

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.519 of 2002

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Tarun Kumar Mukherjee, Son of Late Sunil Kumar Mukherjee, resident of quarter
no. MIG 9, Housing Board Colony, P.S. – Rampur, District – Gaya.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. N.A. Shamshi, Advocate

Mr. Ehteshamudding, Advocate

For the Respondent/s : Mr. Sanjay Kumar (SC – CBI)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 02-04-2018

This appeal is directed against the judgment of conviction and order of sentence dated 06.09.2002, passed by Sri Braj Nandan Sahay, the then Special Judge, C.B.I., Patna in Special Case No. 71/92 arising out of R.C. No. 34(A)/92, by which the appellant above named stood convicted under Section 7 of Prevention of Corruption Act, 1988 and was sentenced to undergo R.I. for one year. He was further convicted under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and was sentenced to undergo R.I. for one year.

2. The case of prosecution in short is that the appellant Tarun Kumar Mukharjee was posted as Senior Auditor in the office of



P.A.O. (O.R.S.) A.S.C. (AT), Gaya in Section –V, since 01.11.1985, his duty was to prepare pay, allowances and final settlement of accounts of Army Personnel of 877 Battalion including the complainant Naik Venkappa Harijan, who was going to be discharged (struck off from strength) w.e.f. 30.09.92 and his F.S.A was under preparation by appellant Tarun Kumar Mukharjee. When the complainant contacted the appellant to know about his pension. The appellant demanded Rs. 1,000/- as bribe and threatened that if the said bribe of Rs. 1,000/- is not being paid to him, he will reflect the debit balance of Rs. 30,000/- to 40,000/- in his F.S.A. Then the complainant, filed a complaint petition before the S.P., C.B.I., Patna, which was verified, thereafter, the case was registered against the appellant Tarun Kumar Mukharjee on 25.9.92 and a trap was laid on 26.09.92 after observing the pre trap formalities. Appellant Tarun Kumar Mukherjee was caught while demanding and accepting Rs. 1,000/-as bribe from the complainant and was taken into custody by the officials of C.B.I.

3. Sanction was obtained for prosecuting the appellant. Investigation was initiated and on completion of which, charge-sheet under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, was submitted.

4. To prove its case, prosecution examined altogether eight



witnesses. They are: P.W. 1 Binod Kumar Mishra, the then Principal Controller Defence Accounts Pension, P.W. 2 Sanat Kumar Mukhopadhyay, the then Assistant Director C.F. Science Laboratory, Hyderabad, P.W. 3 – Amresh Kumar, Deputy Manager of S.B.I. Ranchi, P.W. 4 – Venkappa R.H., the complainant, P.W. 5 – Lakhan Prasad, Senior Accountant Officer, C.D.A., Patna, P.W. 6 – Rajiv Lochan Narain Sinha, Branch Manager, State Bank, Bumuwar, P.W. 7 – Prasanjit Rai and P.W. 8 – Nagendra Prasad.

5. On behalf of defence also three witnesses were examined, they are: D.W. 1 – Krishna Prasad, D.W. 2 – Umashankar Singh and D.W. 3 – Lala Sheo Shankar Prasad all of them were staffs of C.D.A., Gaya and they have stated in their evidence that no such trap was made while the appellant was coming out of office along with D.W. 1, D.W. 2 and D.W. 3 and C.B.I. caught him and took him to an Ambassador car and when they protested, it was stated that they took him for official enquiry.

6. On conclusion of trial, the trial court convicted the appellant under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced him in the manner as stated above.

Being aggrieved the appellant preferred the present appeal.

7. Contention of learned counsel for the appellant is that no such



occurrence took place and the falsity of the prosecution case will appear from the fact that though it is alleged that he was arrested at C.D.A. office but he was taken to retiring room of Gaya Railway Station for preparation of post trap memorandum. Further contention of learned counsel for the appellant is that seized notes were not produced in the court, which also creates a reasonable doubt about the veracity of prosecution story especially when the evidence of P.W. 5 shows that no objection was raised by the appellant in preparing the pension papers of the complainant and they were forwarded to his table three or four days prior to the alleged trap and the appellant subsequently forwarded the same to his superior, in such a situation, the demand of bribe of Rs. 1,000/- on the plea that he would reflect the debit of Rs. 30,000 to 40,000/- from his final settlement of account, does not look probable. However, the trial court has not considered these aspects and convicted the appellant under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, which is not sustainable in the eye of law.

