

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.43 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against judgment of conviction and order of sentence dated 21st January, 2009, passed by the Special Vigilance Judge-II, Patna, in Vigilance Special Case No.28 of 1991 arising out of Vigilance P.S. Case No.45 of 1991]

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Saroj Devi, wife of late P.C. Srivastava @ Prem Chandra Srivastava, resident of village- Bathna, P.S. Bairia, District- West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahesh Narayan Parwat, Sr. Advocate with
Mr. Ved Prakash Srivastava, APP

For the Respondent/s : Mr. S. N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 27-08-2018

By judgment of conviction and order of sentence dated 21st January, 2009, passed by the Special Vigilance Judge-II, Patna, in Vigilance Special Case No.28 of 1991 arising out of Vigilance P.S. Case No.45 of 1991, sole accused (P. C. Srivastava @ Prem Chandra Srivastava) was convicted for the offence under Section(s) 7 & 13 (2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for five years with fine of rupees five thousand under each Section and in default of payment of fine to further undergo simple imprisonment for three months. Both the



sentences were ordered to run concurrently.

2. Prosecution story, in brief, as per written report of one Rajesh Kumar is that Officer-in-Charge of Chautham P.S. has arrested his father in a false case after levelling false allegation with connection with Chautam P.S. Case No.175 of 1991 dated 01.11.1991. The Officer-in-charge demanded Rs.4,000/- from the Informant for declaring the case false.

3. An enquiry was initiated by one Ramesh Chandra Giri (PW 10), S.I. of Vigilance Department, Patna, on 07.11.1991. Thereafter, a team of five persons consisting of Vishwa Nath Ojha (PW 12), Ajay Kumar Singh (PW 5), Ramesh Chandra Giri (PW 10), Pal Farnadese Tudu (PW 15), and Chandrika Pd. (PW 4) was constituted by Vigilance Department. Thereafter, a Pre Trap memorandum with respect to G.C. notes to the tune of Rs.3,000/- (Ext.3) was prepared at Cabinet Vigilance Investigation Bureau Head Quarter, Patna, on 15.11.1991. The Complainant, Rajesh Kumar, was instructed to give the said money to the accused on demand. Thereafter the Complainant, as per direction, handed over the money to accused at his Government residential Quarter situated in the campus of Chautham Police Station as the accused was the Officer-in-charge of that Police Station at the relevant time. Accused was caught red-handed by the Vigilance team in presence of four



witnesses namely Vijay Kumar, Md. Hasimuddin (PW 14), Parmeshwari Singh (PW 6), and Braj Mohan Singh (PW7). Then a Post Trap Memorandum (Ext. 4) was prepared after recovering the said G.C. Notes from the possession of accused, who after being challenged by the team, threw the money on the ground. Hands of the accused were caught hold and they were washed in the solution of sodium carbonate whereupon color of the solution changed into pink. Thereafter, it were sealed and the accused was apprehended by preparing a seizure list giving rise to the Vigilance P.S. Case No.45 of 1991 under Section 7/13(1) (a) P.C. Act 1988 (Ext. 5). Formal First Information Report (Ext. 6) was drawn up. The Investigating Officer submitted charge-sheet against the accused after thorough investigation.

4. The prosecution has examined fifteen witnesses in support of its case. No witness was produced on behalf of the accused.

5. Out of fifteen witnesses examined on behalf of the prosecution, PW 1, PW 2, PW 8, PW 11 and PW 15 are formal witnesses.

6. PW 1 (Gupteshwar Misrha) has proved the material exhibits namely the woolen jacket and the G.C. Notes of one hundred denomination total 30 in numbers to the tune of



Rs.3000/- which he had brought from the *Malkhana* of Vigilance P.S. as material Ext. I and the G.C. notes as Material Ext. II to II/29 respectively. PW 2 (Indranand Mishra) has proved the FIR and his signature on the FIR as Ext.1. PW 8 (Indra Nand Mishra) has proved endorsement on the written report as Ext.5, and the formal First Information Report as Ext. 6. PW 11 (Ajit Dutta) being DIG at Bhagalpur, has proved the sanction order which was typed on his dictation and then he signed thereto as Ext.9. PW 15 (Pal Farnadez Tuddu) has proved the memorandum of G.C. notes scribed by one Deogiri Sharma as Ext.3/7.

