

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.652 of 2010

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

[Against judgment of conviction and order of sentence dated 15.06.2010 passed by the Special Judge, Vigilance II, Patna, in Special Case No.25 of 1991 arising out of Vigilance P.S. Case No.42 of 1991.]

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Puneshwar Rai, son of late Akhileshwar Narayan Rai, resident of village-Motijheel, P.S.-Town, District-Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar through Vigilance

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anshul, Advocate

Mr. Shiv Kumar Prabhakar, Advocate

For the Respondent/s : Mr. PP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 27-07-2018

By impugned judgment of conviction and order of sentence dated 15.06.2010 passed by the Special Judge, Vigilance II, Patna, in Special Case No.25 of 1991, arising out of Vigilance P.S. Case No.42 of 1991, sole Appellant has been convicted for the offence under Section(s) 7 and 13(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for six months under Section 7 of the Prevention of Corruption Act and rigorous imprisonment for one year under Section 13(2) of the Prevention of Corruption Act. Both the sentences were ordered to run



concurrently.

2. The prosecution case, as per written complaint of the Complainant, in brief, is that the Complainant Mani Kant Mishra is supplier in Purnea *Mandal Kara*. The Superintendent of Jail, Sri Laxman Prasad Singh, and Assistant Jailor, Puneshwar Rai, collusively shown supply of vegetable in the name of Complainant, which was grown in jail campus and for payment of the amount of bill, they demanded Rs.10,000/- from the Complainant. They threatened the Complainant that in default of making payment they will show the supply of the articles in the name of others. The Jail Superintendent on 03.10.1991, again, demanded the amount in his Chamber in the presence of Assistant Jailor (Appellant) failing which they refused to make payment of bill to the Complainant. The Complainant paid Rs.5000/- as advance to the Jail Superintendent and he promised to pay the remaining amount of Rs.5000/- within a month after payment of amount of the bill. The Complainant did not want to give bribe and send written report to D.I.G. Vigilance, Patna. Bhagwan Singh, Inspector, Vigilance PS, was deputed to enquire into the matter. He found the allegation correct and submitted his report. Instant case was registered on the basis of enquiry report of Bhagwan Singh and the complaint filed by the Complainant. Further case of the prosecution is that a Trap Team



was constituted under the leadership of Jag Lal Choudhary, Addl. Superintendent of Police, Vigilance. On 30.10.1991, the Trap Team reached Purnea. The accused was apprehended taking bribe money. Thereafter, on search in presence of two independent witnesses bribed money was recovered from his possession. Thereafter, accused was forwarded. The police after investigation submitted charge-sheet against the sole accused (Appellant) for the offence under Section(s) 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Cognizance was taken and accused was put on trial.

3. The accused denied the alleged occurrence and claimed to be innocent.

4. The prosecution during trial has examined altogether twelve witnesses in the case.

5. One defence witness has also been examined, namely, Kailash Pati Yadav as DW 1.

6. In the instant case, the prosecution has examined altogether 12 witnesses. PW 1 (Prem Nath Mishra), PW 2 (Mani Kant Mishra) the Complainant himself, PW 3 (Shri Dev Mallick), PW 4 (Bhagwan Singh), PW 5 (Jaglal Choudhary), PW 6 (Sushil Kumar Yadav), PW 7 (Laxmi Nandan Prasad Singh), PW 8 (Ajay Kumar Singh), PW 9 (Binay Kumar Pandey), PW 10 (Hari Shankar



Singh), PW 11 (Pradip Kumar Srivastava) and PW 12 (Dr. Anil Kumar Sinha).

7. PW 1, 3 and 12 are formal witnesses. PW 6 is seizure list witness, who has turned hostile. He has stated that there was no search conducted in his presence. Other seizure list witness did not come to Court. Bhagwan Singh (PW 4) is verifier, who appeared for examination-in-chief. He has uttered nothing about the alleged occurrence. He has only read the verification report. Cross-examination of this witness was not conducted. Court below has exonerated his oral evidence from consideration. Rest of the witnesses apart from the Complainant are members of Trap Team.

