IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.228 of 2003

==

Sitaram Singh, Son of Sri Indra Deo Singh, Resident of Village – Bandna, P.S. – Raj Chaipur, District – Palamu. At present residing at Gauraia Asthan, P.S. – Budha Colony, Town and District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

==

Criminal Appeal (SJ) No. 238 of 2003

==

Ajit Kumar, Son of Sri Ram Nandan Saran, employed as an Assistant Accounts Officer, (Gazetted Class –II), in the office of Accountant General, Bihar, Patna. Resideing in Veery Shivaji Path, North Shri Krishnapuri, Patna – 800013.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

==

Appearance :

(In CR. APP (SJ) No.228 of 2003)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Ritwaj Raman

For the Respondent/s : Mr. Bipin Kumar Sinha, SC -CBI

(In CR. APP (SJ) No.238 of 2003)

For the Appellant/s : Mr. Binod Kumar Singh
Ms. Vagisha Pragya Vackanavi

For the Respondent/s : Mr. Sanjay Kumar, SC-CBI

==

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: 27 -07-2018

Both the above appeals arise out of common judgment and order passed by Shri Braj Nandan Sahay, learned Special Judge CBI, Patna in R.C. No. 24(A)/89 in Special Case No. 59/89, by which he has convicted the appellant Sitaram Singh in Criminal Appeal (SJ)

No228/2003 under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, hereinafter referred to as the P.C. Act, 1988 and was sentenced to undergo R.I. for one year and also convicted him under Section 224 of the Indian Penal Code and sentenced him to undergo R.I. for one month and appellant Ajit Kumar in Cr. Appeal (SJ) No. 238 of 2003 has been convicted under Sections 225, 353 and 186 of the Indian Penal Code and has been sentenced to undergo R.I. for three months under each section. The sentences were directed to run concurrently.

2. Prosecution case in short is that Appellant Sitaram Singh was demanding Rs. 500/- (Rs. Five Hundred) for making correction in the pay fixation of the complainant, who retired as a teacher and as such the complainant filed a complaint before the S.P. C.B.I., who got the allegation verified by an Inspector of C.B.I. and, thereafter, F.I.R was lodged and two independent witnesses were called and trap team was constituted and the demonstration was done before the complainant and pre-trap memorandum was prepared. Thereafter, the trap team went to the Accountant General Office, Patna and arrested the appellant Sitaram Singh, while demanding and accepting illegal gratification of Rs. 300/- from the complainant and Rs. 300/- was recovered from his pocket and number of G.C. notes wre compared with the number of G.C. notes entered in the pre trap memorandum. It

is further alleged that in the meantime, large number of persons assembled and tried to rescue appellant Sitaram Singh and in the attempt to rescue the appellant Sitaram Singh, the mob attacked the members of trap team and the said mob was led by the appellant Ajit Kumar, thereafter, the armed forces arrived and crowd dispersed and post trap memorandum was prepared after taking the appellant to the C.B.I. office.

3. Charges were framed against the appellants and in support of charge, prosecution examined altogether fourteen witnesses, they are; PW1 – Md. Ataullah Khan, PW2 – R.S.S. Yadav, PW3 – Ranjeet Singh, PW4 – Sukhaiy Sardar, PW5 - Ramrup Prasad, the comoplainant, PW6 – Rajani Ranjan Sahay, PW7 – Kailash Singh, PW8 – R.B. Sinha, PW9- Uday Pratap Singh, PW10- B.K. Birdhi, PW11- Ashok Kumar, PW 12- L.K. Sharma, PW13- Ram Rashik Singh and PW14 – R.C. Choudhary.

4. Large number of documents has also been brought on record by the prosecution side. They have been marked as Exhibits and material exhibits.

5. On behalf of defence also, seven witnesses have been examined, they are; DW1- Gupteshwar Mishra, DW2 – Alok Kumar Singh, DW3 - Ramdeo Das, DW4 – Sidheswar Prasad Singh, DW5- Deonath Dubey, DW6 –Dineshwar Prasad Singh and DW7 – Shiv

Kumar Ram.

6. On conclusion of Trial, learned Trial Court convicted the appellant Sitaram Singh under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act as well as under Section 224 of the Indian Penal Code and appellant Ajit Kumar was convicted under Sections 225, 353 and 186 of the Indian Penal Code and they were sentenced in the manner aforesaid.

