

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1114 of 2002

Megh Nath Singhor S/o Shri Gaj Lal Singhor, aged 42 years, Patwari
P-S No,4, Parsada, Village- Motipur, Tah, Patan, District-Durg (C.G).

-----Appellant

Versus

State Of Chhattisgarh, Through : Special Police Establishment
Lokayukt, Officer, Raipur (C.G.)

---- Respondent

For the Appellant : Shri Ratnesh Kumar Agrawal, Advocate.

For the Respondent/ State : Shri Ashish Kumar Shukla, GA.

Judgment reserved on 30.08.2017

Judgment delivered on 21 .11.2017

Hon'ble Shri Justice Rajendra Chandra Singh Samant

1. Heard.
2. This appeal has been preferred against the judgment of conviction and order of sentence dated 10.10.2002, passed by the Court of Special Judge-cum- First Additional Sessions Judge, Durg, in Special Criminal Case No.01/99 convicting the appellant

under Section 7, 13 (1) (d) & 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and sentencing him to undergo RI for 6 months and to pay fine of Rs.5,000/- & R.I for six months and to pay a fine of Rs. 10,000/-, with usual default stipulations, respectively.

3. Brief facts of this case are these, that at the relevant point of time the appellant was posted as Patwari of Patwari Halka No.4, Village Parsada. Complainant Padum Lal Sahu (PW-7) approached him for the purpose of getting prepared "Rin pustika" of his father-in-law Panchram. The appellant told him that if he wanted to get the "Rin pustika" at the earliest, he would have to pay Rs.10,000/- to him (accused/appellant). A written complaint dated 11.06.1998 (Ex.P1/13 A) was made to the Superintendent of Police, Lok Ayukt, Raipur, under whose authorization, PW-9 made arrangements to trap the appellant. The complainant produced the currency notes, numbers of which were recorded in the preliminary panchnama (Ex.P-5) and after applying phenolphthalein powder on the said currency notes, it was given to the complainant with instruction not to touch the same and he was further instructed to take out the same only when the demand was made by accused. Hulas Ram (PW-1) & S.M. Singh (not examined) were summoned, they were informed about the contents of the complaint made by the complainant and demonstration of trap proceeding was given in presence of all of them.

4. Complainant Padumlal (PW-7) approached the appellant/accused on 12.06.1998 with phenolphthalein applied currency notes in his pocket, he met with the appellant accused in the bus stand. The accused/appellant then asked about the money. He took out the tainted amount from his pocket and tendered it to the accused. The accused accepted the same and kept it in the pocket of his shirt. Thereafter, the trap party trapped the appellant/accused and proceeding of washing phenolphthalein containing articles, hands of complainant, appellant and the currency notes, in solution of sodium carbonate was done and in each washing the colour of solution turned pink, which was preserved and sealed in the bottles. Currency notes recovered were verified from the numbers noted in the preliminary panchnama. Numbered FIR (Ex.P-20) was recorded in Police Station Bhopal. Preserved and seized articles were sent for FSL examination from where a report was received in which the test for presence of phenolphthalein was found positive.
5. After completion of investigation, appellant was charge-sheeted for offences under Section 13 (1) (d) read with Section 13(2) of Act of 1988 and on completion of trial, appellant has been convicted and sentenced in the manner as described above.
6. It is submitted by learned counsel for the appellant that the appellant has been erroneously convicted by the trial Court. Prosecution has miserably failed to prove the demand, acceptance, motive and ***mens rea*** in this case. According to

panch witnesses Hulas Ram (PW-1), the complainant thrust the currency notes into the pockets of appellant/accused and this fact itself is sufficient to establish that the appellant neither demanded any bribe from the complainant nor he received it, on the contrary, it was the complainant who without there being any demand by the appellant put the tainted money in his pocket with intent to implicate him falsely. It is also submitted that there is a variation in the statement of witnesses about the amount of bribe money. PW-7 Padumlal, father of complainant, had a civil dispute with his brother regarding the partition of their family property and during the pendency of the litigation between them, as the appellant refused to prepare the "Rin pustika" because of which a false complaint has been made against him by Padumlal (PW-7).