7. PW 9 is the Informant, Rajesh Kumar. He has deposed during course of his evidence that when he requested the accused to send the case diary to the Court, he assured him to do the same, but on payment of Rs.4,000/-. Whereafter, he gave an application to the Vigilance Department which has been proved as Ext.7. Thereafter, one Sri Ramesh Chandra Giri (PW 10) was deputed to enquire the matter. He visited the residence of the accused to whom this witness introduced as his *Fufera Bhai* and then he paid Rs.1000/- to him out of Rs.4,000/- with an assurance to pay the rest amount i.e. Rs.3,000/- after *Chattha* festival. PW 10 (Ramesh Chandra Giri), who is Vigilance Inspector, has fully corroborated this statement of the Informant in his evidence vide



para 7 to 14 of his examination-in-chief. He gave a report to DIG, Vigilance Bureau, Bihar, Patna, on 11.11.1991 in this regard which has been proved as Ext. 8. PW 9 (Informant) has further stated that on 15.11.1991 he was called in the office where he produced Rs.3,000/- of one hundred denomination and Pre Trap Memorandum was prepared and white powder was spread over the notes and the same was kept in an envelop and was given to this witness with a direction to give the same to the accused after his demand. The Informant gave an endorsement to this effect on the said memorandum marked as Ext.3/3. This witness has further stated in para 24 of the evidence that when he gave the said money to the accused by taking it out from the envelop, he kept it in his jacket's right pocket and thereafter Ramesh Chandra Giri (PW 10) gave signal to the raiding party, whereupon, members of the team arrived. Thereafter, the accused after having seen the raiding party threw the money on the ground and tried to run away, but he was caught hold by raiding party. Thereafter, numbers of those currency notes were tallied with numbers as noted in the memorandum of G.C. notes prepared in this regard. The C.O. & B.D.O. were called before whom right hand and right pocket of his jacket were washed in a chemical solution (sodium carbonate) whose colour immediately changed into pink. Thereafter, said coloured solution bottle,



currency notes and the jacket were seized and seizure list was prepared.

8. PWs 3, 4, and 5 are the members of the raiding party, led by Shri Vishwa Nath Ojha (PW 12). They proceeded on 16.11.1991 in the morning for Chautham from Khagaria along with one Special Magistrate Shri Ajay Kumar (PW 5), where Ramesh Chandra Giri (PW 10) got them introduced with the Informant, Rakesh Kumar (PW 9), who within a short while informed them that the accused was not there. They waited till evening and, ultimately, returned to Khagaria. On 17.11.1991, they moved to Chautham by a mini-bus and got down at Thana Chowk. Thereafter the Informant (PW 9) went to the police station where the accused was posted as Officer-in-charge. Amount of Rs.3,000/- was given to the accused, who kept the same in right pocket of his jacket. PW 10 gave signal and then other members of team rushed there, whereupon, the accused threw that money on the ground. But his both hands were caught by two persons. The BDO & CO were called with two independent witnesses and then the Post Trap Memorandum was prepared before them and a seizure list was prepared over which they put their respective signatures, which have been marked as Exts.3 and 4. The right hand and the right pocket of his jacket were washed in the solution whose colour changed in pink suggesting that



after receiving the said amount he kept the same in his pocket.

9. PW 3 has proved the seizure list as Ext. 2. He has stated in his evidence that said raid was conducted in Thana campus which shows that P.O. is the said Police Station where accused was posted and was having residential quarter inside Thana.

10. PWs 6 and 7 are independent witnesses as well as seizure list witnesses. PW 6 has stated that on 17.11.1991, search of the Officer-in-charge of Chautham Police Station was conducted and 30 notes of Rs.100/- each were recovered. Post Trap Memorandum was prepared over which he signed. The same has been marked as Ext.3/1. Numbers of the recovered notes were tallied with the Pre Trap Memorandum prepared. Thereafter, right hand and right pocket of jacket were dipped in a solution whose colour changed into pink. He has proved his signature over the seizure list as Ext. 4/1. He has stated in his cross-examination that the other witness, who signed over the seizure list, was Braj Mohan Singh (PW 7).

11. PW 7 (Braj Mohan Singh) has also supported the case and corroborated the prosecution story. He has proved his signature on Post Trap Memorandum as Ext.3/2 and on the Seizure List as Ext.4/2.

12. PW 10 (Ramesh Chandra Tiwary) is the witness



who conducted the preliminary inquiry regarding the allegation made against the accused and submitted his report accordingly. PW 10 was all along with the Complainant (PW 9) right from the beginning to the end. He has further deposed in his evidence that after the raiding team was constituted consisting of PWs 3, 4 and 5 and he being a member thereof proceeded with them after getting them introduced with Informant (PW 9) and then went to the alleged place of occurrence i.e. Chautham Police Station, and saw the entire episode, which took place in his presence. This witness has supported the prosecution story with full passion in his examination-in-chief. His evidence also corroborates the evidence of other prosecution witnesses. This witness has stated that the accused threw the said money on the ground when the other member of the raiding team reached there. He has stated in para 54 of his cross-examination that a copy of the seizure list was given to the accused for which he gave an endorsement and signed as well before him. The same has been marked as Ext. 4/3. This witness has further stated in his evidence that if anything comes in contact with phenolphthalein and if it is dipped in the solution of sodium carbonate, its colour shall change into pink. This goes to support the fact that since the accused had touched the said notes and kept the same in his right pocket of the jacket and when right hand and right



pocket of the jacket were dipped in the solution of sodium carbonate colour thereof had changed into pink. This fact also finds full support by the FSL Report (Ext. 10)

13. PW 12, Vishwa Nath Ojha, is the leader of the raiding team comprising of PWs 3, 5, 10, and 15 from Patna to Chautham Police Station. He has supported the prosecution story in his examination-in-chief. In para 8, he stated that a memorandum of 30 G.C. notes was prepared at his direction by one Girish Sharma over which he signed (Ext. 3/5). He stated in para 21 of his evidence that the accused threw the said money on the ground soon after seeing the members of raiding party, whereupon, Chandra Bhushan Singh & C.B. Kumar Singh caught hold of his hands. This has been corroborated by PW 10 in para 42 of his evidence. One Chandrika Singh picked those notes at his instance and then they moved to the P.S. concern i.e. from the residence of the accused which was in the campus itself.