7. From perusal of the evidence as adduced on behalf of prosecution, it appears that PW5 is the complainant in this case and his evidence disclosed that he superannuated from service in the year 1984 from the post of Primary Teacher. He has stated that he had lodged the complaint in C.B.I. office against the appellant Sitaram Singh for demand of Rs. 500/- (Rs. Five Hundred) for preparation of his pension papers. His evidence further disclosed that the allegation was verified by the C.B.I. Inspector, who submitted verification report (Ext.5) . His evidence further disclosed that on persuasion, Sitaram Singh agreed to give the papers for Rs. 300/- and asked him to come on 31.08.89. Thereafter, a trap team was constituted. His evidence further disclosed that before trap team witness Sukhae Sardar was asked to touch a powder and to dip his fingers into the solution and as soon as he dipped his fingers into the glass, it turned pink, thereafter, the solution was sealed (Material Ext. I) with his

signature and signature of others. His evidence further disclosed that the currency notes of 300/-, brought by him, was smeared with the powder and complainant was told to give it to Sitaram Singh with instruction on demand, it be given to the appellant and then signal by rubbing head and a memorandum was prepared of the above (Ext. 3), he asked about his work, on which, Sitaram Singh demanded money, and he handed over to him G.C. notes smeared with powder, appellant Sitaram Singh took it and after counting the same, put the notes into his pocket, then the complainant signaled and all the member of trap team came and overpowered appellant and charged him. His evidence also disclosed that crowd assembled and Sitaram Singh tried to flee away in the melly and in course of his fleeing away, appellant Ajit Kumar assaulted the raiding team but the police reached there and the crowd dispersed. His evidence also disclosed that when the crowd dispersed, the currency notes were recovered from the pocket of Sitaram Singh, which was identified by comparing the same with the number of G.C. Notes numbered in the pre trap memorandum and all the G.C. notes were sealed, which was marked as material Ext. IV. His evidence also disclosed that both hands and the pocket of his shirt were dipped into the said solution and the solution turned pink. They were sealed and Marked as material Exts. VII, VIII and IX and post trap memorandum/ seizure memorandum (Ext. 4) was prepared. He has further stated in his evidence that the notes were recovered by the witnesses and not by the CBI officials.

8. PW -14 R.C. Choudhary is the Investigating Officer in this case and his evidence disclosed that the complainant has given a written complaint in the C.B.I. Office of demand of Rs. 500/- (Rs. Five Hundred) by the appellant for preparation of complainant's pension papers and on 29.08.89, itself C.B.I. Inspector R. R. Sahay (PW6) was directed to verify the allegation, and after verification, he submitted the verification report (Ext. 5). During the verification also, the appellant has demanded Rs. 500/- and on the persuasion of the complainant, the appellant agreed for Rs. 300/- and asked the complainant to come on 31.08.89. F.I.R (Ext.12) was lodged on 29.08.89. His evidence also disclosed that on 31.08.89, the members of the trap team assembled at 11 'O' clock and after demonstration, the pre trap memorandum was prepared. His evidence also disclosed that Sukhae Sardar PW4 was directed to remain with the complainant as shadow witness and try to listen the talk between the complainant and the appellant Sitaram Singh. At tea stall near wall of Circuit House, the complainant asked the appellant about his work, on which, the appellant demanded Rs. 300/-, and the complainant took out Rs. 300/- from his pocket and gave the same to the appellant Sitaram Singh, which was kept by the appellant into his shirt pocket and

R.S.S. Yadav (PW2) and B.K. Birdhi (PW10) Inspectors of CBI caught his hand and notes of Rs. 300/- were recovered from the pocket of the appellant Sitaram Singh, which were compared with the number of G.C. notes mentioned in the pre trap memorandum (Ext. 3) and found the same tallied with the numbers. Thereafter, notes were sealed and all of them has put their signatures Material Ext. IV. His evidence further disclosed that while they were taking the accused person to Circuit House, the crowd assembled and became violent and they assaulted Lalit Kishore Sharma Police Staff Car driver, Jaggarnagh Prasad and B.K. Birdhi and the mob tried to get the appellant Sitaram Singh freed and R.S.S. Yadav identified appellant Ajit Kumar amongst them. His evidence also disclose that thereafter, his both hands were dipped and also the pocket of his shirt was also dipped into the Sodium Carbonate solution and they turned pink. He has also prepared seizure memo (Ext 4). His evidence in para -27 in cross –examination disclosed that during investigation, he came to know that the revised pension were already dispatched to the complainant prior to complaint being filed.. However, he had not found out as to whether, it was received in parcel office or in the office of District Superintendent of Education. To a Court's query also, this witness admitted that it appears that on 29.8.89, no pension revision paper of the complainant was pending before the appellant

Sitaram Singh.

9. PW1 is the steno in AG office and he had typed the sanction order dictated by R.B. Sinha, Deputy A.G.

10. PW8 is Deputy Secretary, Science and Technology and he has given the sanction order and in his cross-examination, he has stated that Deputy Accountant General is the appointing and Administrative Officer of Grade 'C' employees. Though in his cross-examination, he has stated that Sitaram Singh was appointed by Senior Deputy Accountant General and his cross – examination also disclosed that Senior Deputy Accountant General is superior in scale.

11. PW 7, 9 and 11 has been tendered for cross-examination and there is nothing important in their evidence.

12. PW 2, R.S.S. Yadav was the Inspector of CBI and he was also member of raiding team and his evidence disclosed that appellant Sitaram Singh demanded Rs. 300/-, thereafter, Rs. 300/- was given to appellant Sitaram Singh by the complainant and on signal, they reached to the appellant and he and B.K. Birdhi caught his both wrists and asked as to why he was taking bribe and tried to bring him to Circuit House but Sitatam Singh started making scuffle with them and other employees of A.G. office also reached there and in the meantime, the independent witness Ranjit Singh recovered money from his pocket. His evidence also disclosed that office staffs of the

A.G. Office has also assaulted B.K. Birdhi, Lalit Kishore and Jaggarnath Prasad and the mob was led by appellant Ajit Kumar. His evidence also disclosed that he knew appellant Ajit Kumar from before as he was living near his house.