7. He further submits that the trial Court failed to appreciate the version of defence witnesses and passed the order of conviction against the appellant which is against the principles of law. Hence for these reasons as appellant was not competent to prepare the "Rin pustika" there was no occasion to demand bribe from the complainant. This apart, the evidence on record shows that the appellant has not accepted the bribe money from the complainant. For this purpose, he placed reliance on the judgments in **Krishna Ram Versus State of Rajasthan**, reported in (2009) 11 SCC 708, **Anvar P. V versus P.K. Basheer and Ors** reported in (2014) 10 SCC 473, **Sanjaysingh Ramrao Chavan Versus Dattatray Gulabrao Phalke and Ors** reported in (2015) 3

SCC 123, Meena (Smt) W/o Balwant Hemke Versus State of Maharastra reported in (2000) 5 SCC 21, B. Jayaraj Versus State of Andra Pradesh reported in (2014) 13 SCC 55, Mannah Shaikh and Ors. Versus State of West Bengal and Anr. reported in (2014) 13 SCC 59, T. Subramanian Versus State of T. N. reported in (2006) 1 SCC 401, State of Maharashtra Versus Rashid B. Mulani reported in (2006) 1 SCC 407, State of Maharashtra Versus Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200, Dariyav Singh Vashishtha Versus State of C.G reported in 2011 (2) C.G.L.J 299, State of M.P Versus Anil Kumar Verma reported in 2007 (2) M.P.H.T. 458, Sitaram and Ors. Versus State of M.P. reported in 2007 (2) MPHT 469 (DB), Banarsi Dass Versus State of Haryana reported in AIR 2010 SC 1589, M. Jagdish Vyas and ors. Versus Union of India reported in AIR 2010 SC 1596, Asha Verma and Ors. Versus State of MP reported in 2011 (1) CGLRW 316, Brahmaddatt Pathak Versus State of MP reported in 2012 (2) CGLRW 252, Smt Meera Upadhyay Versus State of Chhattisgarh and Ors, reported in 2012 (3) CGLRW 141, Gautam Chatterji and Anr. Versus State of MP reported in 2012 (3) CGLRW.153

8. Learned counsel for the respondent/State submits that the grounds raised in this appeal and the submission made on behalf of the appellant have no force. The demand and acceptance has been proved from the evidence of Padumlal (PW-7) who had

categorically stated, that he handed over the bribe amount to the appellant in his hand and in turn, he kept it in his shirt. Appellant had been working in the capacity of the patwari and he was competent to prepare the "Rin pustika" in favour of the father in law of the appellant. Hence for these reasons, the conviction of the appellant recorded by the trial Court is based on the cogent and reliable evidence which needs no interference by this Court in exercise of its appellate jurisdiction. Reliance is placed in the judgment of Supreme Court in **Krishna Ram Versus State of Rajasthan** reported in **(2009) 11 SCC 708** wherein in Paragraph No. 21 the court has observed as under:-

“ Once it is proved that the money was recovered from the possession of the appellant, the burden of presumption as contemplated under Section 20 of the PC Act, 1988 shifts upon the appellant, which he could not rebut through cross-examination of the prosecution witnesses or by adducing reliable and convincing evidence to prove that DW -1 advanced Rs. 500 as loan to the appellant through the complainant. DW-1 Ram Chandra has not given any reason why he chose the complainant alone to deliver a sum of Rs. 500 to the appellant on the day when he was apprehended by the Anti-Corruption Team. In these circumstances, the High Court has rightly concluded that the explanation

given by the appellant was not probable and reasonable.”

9. The questions for determination in this appeal are as under;-

- whether the demand and acceptance by the accused/appellant has been proved by the prosecution beyond reasonable doubt?
- whether the accused/appellant has been falsely implicated in this case by complainant Padumlal (PW-7)?

10. Perused the evidence and record of the trial Court to determine the questions mentioned above.

11. It is not under challenge in this appeal that complainant Padumlal (PW-7) filed written complaint before the Superintendent of Police, Lok Ayukt, Raipur, on the basis of which a trap was arranged, demonstration of trap was given to the complainant and witnesses and thereafter the trap party proceeded to the spot where the complainant passed over the amount of bribe to the appellant, which has been recovered from his possession. As submitted by the appellant that bribe amount was placed by the complainant into the pocket of the appellant for which the specific statement of the witnesses needs examination.

12. Padumlal (PW-7) has stated that he alongwith the trap party reached village- Motipur, where he met with the appellant and while they were having tea in a hotel, he handed over the

currency notes of bribe to the appellant who received the same and kept it in the pocket of shirt. Thereafter, he came out of the hotel and gave the pre-decided signal and immediately thereafter the trap party arrived at the spot and trap proceeding was conducted. In the cross-examination he has denied this suggestion that he thrust the currency notes into the pocket of the appellant. Further he has made statement on his own that the appellant asked him whether he has brought the money, then he handed over the money to the appellant, which he kept in his pocket. There is no other statement in his examination to rebut or falsify this statement given by him.