8. Per contra, learned counsel appearing on behalf of C.B.I. has supported the finding of guilt recorded by the Trial Court and has submitted that in this case complaint was registered after verification of the allegation and the appellant was arrested while demanding and accepting the bribe of Rs. 1,000/- and since the place, where the



appellant was arrested was a crowded place and there was chance of chaos, as such, post-trap memorandum was prepared at the retiring room of Gaya Railway Station before the two independent witnesses i.e. P.W. 3 and P.W. 6 and as such, it cannot be said that the procedure has not been followed rather the hands of the appellant was dipped in a solution, which turned pink. Further so far submission that notes were not produced before the court is concerned, envelope has been produced and the evidence is there that the notes were kept in the said envelope and no cross-examination has been done by defence on this point and, therefore, there is no infirmity in the judgment of trial court and conviction of appellant under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act is just and proper.

9. In the background of rival contentions of the parties, on perusal of the evidence of witnesses, it appears that P.W. 4 is the complainant in this case and he has stated in his evidence that he was going to be superannuated on 30.9.92 and his pension was to be prepared by appellant Tarun Kumar Mukharjee and on 24.9.92, he met the appellant. His evidence further shows that appellant Tarun Kumar Mukharjee demanded Rs. 1,000 from him, for preparation of his pension papers. Then he made complaint to his superior officer, who communicated the same to S.P., C.B.I. and S.P., C.B.I. sent Nagendra Prasad, P.W. 8, Inspector of C.B.I. Evidence of this witness also show



that he gave complaint to Nagendra Prasad in Hindi written by Radheshyam as he did not know Hindi and he proved the same as Ext. 4. His complain was verified by another officer of C.B.I. His evidence also disclosed that all the persons including independent witnesses assembled on 26.9.92 in the retiring room of Gaya Railway Station, there in the retiring room, he was introduced to other persons, who enquired from him and pre trap formalities and demonstration was given. This witness has stated that the finger of one witness, namely, Sinha Ji was made to touch powder and then his finger was dipped into a solution and his fingers turned pink. Evidence of this witness also disclose that in the said demonstration, Inspector demanded the bribe money from him, on which, he gave him all the G.C. notes of 100 denominations each. He has further stated that the notes were treated with powder and then handed over to him with instruction to give to the accused only after the same is demanded. A preliminary memorandum was prepared over which, he put his signature, which have been marked as Ext. 3/21 to Ext. 3/24. His evidence further shows that a trap team proceeded towards the place of occurrence and after reaching the place of occurrence, all members of the trap team occupied their position near the betel shop. He has stated that at 5.00 P.M., the appellant Tarun Kumar Mukharjee reached near the betel shop and appellant told him that he had brought Rs. 1,000/-, on which



the appellant told that he had demanded Rs. 2,000/-, however, he took the money of Rs. 1,000/- and counted the same and kept it in the back pocket of his pant. Then he gave signal to the C.B.I. officials by scratching his hair. The C.B.I. officials rushed there and caught both hands of the accused and as people started assembling there, appellant was taken to retiring room of Gaya Railway Station, where the independent witness, Amresh Kumar took out the notes, number of which were compared with the number that were mentioned in the pre trap memorandum and both were found to be same. This witness has stated that the notes were sealed in an envelope over which he also put his signature. This witness has further stated that both hands and pocket of the pant of the accused was dipped in to the solution separately, and all the solutions turned pink. Thereafter all the solutions were sealed, on which this witness also put his signature and signature of this witness has been marked as Ext. 3/25 to Ext. 3/26. This witness has been cross examined at length, however, there is nothing in his cross-examination to revert his evidence in chief.

10. P.W. 1 is the Principal Controller Defence Accounts, who has given sanction order for prosecution against the appellant, which was marked as Ext. 2.

11. P.W. 2 is the Assistant Director of Central Forensic Laboratory, Hyderabad and his evidence disclosed that by C.B.I., Patna, four



bottles, which were sealed by cloth, were sent to him in connection with R.C. Case No. 34(A)/92, which was compared with specimen sealed impression and all bottles were marked as DW, RW, LW and PW and his evidence in para -3 disclosed that the solutions contained mixture of phenolphthalein and sodium carbonate. His report has been marked as Ext. 2.

12. P.W. 3 is the independent witness and he has also supported the prosecution case about the preparation of pre trap memorandum or preliminary memorandum and the recovery memorandum and his evidence also does not disclose anything to doubt his testimony rather the evidence supports the prosecution case and the as stated by the complainant (P.W. 4).