13. PW 6 Rajni Ranjan Sahay is the verifier of the allegation and he was also member of the trap team and post trap memorandum was also prepared and as per his evidence, money was also recovered in his presence and his evidence also disclosed that Ranjit Singh has recovered the notes from the pocket on the instruction of R.C. Chaudhary. His evidence in cross-examination shows that accused has not told the complainant in front of him that Sitaram has got all the papers rather in front of him, the accused has told that he has dispatched the paper of complainant (PW5).

14. PW 10 B.K. Birdhi is also witness so far pre trap memorandum and seizure memorandum as well as recovery is concerned and he has also supported the allegation of demand by the appellant Sitaram Singh. His evidence also disclosed that Ajit Kumar was abetting others. His evidence disclosed that in the melly his button of shirt was broken and he has not received any injury.

15. PW12 is the Hawaldar of CBI and he has also supported the recovery and preparation of post trap memorandum and this witness has also named appellant Ajit Kumar.

16. PW3 Ranjit Singh is an independent witness and he was Assistant of F.C.I. office. He has also stated about the constitution of raiding team and preparation of pre trap memorandum and the recovery and post trap memorandum. According to the evidence of this witness, Sukhae Sardar (PW4) and the accused went to a tea stall and others were at the surroundings of the said tea stall and the accused had demanded money, which was given by the complainant and R.C. Chaudhary charged the appellant Sitaram Singh and caught his both wrist and recovered money from his pocket. His evidence also disclosed that the search was made by the C.B.I. personnel and money was also recovered by them.

17. PW4 is also independent witness and an Assistant in F.C.I. office. He was the shadow witness. His evidence also shows that he along with appellant and complainant sat at the tea stall and other members of the raiding team also sat, wherever they got their place and the complainant asked the appellant about his work and appellant demanded Rs. 300/-. This witness has also stated about the seizure memorandum and post trap memorandum after the seizure of notes. Evidence of this witness in cross-examination, shows that his Regional Manager was trapped few days prior to the occurrence.

18. PW13 Ram Rashik Singh is Assistant Accountant in the A.G. Office and his evidence disclosed that he was Section Officer in Pen-

Ten section and in that section and his evidence disclosed that prior to 04.08.1989, pension paper of the appellant was prepared, approved and dispatched to the District Superintendent of Education, Bettiah, Treasury Officer and to the Complainant. Evidence of this witness in para -17 of his cross-examination further disclosed that dispatch section through register parcel, it is sent to the parcel to the concerned officer and in the present case, it has gone to the District Superintendent of Education, Bettiah and his evidence also disclosed that on 12.08.89, it was sent to the District Superintendent of Education through G.P.O. and sent to complainant Ramroop Prasad through U.P.C. on 23.08.89. His evidence in para 28 also shows that CBI officers were enquiring about the appellant Ajit Kumar.

19. On behalf of defence seven witnesses were examined and evidence of DW 1, 2, 4, 6 and 7 disclosed that money was thrusted in the pocket of appellant Sitaram Singh.

20. DW3 has disclosed about the procedure of receiving of paper and preparation of final authority and dispatch. In his evidence in para -3, he has stated that on 31.07.89, paper of the complainant was sent to dispatch section and from the section, when it has gone to Treasury Officer, he did not know. His evidence also disclosed that they have asked about the address of appellant Ajit Kumar.

21. DW5 is also Senior Accountant in the A.G. Office and he was

diarist and he was dealing with the receiving and sending of papers and he has sent the same on 4.8.89 vide letter no. 5861 to 5872 , the pension and gratuity authority letter and from dispatch, it was sent on 12.8.89 and it was sent through the registered post. His evidence also disclosed that on 31.08.89 appellant Ajit Kumar was there in the office of S.N. Chaudhary.

22. Learned counsel for the appellants has assailed the judgement on the ground that the prosecution has miserably failed to prove the demand and acceptance by the appellant as well as the recovery, which are the ingredients of Section 7 and Section 13(2) read with Section 13(1)(d) of P.C. Act. It has been submitted by learned counsel for the appellants that unless the prosecution has been able to establish the demand, acceptance and recovery, conviction of appellant is not sustainable and no presumption *ipso facto* can be drawn in the present case. In support of his contention learned counsel for the appellant has relied upon the decision of **B. Jayaraj vs State Of A.P**. reported in **(2014) 13 SCC 15** as well as on the judgment in the case of **Selvaraj vs. State of Karnataka** reported in **(2015) 10 SCC230** and further on the judgment reported in **(2015) 3 SCC 247 M.R. Purushottam vs. State of Karnataka**. Further submission is that the sanction order is not proper as it has not been granted by the appointing authority**.**