8. The Complainant has been examined as PW 2. He has stated in his evidence about the alleged occurrence. He was supplier of food articles in Purnea Jail in the year 1991 and a bill for payment was pending amounting to Rs.2.75 lacs. The Jail Superintendent and Assistant Jailor were demanding illegal gratification and they demanded Rs.12,000/-. He made payment of Rs.5000/- in advance and informed the Vigilance department on 20.10.1991. For verification of allegation made in the Complaint Petition, an Officer was deputed, who reached Purnea on 25.10.1991 at about 8:00 P.M. The Complainant and the verifier reached the residence of both accused persons. They met Assistant Jailor



(Appellant) who demanded Rs.7000/-, the due money. He further told that any lesser amount will not be accepted. In the evening at about 4.00 P.M. on the same day the Complainant and verifier went to the residence of Jail Superintendent, who told them that the Assistant Jailor has told them correct. The bill will not be passed unless the amount is paid and after that the Complainant and verifier came to Patna. The Complainant went to Vigilance Office with Rs.7000/-(seventy currency notes of Rs.100/- each) and handed over the same to the Officer-In-charge. The memorandum of notes was prepared on which he put his signature (marked Ext.2). Phenolphthalein was applied on the said currency notes and handed over to him in a packet with direction that he will give the same to the accused on his demand. The Complainant along with trap team reached Purnea on 30.10.1991 and went to the residence of Assistant Jailor (Appellant) and met him. He enquired about Jail Superintendent, who told him that he has gone to Bhagalpur to attend an office meeting. The Complainant asked him whether the amount be paid to him. The Assistant Jailor (Appellant) demanded money upon which he handed over envelop containing money and the accused took it and went inside his quarter keeping the money in his pocket. In the meantime, he gave signal to the Trap Team on which they arrived and apprehended the accused. On being asked by



the Trap Team, the accused disclosed that he has kept the money in a wooden box. The Dy. Superintendent of Police recovered the said currency notes from the wooden box. The number of recovered currency notes tallied with the number of currency notes of the memorandum. The hand of the accused was washed in solution which became of pink colour. The solution was spread on the pocket of pant of the accused which also became of pink colour and likewise solution was spread on wooden box which also became of pink colour.

9. Bhagwan Singh, PW 4, has stated in his evidence that on 24.10.1991, he received Complaint Petition of Mani Kant Mishra (Complainant) and he was directed to verify and report about the matter. He reached Purnea on 25.10.1991 at about 9.00 A.M. along with the Complainant and went to residence of Assistant Jailor (Appellant), who was ready in his uniform, to go to his office. He and the Complainant also accompanied him. In the way, the Complainant asked the accused about his bill on which the accused told that his bill has already been prepared and it may require countersign as 15 days has been passed. The Complainant told the accused that due to illness of his mother, he could not come earlier. In the meantime, they reached in the Chamber of the accused where the Jailor Murari Das was sitting. The Complainant disclosed



identity of PW 4 as his uncle. The Jail Superintendent, Laxman Prasad, came in the Chambers at about 10.30 A.M. The Assistant Jailor (Appellant) and the Complainant went in the Chambers of Jail Superintendent. The bill bearing No.41/1991-92 of Rs.27,041.25 was handed over to him and the Complainant went to Purnea Treasury for depositing the bill. PW 4 along with the Complainant again went to the residence of the accused at 4.30 PM where the Complainant told the accused that his bill has not been passed on which he told that it will be done on Monday. The Complainant told the accused that he has already paid Rs.5000/- and requested that remaining amount of Rs.5000/- may be taken in two installments on which the accused told that now he has to pay Rs.7,000/- for passing of the bill and at the time of payment of Rs.5,000/-, it was decided that the Complainant has to pay Rs.7,000/-. After that the Complainant agreed and told the accused that he may come either on 29.10.1991 or 30.10.1991 with the money. After that PW 4 along with Complainant reached at the residence of Jail Superintendent where he was identified by the Complainant as his uncle. During course of talk, the Complainant requested the Jail Superintendent and he told that he has already paid Rs.5000/-. He went to Assistant Jailor, who told him to pay Rs.7,000/- more. The Jail Superintendent told that the accused has told correct amount. The Complainant told



the Jail Superintendent that he will pay the due money on 29 or 30.10.1991 on which the Jail Superintendent told that he will pass more amount in other bill. The Jail Superintendent further told the Complainant that his three bills have already been paid in which he has his 3% share which he should get to which the Complainant agreed. The Jail Superintendent brought his dairy and put a chit of paper which shows Rs.3,245.55 of his commission was due against the Complainant. He has proved that paper (marked Ext.4). After completing the inquiry, he submitted his report marked Ext.5.