14. PW 13 (Anal Lakda) is the Investigating Officer of the case. He has stated that while he was posted as Additional Superintendent of Police, in Vigilance Department, he received an application filed by Rajesh Kumar (PW 9) regarding which an inquiry was conducted by Ramesh Chandra Giri (PW 10), whereupon, he submitted the written report. He took the charge of



investigation on 15.11.1991. He recorded statement of the witnesses namely PWs 10, 9, 14, 7, 6, 3 and 12, received the G.C. note memo & seizure memo. He has also described the place of occurrence in his evidence, which was residential quarter of the accused. He has proved sanction order in para 11 of his evidence. Sanction order was issued by the I.G., Bhagalpur, which has been marked as Ext.9. This witness in para 12 and 13 has stated that accused had taken illegal gratification from the Complainant for filing final form in Chautham P.S. Case No.175 of 1991. This witness in para 18 of his evidence has stated that he had not gone with the raiding party.

15. PW 14 (Hasimuddin) was posted as C.O. and one Vijay Kumar was posted as BDO. They were informed that the Officer-in-charge has been arrested by Vigilance Department. He has proved the endorsement given by him on the G.C. notes memorandum, which has been marked as Ext. 3/6 and that of Vijay Kumar as Ext. 3/7. He has further proved his signature on the seizure list as Ext. 4/5, and that of said Vijay Kumar as Ext. 4/6 respectively. He has further supported the fact of changing the colour of solution into pink whereafter that were sealed in two bottles. One of his jacket's pockets was also dipped in the solution.

16. During argument, learned counsel for the Appellant has mainly contended that all the witnesses have stated



that said notes were taken from the ground and not from the conscious possession of the Appellant/accused. It can never be presumed that it was recovered from him. Therefore, he has been falsely implicated in this case with the connivance of the Vigilance Officers and the Informant.

17. It has further been argued that all the witnesses are official witnesses. They have deposed with intention to falsely implicate the accused at the instance of the Informant. Chandra Bhushan Singh, watcher, who is said to have caught hold the hand of the accused and the BDO, who was also present there, have not been examined. In the written report, there is mention of ‘Srivastava Jee’ and not Prem Chandra Srivastava..

18. This Court after looking into evidence of entire prosecution witnesses finds that all the witnesses have supported the case of the prosecution about receiving of amount by the accused and keeping the same in the jacket and on seeing the raiding party he threw the money on the ground. Even independent seizure list witnesses i.e. PW 6 and 7 have also supported the case of the prosecution and recovery of 30 notes of rupees 100 denomination from the possession of the accused. It is also apparent from the evidence that right hand and right pocket of the jacket was dipped in the solution of Sodium Carbonate, which turned into pink.



19. So far contention of the Appellant-Accused that Informant only mean 'Srivastava Jee' and not Prem Chandra Srivastava, is not of much relevance because in the Police Station there is only one Officer-in-charge and the Informant has specifically mentioned in the written report that Srivastava Jee was Officer-in-charge, who has demanded money.

20. All the witnesses examined on behalf of the prosecution are officials of the Vigilance Department. This Court from their evidence does not find any reason to disbelieve their evidence.

21. The defence has not been able to give any definite reason by way of defence evidence for false implication of the accused by the Vigilance Officers. The defence has not examined a single witness in support of the defence that he has been falsely implicated in this case.

22. Therefore, this Court does not find any illegality in the impugned judgment of conviction and order of sentence passed by the learned Trial Court.

23. In view of such, impugned judgment of conviction and order of sentence dated 21st January, 2009, passed by the Special Vigilance Judge-II, Patna, in Vigilance Special Case No.28 of 1991 arising out of Vigilance P.S. Case No.45 of 1991 is



hereby affirmed.

24. This appeal is, accordingly, **dismissed**.

25. It was brought to the notice of this Court during hearing of instant appeal that original Appellant-Accused, P. C. Srivastava @ Prem Chandra Srivastava, against whom judgment of conviction and order of sentence was passed, had died during the pendency of this appeal on 17.04.2017.

26. Interlocutory Application No.264 of 2018 was filed for substitution of his wife in terms of Section 394 (2) Cr. P.C., which was allowed by this Court by order dated 18.05.2018.

27. Therefore, since the original Appellant-Accused is already dead, the Court below is not required to issue any process against the original Appellant-Accused to undergo the sentence as ordered in the impugned judgment.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	28-06-2018
Uploading Date	28-08-2018
Transmission Date	28-08-2018