23. Further submission of learned counsel for the appellants is that

there is no independent witnesses to the occurrence and though it is alleged that two witnesses viz. PW3 and PW4 are the independent witness and they are officials of F.C.I. but it is also a fact that they remained with the prosecution party throughout the day and evidence of PW4 disclosed that few days prior to occurrence, a Regional Manager of his Office was also trapped by the C.B.I., hence and in such a situation, they cannot be termed as independent witnesses. In support of this contention, learned counsel for the appellants has relied upon a decision reported in **2015(10)SCC 230** and further on the judgment of Single Judge Bench decision of this Court reported in **2008 (4) PLJR 719 & 1983 BBCJ 393.**

24. It has been submitted that so far allegation of assault on the prosecution party is concerned, there is no injury report nor any torn cloth or broken spectacles have been brought on record and the name of appellant Ajit Kumar has been dragged in the case only at the instance of PW2 R.S.S. Yadav as he told that he was knowing the appellant Ajit Kumar from before as he used to reside in his area but the evidence available on record clearly shows that they have enquired about the same from the AG office with regard to the address of the appellant Ajit Kumar and that creates doubt about the claim of PW2 that he knew him from before.

25. It has also been contended that so far demand is concerned, the

evidence available on record as per the evidence of PW13 Rasik Singh in para 3 to 5 and 7 to 9 that the papers of complainant was already processed by 4.08.89 and the same was dispatched also, hence no work of the complainant for revision of his pension or any other work was pending before the appellant in the office of AG and the same will also appear from Ext. 8 to 8/2 as well as Ext. 9 and 11, which are the inward and outward receipt register. Apart from that evidence of PW6 Rajani Ranjan Sahay also disclosed that appellant had informed the complainant at the time of verification that appellant has sent the pension papers to dispatch, as such, the entire prosecution story get falsified by the aforesaid evidence that clearly shows that no paper of the complainant was pending before the appellant and as such no occasion for demand and acceptance of alleged illegal gratification arose.

26. Apart from that learned counsel for the appellant has also submitted that in this case, there is also contradiction amongst the evidence of witnesses on the point of recovery and the time of recovery of money from the pocket of the appellant Sitaram Singh, which will appear from evidence of PW2 R.S.S. Yadav in para -22, PW 3 para – 18 and PW5 para 34. Similarly PW5 in para -11 has stated that Ranjit Singh, the independent witness has recovered the money and that too after *hungama*, whereas PW10 in para -22 of his

evidence has stated that it has been recovered by the I.O. and that too after the alleged *hungama* and PW14 has not named any witness as to who recovered the money from the pocket of appellant Sitaram Singh and as such, there are vital contradictions amongst the evidence of witnesses, which itself cast a reasonable doubt with regard to prosecution case of recovery from the possession of the appellant.

27. Further submission of learned counsel for the appellants that PW3 and PW4 are alleged to be the independent witness in this case but they officials of FCI and they remained with the prosecution party throughout the day and they were also the part of raiding team and as such, it cannot be said that they are independent witnesses. Moreover, evidence of PW 4 shows that CBI has also lodged a case against their Regional Director, prior to occurecnce, which will appear from para 21, in such a situation, they were definitely under the pressure of CBI and as such they cannot be treated to be independent witnesses. In support of its contention, learned counsel for the appellants has relied upon a decision reported in 1992 Cr. L.J. 490.

28. On the other hand, learned counsel appearing on behalf of CBI has submitted that so far demand, acceptance and recovery is concerned, PW2 in para -12 of his statement has stated about the demand and recovery and stated that the complainant asked that appellant as to what happened to his work, then, the appellant Sitaram

Singh demanded Rs. 300/- first and, thereafter, he will give the papers by 4 'O' clock in the evening. Similarly, evidence of PW3 in para – 10 shows that they were seating at the tea stall and the appellant had a talk with the other person and, thereafter, the complainant asked about his work, then, the appellant demanded money from him. Similarly, PW 4 in para 17 of his evidence has stated that complainant had talk with the appellant about the bribe and as to what happened to his work, then the appellant demanded Rs. 300/-, on which, the complainant (PW5) has given Rs. 300/- to appellant Sitaram Singh and after counting the same, he kept it into his pocket, thereafter, he was apprehended. PW5 complainant has also stated in his evidence that there was demand of Rs. 500/- by the appellant Sitaram Singh but later on he agreed on Rs. 300/- and further stated in para -13 that he asked from appellant Sitaram as to what happened to his work, on which, he stated that first give money, thereafter, he will give paper at 4 'O'Clock, this piece of evidence of the complainant PW5 has been corroborated by the evidence of other witnesses viz. PW6 in para -4, evidence of PW7 in para 3 and 8 and evidence of PW14 in para 8 and as such, there are sufficient evidence available on record that there was demand and acceptance as well as recovery from the appellant and, therefore, ingredients are available that constitutes an offence under Section 7 and 13(2) read with 13(1)(d) of the Prevention of

Corruption Act. It has also been submitted that as the prosecution has been able to prove the demand and acceptance and recovery and in such a situation, a presumption under Section 20 of the Prevention of Corruption Act and no sufficient explanation has been given by the appellant. Further submission of learned counsel for the CBI that there are sufficient evidence available on record to show that mob came and assaulted the CBI officials that was led by appellant Ajit Kumar and he has been identified by PW2 R.S.S. Yadav as he used to live near his house and as such the conviction of both the appellants in this case is just and proper and does not require any interference.