10. PW 5, Jaglal Choudhary, was leader of the Trap Team. He has stated in his evidence that on the basis of letter received by him he organized a Trap Team consisting of the Officers as mentioned in his evidence and also perused verification report of Bhagwan Singh. Memorandum of currency notes given by the Complainant was prepared which bears his signature, which has been marked Ext.2 and 2/1. The Complainant, Manikant Mishra, gave Rs.7,000/- (Seventy currency notes of Rs.100/- each). Chemical powder of sodium carbonate and phenolphthalein powder was exhibited and phenolphthalein powder was applied on the notes and was handed over to the Complainant with direction that he will give the same to the accused on their demand. The Trap Team reached Purnea on 30.10.1991. All the members of the Trap Team reached



outside the house of the accused. The Complainant, Manikant Mishra, and verifier, Bhagwan Singh (PW 4), were sent in the house of the accused with direction that they will give signal by wiping their mouth with handkerchief when the accused will take money. Bhagwan Singh (PW 4) after sometime gave signal to members of Trap Team and they rushed to the residence of the accused. Inspector Harishanker Singh caught right hand, whereas, Ramesh Chandra Giri, Inspector, caught left hand of the accused and members of the Trap Team disclosed their identity before the accused. Two members amongst the gathering, Sushil Kumar Yadav and Md. Sahabuddin were called before whom search of accused was made but nothing was recovered from his possession. During course of query, the accused confessed his guilt and at his instance all the 70 notes of Rs.100/- each were recovered, kept in wooden box in courtyard of the accused. The notes were same as G.C. notes of memorandum. After that solution of sodium carbonate was prepared and right hand of the accused was put in the solution but its colour was not changed. But when the left hand of the accused was put in another solution of sodium carbonate glass the colour became pink from white. Both the solutions were sealed. Another solution of sodium carbonate was prepared in a glass and the left pocket of pant of the accused was put in the solution on which its colour became



pink from white. A seizure list of seized notes was prepared by Hari Shankar Singh, Police Inspector, on the direction of this witness. A copy of the seizure list was handed over to the accused. The accused put his signature on it. He has proved seizure list marked Ext. 6. Thereafter, accused was arrested.

11. PW 8 (Ajay Kumar Singh) PW 10 (Hari Shankar Singh) and PW 11 (Pradeep Kumar Srivastava) are the members of Trap Team, who gave similar evidence about the alleged occurrence.

12. PW 8, Ajay Kumar Singh, is Magistrate in Vigilance Department, who has proved his signature on memorandum of G.C. Notes marked Ext.2/2.

13. PW 10 and 11 have stated that after applying phenolphthalein powder on the currency notes it was handed over to the Complainant with direction that he will give the same to accused on his demand as bribe. The Trap Team has reached in the morning near the residence of the accused. They were walking around residence and on receiving signal from verifier, PW 4, Bhagwan Singh, the members of Trap Team reached the residence of the accused. They have also stated that on search nothing was recovered from the possession of the accused. Notes were the same as mentioned in memorandum. The seized notes, chemical solution and full pant of the accused were seized and seizure list was prepared on



which PW 8 and other witnesses put their signature marked Ext.6/2.

14. PW 1, Prem Nath Mishra, has proved 70 currency notes of Rs.100/- each marked Material Ext. I to I/69.

15. PW 3, Shrideo Mallick, has proved sanction for prosecution marked Ext.3.

16. PW 7, Laxmi Nandan Prasad Singh, has also proved sanction order for prosecution marked Ext. 7.

17. PW 12, Dr. Anil Kumar Singh, Sr. Scientific Officer of FSL, Patna, has proved FSL report marked Ext.9.

18. PW 6, Sushil Kumar Yadav, is seizure list witness, who has proved his signature marked Ext.6/1. He has stated that nothing was recovered in his presence. He has been declared hostile by the prosecution.