13. Hulas Ram (PW-1) is one of the trap eye-witness. He has stated that at the time of incident he saw the appellant coming and then he saw complainant putting the money into the pocket of the appellant and thereafter, he gave signal. In cross-examination he admitted that the money was given to the appellant but then he has denied his own statement stating that the money was put into the pocket to the appellant and clarified the earlier statement given in his cross-examination that complainant gave money into the hands of the appellant, which was received by the appellant and kept in the pocket of his shirt. This change of version made by this witness makes him unbelievable, hence, his statement at this point cannot be relied upon.

14. Other witness (PW-2) Charan Singh is not the direct witness of the incident of acceptance of bribe money, no other witnesses

was examined by the prosecution who had witnessed giving of currency notes by the complainant to the appellant and its acceptance by appellant.

15.N.S. Kavar (PW-5), Dy. Superintendent of Police, has conducted the trap proceeding, after receiving the signal from the complainant. He has stated that the fingers of both hands of the appellant were washed in the solution of sodium carbonate and the colour of solution turned into pink, which was preserved in a fresh glass bottle and sealed. On being informed by the appellant himself, that he has kept the bribe notes in the upper left pocket of his shirt. The same currency notes were recovered and dipped in the fresh solution of sodium carbonate and the colour of solution change into pink, which again preserved in fresh glass bottle and sealed. As per the report of FSL Exhibit (P-19-B), the phenolphthalein test of these solutions was positive. Inspector R. L. Armo (PW-9) has given statement before the Court about the trap proceeding, about preserving the solution of washing, about sending of the preserved solutions in bottles for examination by FSL Lab and about receiving the report Exhibit (P-19 (B)) from the FSAL Lab.

16.The report of FSL establishes presence of Phenolphthalein powder on the currency notes and the hands of the appellant. When the appellant was apprehended by trap party his hands were washed first in the solution of sodium carbonate and thereafter, the currency notes were recovered from his shirt. In

this situation, the burden was on the appellant/ accused to explain as to how his hands got tainted with the phenolphthalein powder which were applied to the currency notes particularly when the defence version is that the appellant had not touched the currency notes and the said currency notes were directly thrust into his pocket by the complainant. This burden has not been discharged by the appellant.

17. Keju Prasad Choubey (DW-1) has not stated anything about the demand and acceptance, whereas Mannu Lal Kumhare (DW-2) has stated that in his presence complainant met with appellant and asked him to prepare "Rin Pustika" in favour of his father-in-law, which the appellant refused, hearing that complainant by force put the money into the pocket of the appellant, thereafter, he came to know that the appellant was trapped. Statement of this witness does not explain as to how the hands of the appellant got tainted with Phenolphthalein powder. Hence, after carefully scrutiny and analysis of the evidence of the prosecution and defense, this Court is of the view that statement of Padumlal (PW- 7) is corroborated with the circumstantial evidence of the FSL report Exhibit (P- 19 – B), as the burden to explain the presence of phenolphthalein on the hands of the appellant has not been discharged by him and for this reason the findings of the trial Court that the appellant was the person who accepted the tainted currency notes in bribe cannot be interfered with. Thus, the first question is decided accordingly.

18.Keju Prasad Choubey (DW-1) has given statement before the Court, that vide Exhibit D-12 order for partition was passed by Naib Tehsildar in case No. 2A 27/88/89 dated 18-12 -1989 between the parties Mansha Ram and Panch Ram (father-in-law of Padumlal PW-7). The appellant submitted a report against Panch Ram in a proceeding, in which stay order was passed, which said that during the continuation of the stay order Panch Ram had cut some trees standing on the disputed land without there being any permission of the authorities. Appellant had been the Patwari of that circle vide Exhibit (D-6), on the basis of which Panch Ram was penalised with fine. In cross-examination he has stated that the statement given by him does not concern any person named Padumlal PW-7.

19.This statement of Keju Prasad Choubey (DW-1) is relied upon by defense to establish that the appellant has been falsely implicated on account of previous enmity. However, no question has been put to Padumlal PW-7 about having previous enmity with the appellant. Hence, the ground raised by defence cannot be held to be established on the basis of the evidence as produced in defence. There are some minor discrepancies about the bribe amount but the same is of no consequence and does not have any bearing on the statement of the complainant and other witnesses who have supported the prosecution. In this manner second question is also answered in negative.

20. Hence, after due consideration it is found that appellant failed to discharge his burden of proving his defence in this case, whereas the prosecution has proved its case beyond reasonable doubt. Hence, for the reasons aforementioned this appeal is liable to be dismissed and is dismissed accordingly.

Sd /-

(Rajendra Chandra Singh Samant)

Jamal

Judge