29. Heard rival contentions of the parties. Generally in the cases of Prevention of Corruption Act, relating to the illegal demand of gratification by a Government official for extending the privilege or benefiting particular persons against the law, the prosecution has to prove the demand for illegal gratification, which is paramount to finding that an offence had occurred under Sections 7 and 13 of the act. Learned counsel for the appellants have referred certain decisions to show that mere recovery of marked money is insufficient to convict a public servant without clear evidence to prove that the money was voluntarily taken as a bribe, the relevant paragraphs of the judgment of Hon’ble Apex Court in the case of **B.Jayaraj vs State Of A.P** 2014 (13) SCC 55, is reproduced herein below:-

"In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P.[1] and C.M. Girish Babu Vs. C.B.I.[2]"

30. Further reliance has also been placed by learned counsel for the appellants the decision of Hon'ble Supreme Court reported in **2015(3) SCC 247 M.R. Purushottam vs. State of Maharashtra**. *in which, it has been observed that however in this case it appears that the complainant has not made any complaint and stated in his examination-in-chief that the accused had not demanded anything from him and he did not know what is written in Exh.P1 and in that situation.* Hon'ble Apex Court has come to the conclusion that *the demand of bribe has not been proved by the prosecution. However, main thrust of argument of learned counsel for the C.B.I. is that once demand made by the accused as well as acceptance of that illegal demand by his wife is proved by the prosecution, the case of*

prosecution is found to be proved and in that connection, he has referred a decision in the case of Hon'ble Apex Court in the case of State of **M.P. vs. S. Janardhan Rao** reported in **2005 (1) SCC 72** and cited a decision of Hon'ble Apex Court reported in **(1995) 3 Supreme Court Cases 567** in the case of **M.W. Mohiuddin vs State Of Maharashtra**. It has been submitted that the Hon'ble Apex Court has held that when the complainant had parted with the tainted money and the same came under the hold and control and into the possession of the accused and immediately a signal was given and the trap party entered the scene and completed the trap proceedings and once this requirement namely that he came into possession of the money is satisfied then the only inference is that he accepted the same and thus obtained the pecuniary advantage. In the said case, it has also been observed by Hon'ble Apex Court that whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances in each case.

31. Learned counsel for the CBI has relied upon a judgment of Hon'ble Apex Court reported in **2006 (12) SCC 277 B. Noha vs. The State of Kerala and Another,** in which the Hon'ble Apex Court has held in para -11 as follows:-

> "The evidence shows that when PW-1 told the accused that he had brought the money as directed by the accused, the accused asked PW-1 to take cut and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case………

32. Further decision, which has been relied upon by learned counsel for the CBI is three Judge Bench decision of Hon'ble Supreme Court reported in 1991 Supplementary (1) SCC 206 Rup Singh (dead) by LRE vs. The State of Punjab, wherein the Hon'ble Supreme Court has held that "The find of the currency notes from the adjoining house was also taken as indicative of the appellant's mens rea and the fact that the appellant's hands were tainted with phenolphthalein powder was considered a piece of corroborative evidence which supported the prosecution version".

33. Having gone through the judgments referred by the parties, it is evidently clear that the proof of demand of illegal gratification is very essential for conviction under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Learned counsel for the CBI has tried to impress upon this Court that once the money is handed over to the accused and he has accepted the same, there is presumption against him and furthermore, the accused has also not given any explanation for his hand turning pink that also goes against

the appellant.

34. Hon'ble Apex Court in a recent decision reported in **2017 (8) SCC 136 Mukhtar Singh (Since Deceased) Through his legal representative** has discussed the aforesaid point of the demand and acceptance and come to the conclusion in paragraph 13 and 14 of its judgment, which reads as follows**:-**

> 13" The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair vs. State of Kerala4, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent.Carrying this enunciation further, it was exposited in State of Kerala vs. C.P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.
>
> 14. In P. Satyanarayana Murthy (supra), this Court took note of its verdict in B. Jayaraj vs. State of A.P. underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the

proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy (supra) on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

> "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these 6 (2014) 13 SCC 55 two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder."

35. Further in a case reported in **2014 (13) SCC 143 Satvir Singh vs. State of Delhi**, the Hon'ble Apex Court has observed that :-

> "It is rightly contended by the learned senior counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act, viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have committed by him. Therefore, the reliance placed on the evidence of

prosecution witnesses i.e. PW-2, PW-3 and others by the respondent's counsel, the relevant portion of which is extracted in the aforesaid portion of the judgment, does not amount to presumption of offence as provided under Section 20 of the Act. Therefore, the question of onus of proof to disprove the presumption did not arise at all on the part of the appellant".