13. P.W. 6 is also an independent witness and he has supported the pre trap and post trap memorandum as alleged by the prosecution and there is nothing in his evidence to doubt his testimony.

14. P.W. 5 is the Senior Accounts Officer, who had produced the documents before the C.B.I. and he has proved the signature of the Inspector on the seizure list and seizure list was also proved by him. He has also proved two signatures of Second Officer and Senior Accounts Officer and also proved the signature of appellant. He has proved some other documents also. He has been cross examined at length and his evidence in para -11 disclose that papers of



complainant was produced before him by the appellant for final passing, three to four days prior to the date of occurrence and he had passed the papers and there was no objection raised by the appellant with regard to pension papers of the complainant and nobody has complaint against the appellant Tarun Kumar Mukharjee before him and he has sent the same to the higher officers.

15. P.W. 7 Prasanjit Roy, is Inspector of C.B.I. and he has stated that on 24.9.92, he verified the complain of the complainant and submitted the report and proved his report as Ext. 7.

16. P.W. 8 is the Inspector, to whom the investigation was entrusted and he has stated that he was the officer and arranged the witnesses and called them in the retiring room of Gaya Railway Station, preliminary memo was prepared and after demonstration, the same was given to the witnesses and after arrest recovery memo was also prepared in presence of witnesses.

17. Considering the evidence discussed above, it appears that there is consistent prosecution evidence available that Rs. 1,000/- was demanded by the appellant as illegal gratification from the complainant in order to prepare his pension papers and the complainant made complaint to his higher officials, who reported the matter to S.P., C.B.I. Thereafter, the allegation was verified by P.W. 7 Prasanjit Roy and his report Ext. 7 also supported the allegation made



in the complaint. Thereafter, preliminary memo was prepared at the retiring room of Gaya Raliway Station where number of G.C. notes were noted down and they were mixed with the powder and process was shown to the witnesses. The evidence further shows that the appellant was arrested near the betel shop, while he was accepting the money and he was brought to the retiring room of Gaya Railway Station, where his both hands were caught and dipped into the solution, which turned red and also the pocket of the pant, on which the appellant has kept the said notes, were also dipped and that also turned pink. Number of the G.C. notes were matched with the numbers noted down during preparation of pre trap memorandum and those notes also got matched and, thereafter, post trap memorandum and recovery memorandum was prepared and said solution was sealed, which was sent to Central Forensic Laboratory, Hyderabad and they have also found the same mixed with phenolphthalein and sodium carbonate. As such, there are evidence available on record to show that notes accepted by the appellant was the same notes, which has been delivered after the preparation of preliminary memorandum and post memorandum, which also supports the case of prosecution.

So far submission of learned counsel for the appellant that he was arrested near the Paharpur Camp Area but there no seizure was prepared and no post memorandum was prepared and he was taken to



retiring room of Gaya Railway Station, as such, possibility of manipulation and false implication cannot be ruled out, it appears that the post trap memorandum was prepared in presence of two independent witnesses i.e. before P.W. 3 and P.W. 6, who are the bank officials and further evidence shows that place from where appellant was arrested, was a crowded place, as such, he was brought to retiring room of Gaya Railway Station, where pre trap memorandum was also prepared and currency notes were recovered in presence of independent witnesses from the pocket of the appellant and post trap memorandum was prepared. As such, there is no infirmity in the whole process. Further submission that notes were not produced before the court but it appears that envelope has been produced and it is the case that those notes were kept in the said envelope, has been given to the appellant. It further appears that in spite of cross examination, there is nothing in the evidence of any of the witnesses to show that they have deposed falsely in this case and had any previous grudge against the appellant.

18. In view of the above discussion, it is held that the prosecution successfully proved that the appellant Tarun Kumar Mukharjee was guilty for committing the offences punishable under 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

19. So far sentence of the appellant is concerned, it has been



submitted by learned counsel for the appellant that appellant is now aged about 64 years and he had lost his job due to the said allegation and he has already faced mental as well as economical distress and, therefore, a lenient view may be taken and his sentence may be reduced to the period already undergone by him in judicial custody.

20. However, it appears that the minimum punishment under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 is one year prior to amendment and the trial court has awarded the appellant sentence of one year under each count.

21. Accordingly, I do not find any infirmity in the judgment of conviction and order of sentence dated 06.09.2002, passed by Sri Braj Nandan Sahay, the then Special Judge, C.B.I., Patna in Special Case No. 71/92 and the same is hereby affirmed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.04.2018
Transmission Date	06.04.2018

