard, the work distribution order (Ex.P17) reveals that the Appellant was authorised for work of Revenue Inspector and he was also authorised to remove the encroachment under his area which includes Supela Market, Supela, Kohka Road, Supela Purani Basti. Murtilal Sharma (PW5), Revenue Officer of SADA, Bhilai has categorically stated that at the relevant point of time, the Appellant was Incharge Revenue Inspector and he was directed to remove the encroachment of said Patiram. Therefore, the argument advanced by Learned Counsel for the Appellant in this regard is not sustainable.

10. In order to prove the aforesaid ingredients of the offence, the prosecution has examined Complainant Raju Dubey (PW7), who has categorically deposed that the Appellant had demanded the bribe money for removing the encroachment of said Patiram. He made complaint to the authority. Trap was conducted. He went to the office of the Appellant on 9.5.1997, where also the Appellant demanded money. At that time, he gave Rs.500/- to the Appellant. Conversation took between both of them was recorded. The Appellant again demanded money on which he gave 5 tainted currency notes each of Rs.100/- to the Appellant on 14.5.1997 which the Appellant took in his hand. At that time also, he recorded the oral conversation took between both of them on tape recorder. Ex.P3 and Ex.P12 are the transcriptions of the recordings done on the tape recorder which corroborated the above statement of Complainant Raju Dubey (PW7). He further deposed that he gave a hint already tutored to him. Then the Appellant was trapped by the trap party. As per his evidence, his hands were washed with the solution of sodium carbonate and after the wash, the solution had turned into pink colour. Thereafter, the hands of the Appellant were also washed in other solution of sodium carbonate and after the wash the said solution had also turned into pink colour. The 5 currency notes each in the denomination of Rs.100/- recovered from the Appellant were also washed in other solution of sodium carbonate which after the wash had turned into pink colour.

11. Deputy Superintendent of Police N.S. Kanwar (PW10) conducted the trap proceedings. He has deposed about the trap proceedings in detail. He has also deposed that at about 1:00 p.m. the Appellant took the bribe money of Rs.500/- from the Complainant near second pole of the porch. After taking the bribe money, he caught both the hands of the Appellant from behind. At that time, the currency notes smeared with phenolphthalein powder were in his hands. He also deposed that hands of the Appellant were washed with the solution of sodium carbonate which after the wash had turned into pink colour. Numbers of the currency notes were tallied and the currency notes were washed in other solution of sodium carbonate which after the wash had turned into pink colour.

12. Dauram (PW3), Jailal Pankaj (PW4) and T.D. Patel (PW9) have also substantially corroborated the trap proceedings, wash of hands of the Appellant, change of colour of the solutions to pink and recovery of currency notes from the hands of the Appellant.

13. The evidence of the aforesaid witnesses clearly reveals that at the time of trap, Complainant Raju Dubey (PW7) gave Rs.500/- to the Appellant. The Appellant took 5 currency notes of Rs.100/- each from the Complainant in his hands and kept the same in his hands which were recovered by the trap party. The evidenced led by the prosecution is sufficient to prove that hands of the Appellant were washed with the solution of sodium carbonate which after the wash had turned into pink colour. The prosecution has also produced chemical examination report (Ex.P20) which shows presence of phenolphthalein in the solutions of sodium carbonate sent for chemical examination in which the hands of the Appellant and the Complainant were washed and the recovered currency notes were dipped. Ex.P20 further supports and corroborates the case of the prosecution.

14. The evidence adduced on behalf of the prosecution clearly reveals that on the relevant date and time, the Appellant was holding the post of Investigator, but he was also the Incharge Revenue Inspector and the area from which encroachment of Patiram was to be removed was falling in his jurisdiction. It also reveals from the statement of Murtilal Sharma (PW5) that the Appellant was directed by him to remove the said encroachment. From the evidence on record, it is also clear that the Appellant had demanded the illegal gratification of Rs.1,000/- from the Complainant for removal of the encroachment in question. The evidence adduced on behalf of the prosecution is sufficient for drawing the inference that the Appellant demanded and accepted the illegal gratification of Rs.1,000/- from the Complainant other than the legal remuneration by abusing the powers of his post and office, which is punishable under Sections 7 and 13(1)(d)(i) read with Section 13(2) of the Act of 1988.

15. From appreciation of the evidence available on record, I find that the Trial Court has rightly convicted and sentenced the Appellant. The conviction is based on credible, clinching and legal evidence. The sentence awarded to the Appellant is also appropriate and does not warrant any interference.

16. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.

17. It is reported that the Appellant is on bail. He shall immediately surrender before the Trial Court or shall be taken into custody forthwith for undergoing remaining part of the sentence.

18. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(**Arvind Singh Chandel**)
JUDGE

Gopal