36. Similarly, the Hon'ble Apex Court in a case reported in **2009(3) SCC 779 C.M. Girish Babu vs. CBI Chochin, High Court of Kerala** in para -8 has held that:-

> "In this regard, the High Court found that there is nothing in the evidence of PW-11 - Natarajan, official witness, to arrive at any conclusion of appellant making any demand of gratification. PW-11 stated that from the conversation between the appellant and PW-10, he could heard the appellant asking "is it ready?" and PW-10 only nodding his head. It is for that reason the High Court recorded that the alleged demand by the appellant on 2.10.1999 is highly doubtful and is not proved beyond reasonable doubt. The High Court relied upon yet another circumstance creating a doubt as regards the demand of any gratification by the appellant as there is no mention of any such demand in Exhibit P-9 - post trap mahazar. The High Court accordingly acquitted the appellant of charges under Section 13(1)(d) read with Section 13(2) of the said Act ."

37. In the present case, what appears that the complainant has stated about the demand of Rs. 500/- by the appellant for preparation/fixation of his pension papers and later on the appellant

agreed on Rs. 300/- and the evidence also shows that the complainant has given the amount to the appellant at a tea stall and at the same time, the evidence of complainant also shows that when appellant met with the complainant at the tea stall, he enquired about his work, then the appellant asked for Rs. 300/-, which was given by the complainant to him, thereafter, he was arrested by the C.B.I. officials and evidence of other witnesses, who are CBI officials and two witnesses of F.C.I. Department are also on that point. However, what appears from perusal of the records and evidence of prosecution witnesses also that on the date of occurrence or on the date of demand, no work of the complainant was pending before the appellant. In that connection, evidence of PW13, who was the Section Officer in the Pen Ten Section of AG office disclosed that pension paper of the appellant was prepared and dispatched to the District Superintendent of Education, Bettiah, to the Treasury Officer as well as to the Complainant. Evidence of this witness in para -17 of cross examination also disclosed that the dispatch section sent the parcel to the official concerned and also to the District Superintendent of Education, Bettiah and also to the complainant on 23.08.89 through U.P.C. The aforesaid evidence of PW13 further found support from the evidence of I.O. R.C. Chaudhary, who has stated in his evidence that the revised pension of the appellant was disposed of by the Section, in which the appellant was posted as on 4.8.89 and it was sent to the dispatch section for sending a copy to the District Superintendent of Education, Bettiah and his evidence further disclosed that dispatch section sent the same to the District Superintendent of Education, Bettiah and also to the complainant on 23.8.89 through U.P.C. Evidence of this witness also disclosed that he has not verified the receiving of parcel in the District Superintendent of Education, Bettiah and to a Court's query also, this witness has admitted that no pension revision paper of the complainant was pending before the appellant Sitaram Singh.

38. It appears that in this case trap was led on 31.08.89 and the complaint was filed on 28.08.89 and as such the above evidence clearly disclosed that as on date of filing of complaint, no pension paper of the complainant was pending before the appellant as the letters were dispatched on 23.08.89 itself. The aforesaid facts found further support from the evidence of PW6 Rajni Ranjan Sahay, who stated in his cross-examination that at the time of verification of the complaint, the accused had told that he has dispatched the papers of complainant. Evidence of this witness found further corroboration from evidence of PW 13.

39. Now considering the above discussion, it appears that the pension papers of the complainant had already been dispatched prior to filing of the complaint petition, in such a situation, when the work

has already been done, the question arises as to what was the occasion for the appellant to demand money from the complainant. However, in spite of aforesaid fact without going into detailed investigation on that point, it appears that charge-sheet has been submitted against the appellant Sitaram Singh. No doubt, evidence of witnesses specially the evidence of C.B.I. witnesses and independent witnesses also disclosed that a demand was made by the appellant from the complainant and the money was given to the appellant Sitaram Singh by the complainant, which was counted by the appellant Sitaram Singh and he kept the same into his pocket and, thereafter, CBI officials caught him and money was recovered. On that point also, so far transaction of tainted money is concerned, there is contradiction in the evidence of prosecution witnesses as according to PW2 R.S.S. Yadav in para -22, it was PW3 Ranjit Singh, who recovered the tainted money before the alleged *hungama,* whereas evidence of PW3 Ranjit Singh disclosed that the money was recovered by the CBI officials and not by him and that too before the *hungama*. On the other hand, evidence of PW4 disclosed that he has not named any person as to who had recovered the money but according to him, the alleged money was recovered after *hungama*, which will appear from para -13 and 24 of his evidence. PW5 in his evidence in para 15 has stated that the money was recovered before *hungama* but in his cross-examination in para -34 has stated that the money was recovered after *hungama* and he has stated in his evidence that the same was recovered by the witnesses and not by the C.B.I. officials and according to PW6 in para 11, it was Ranjit Singh, who recovered the money and that too after *hungama*, whereas, PW 10 in para -22 has stated that it is the I.O., who recovered the money after hungama. I.O. PW. 14 has not taken the name of any person but has stated that the recovery was made before the *hungama.* As such evidence of witnesses are contradictory so far recovery as well as time of recovery is concerned.

40. Learned counsel for the CBI has stated that these are minor contradictions and on that basis only, evidence of demand and acceptance as well as recovery cannot be brushed aside and apart from that prosecution has been able to prove that tainted money was recovered from the possession of the appellant Sitaram Singh and hence, recovery memorandum has been prepared and further the hand of the appellant and the shirt in which the said tainted money was ke pt, were dipped into the solution and both turned pink and no explanation has been given by the defence for the same.

41. However, it appears that the CBI as well as learned Trial Court has failed to consider this aspect of the matter that evidence of prosecution witnesses itself disclosed that the work of revision of

pension of the appellant has already been done by the Pen Ten Section, in which the appellant Sitaram Singh was working at relevant point of time and the same was dispatched to the District Superintendent of Education, Bettiah and a copy of the complainant as well through UPC, which are Ext. 8 and 8/1, in such a situation, a question arise as to what was the occasion for the appellant for demanding the money. Learned counsel for the C.B.I. has relied upon a decision reported in 2004 (12) SCC 29 State of West Bengal vs. Kailash Chandra Pandey to contend that in the said case also, the bills of the complainant for the period in question have already been passed and payments made. However, Hon'ble Apex Court has held that this is not a ground to disbelieve the prosecution case. In fact, the objections were raised & deductions were made in bills and money was being demanded from Shri Sengupta so that his bills are not objected or delayed and no deduction be made in future. The money was paid to the accused for the safe passage of his bills. However, the facts of the present case is completely different to the decision relied upon by learned counsel for the C.B.I. as in the present case, there is nothing available on record to show that the appellant Sitaram Singh has raised any objection or has made any deductions in the revision/fixation of pension of the complainant rather the evidence of PW13 in para -7 disclosed that the application received from the complainant was diarized at page -57 of the diary at Sl. No. 745, which has been received from the office of District Superintendent of Education, Bettiah by appellant, on which, the appellant put his initial also. Paragraph -8 of the evidence of this witness disclosed that after receiving the papers, appellant Sitaram Singh calculated his pension and put his signature and the Section Officer has also checked the same and put his signature and, thereafter, the Accounts Officer had also approved the same on 19.7.1989 and the same was marked as Ext. 9/1 and, thereafter, the Section Officer and Accounts Officer signed the same, which was marked as Ext. 11. Evidence of this witness in para -9 shows that paper was sent to the dispatch section on 4.8.89 and further para -12 of his evidence disclosed that in between 13.07.89 to 19.7.89, the pension was calculated and the calculation made, was correct and Accounts Officer has written certain conditions on that. The aforesaid evidence clearly disclosed that on 29.08.89, no pension paper of the complainant was pending before the appellant. In such a situation, a reasonable doubt arises as what was the occasion for the appellant to demand any money from the complainant specially when there is contradiction amongst the prosecution witnesses with regard to recovery as well as the time of recovery. As such the prosecution story with regard to demand, acceptance and recovery of the money, is not free from reasonable doubt.

42. Learned counsel for the appellant has also submitted that prosecution has failed to prove the story of demand and recovery by cogent and reliable evidence and there shall be no presumption under Section 20 of the Prevention of Corruption Act. In support of his contention, he has relied upon the decision in the case of **B.Jayaraj vs State Of A.P** (supra), in which the Hon'ble Apex court has observed that "in so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent". Learned counsel for the appellants has also relied upon a decision reported in **2016 (12) SCC 150 V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga to contend in which, it** has been held that "*in order to constitute an offence under Section 7 of the Prevention of Corruption Act, 'proof of demand' is a sine quo non. This has been affirmed in several judgments including a recent*

judgment of this Court in B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55, wherein this Court held as under:- "7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P.(2010) 15 SCC 1 and C.M. Girish Babu v. CBI (2009) 3 SCC 779." The same view was reiterated in P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr. (2015) 10 SCC 152".

43. Hon'ble Apex Court in the case of **Som Prakash vs. The State of Punjab** reported in **1992 Cr. Law J. 490** has held in para 2 of its judgment, which reads as follows:-

> "The High Court found that the witnesses who were associated in the conduct of the raid for recovery of tainted money from the appellant could not be termed as independent who could be associated with such raids. The High Court further expressed doubt about veracity of the witness who claimed that money was actually handed over in his presence. The High Court, however, drew an adverse inference against the appellant from the circumstance that

> the, bill which was delayed for unreasonable period had suddenly been passed by the appellant On an overall assessment the High Court entertained some suspicion about the credibility of the prosecution witnesses but at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant. We agree with the learned Counsel for the appellant that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him."

44. Further a Single Bench of this Court in the case of **Raza Imam Rizvi vs. The State of Bihar**, reported in **2008(4) PLJR 419** has observed in paragraph – 22 of the its judgment, which reads as follows:-

> "In such a case of trap and recovery of the tendered amount presence of independent witnesses from all respects is the requirement of law as all others involved are personnels of the department. The witnesses so produced as independent witnesses must not only be independent but they must be of such a category that what they depose before the court cannot ordinarily be questioned or doubted. The prosecution must in such matter seriously endeavour to secure really independent and respectable witnesses so that his/their evidence in regard to every step of trap inspire confidence and the court is not left in any doubt. This is a

> safeguard for protection of public servant. Reference in this regard may be made to the case of Raghbir singh vs. State of Punjab, 1976 Cri. L.J. 172."

45. Considering the discussions made above, the question of presumption arises only when prosecution has been able to establish the demand and recovery beyond all reasonable doubt.

46. It further appears that PW3 and PW4 are called as independent witness but they remained with the raiding team throughout the day and moreover, there were Assistants of Food Corporation of India and evidence of PW4 shows that prior a case was lodged against their Regional Manager in such view of the matter, they cannot be said to be really independent witnesses, which requires confidence and keeping the independent witness during the trap is safeguard or for protection of public servant and the independent witnesses must be really independent and respectable, which is missing in the rpesent case. In such a situation, it appears that the prosecution has not been able to establish story of demand, acceptance and recovery beyond alls shadow of reasonable doubt.

47. Although appellant has also raised a point with regard to sanction order, however, during argument, the said point has not been pressed.

48. The appellant Sitaram Singh has also been convicted under

Section 224 of the Indian Penal Code for intentionally offering resistance or illegal obstruction to the lawful apprehension of himself and appellant Ajit Kumar in Cr. Appeal (SJ) No 238 of 2003 has been convicted under Section 225 of the Indian Penal Code for intentionally offering resistance or illegal obstruction to the lawful apprehension of appellant Sitaram Singh and further convicted under Section 353 of the Indian Penal Code for making assault and criminal force to deter public servant from discharge of his duty as well as convicted under Section 186 of the Indian Penal Code for obstructing public servant in discharge of public functions. However, on perusal of the evidence as discussed above, there is nothing available on record to show that appellant has assaulted any member of the trap team and at best on witness has stated that he tried to flee away and the evidence available on record shows that he himself sustained injuries in his leg. As such, there is not sufficient, cogent and reliable evidence available on record that appellant Sitaram Singh illegally created obstruction for his apprehension.

49. So far appellant Ajit Kumar is concerned, it is alleged that he led the mob and tried to get freed appellant Sitaram Singh from the clutches of the C.B.I. and he has assaulted the C.B.I. officials and some witnesses have also stated that the mob had assaulted B.K. Birdhi, Lalit Kishore and Jaggarnath Prasad. However, none of the

witnesses has stated that they received any injury nor there is any evidence that cloth of any member of trap team was torn and at best the evidence of PW10 shows that only button of his shirt was broken and except PW2 R.S.S. Yadav, none of the witnesses has stated that they were knowing appellant Ajit Kumar from before and according to prosecution story R.S.S. Yadav identified appellant Ajit Kumar amongst the mob and evidence of PW2 R.S.S. Yadav disclosed that he was knowing the appellant Ajit Kumar from before as he was residing in his *mohalla*. However, prosecution evidence further disclosed that the prosecution party had enquired about the whereabouts of the appellant Ajit Kumar in the AG Office. In such a situation, the claim of the PW2 R.S. S. Yadav that he was knowing Ajit Kumar from before and the mob was led by him, does not inspire confidence. It has also come that appellant Ajit Kumar used to sit besides the table of appellant Sitaram Singh and the defence witnesses have stated the complainant thrusted the money into the pocket of appellant Sitaram Singh and thus all these things creates a reasonable doubt about the participation of appellant Ajit Kumar.

50. Considering the entire discussions made above, it appears that there are several discrepancies in the prosecution case so far demand, acceptance and recovery of amount is concerned specially in view of the fact that revised pay bill has already been issued prior to lodging

of the complaint by the complainant and the investigating officer knowing well this fact submitted charge-sheet in this case without conducting further investigation. So far story of recovery is concerned, there are vital contradictions amongst the evidences of prosecution witnesses and the prosecution witnesses, who have supported the story of demand and recovery are CBI officials and two independent witnesses of the FCI but as discussed above, they do not appear to be independent witnesses rather they were under the influence of prosecution party. Further, it appears that the story of *marpit* and identification of Appellant Ajit Kumar is also not free from reasonable doubt. All the above facts clearly show that the prosecution evidence is not free from reasonable doubt. Whereas, it is evident that the revised pension of the complainant was already prepared prior to the complaint and further the evidence of prosecution witnesses are contradictory to each other, which creates a serious doubt about prosecution story. It is well settled that prosecution standard of proof requires for the prosecution to prove the case beyond all reasonable doubts and at the same time, the defence has to create reasonable doubt in the prosecution case based on preponderance of probability. In the present case, it appears that prosecution has entirely failed to prove its case under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act as well as under Section 324 of the IPC against the appellant Sitaram Singh. Similarly, the prosecution has also failed to prove its case under Section 225, 353 and 186 of the IPC against appellant Ajit Kumar and hence, the appellants are entitled for at least benefit of doubt.

51. Accordingly these appeals are allowed. Judgment of conviction and order of sentence passed by Shri Braj Nandan Sahay, learned Special Judge CBI, Patna in R.C. No. 24(A)/89 in Special Case No. 59/89, is hereby set aside.

52. As the appellants are on bail, they are discharged from liability of their bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.08.2018
Transmission Date	03.08.2018