19. PW 9, Binay Kumar Pandey, is the Investigating Officer of this case, who visited the place of occurrence and recorded statement of the witnesses. He obtained sanction order for prosecution against the accused and sent the sealed solution for test in FSL, Patna, and after concluding investigation submitted charge sheet in this case.

20. DW 1, Kailash Pati Yadav, has stated that the occurrence took place on 20.10.1991. He was also Contractor of Purnea Jail. On that day, he had gone to the residence of Assistant



Jailor to ask about the requirement. The Complainant, Mani Kant Mishra, also came in the courtyard of the accused from back gate and told him to leave the room for 10-15 minutes as he has to do some talk with the Appellant. Thereafter, he came out. Later on, he came to know that members of the Trap Team have recovered money from the courtyard.

21. As such, from the evidence of aforesaid witness, it is apparent that the Complainant (PW 2) and the identifier, Bhagwan Singh (PW 4) had gone inside the residence of the Appellant to make payment of the bribe money.

22. PW 5, Jag Lal Choudhary, was leader of the Trap Team. As per his evidence, there were 13 members in the Team, who had conducted Trap, but only five persons have been examined by the prosecution as witness. The other members of the trap have not appeared for their evidence. PW 5 has stated in his evidence that on 30.10.1991 all the members of the Trap Team reached outside the house of the accused. The Complainant, Manikant Mishra, and verifier, Bhagwan Singh (PW 4), were sent inside the house of the accused with direction that they will give signal by wiping their mouth with handkerchief when the accused will take money. Bhagwan Singh (PW 4) after sometime gave signal to members of Trap Team and they rushed to the residence of the accused. It is



alleged that Inspector, Harishanker Singh, caught right hand, whereas, Ramesh Chandra Giri, Inspector, caught left hand of the accused and members of the Trap Team disclosed their identity before the accused. Two members amongst the gathering, Sushil Kumar Yadav and Md. Sahabuddin were called before whom search of accused was made but nothing was recovered from him. During course of query, the accused confessed his guilt and at his instance all the 70 notes of Rs.100/- each were recovered from wooden box kept in courtyard of the accused. The notes were same as G.C. notes of memorandum. After that solution of sodium carbonate was prepared and right hand of the accused was put in the solution but its colour was not changed. But when the left hand of the accused was put in another solution of sodium carbonate glass the colour became pink from white. Both the solutions were sealed. Another solution of sodium carbonate was prepared in a glass and the left pocket of pant of the accused was put in the solution on which its colour became pink from white. A seizure list of seized notes was prepared by Hari Shankar Singh, Police Inspector, on the direction of this witness. A copy of the seizure list was handed over to the accused and he put his signature on it. Similar evidence has been given by PW 8 (Ajay Kumar Singh) PW 10 (Hari Shankar Singh) and PW 11 (Pradeep Kumar Srivastava).



23. Bhagwan Singh, PW 4, has stated in his evidence that he had gone to the residence of the Appellant on 25.10.1991 at about 9.00 where talk was finalized to give payment on 29/30.10.1991. The Jail Superintendent brought his dairy and put a chit of paper which shows Rs.3,245.55 of his commission was due against the Complainant. This witness has proved that paper (marked Ext.4). He submitted his report after completing the inquiry marked Ext.5. As such, PW 4 has not stated anywhere in his evidence that money was paid to the Appellant in his presence by the Complainant.

24. The Complainant (PW 2) has stated in his evidence that he went inside the residence of Assistant Jailor (Appellant) on 30.10.1991 and upon demand of the money he handed over the envelop containing money and the accused took it and went inside his quarter after keeping the money in his pocket. In the meantime, he gave signal to the Trap Team on which they arrived and apprehended the accused. On being asked by the Trap Team, accused told that he has kept the money in wooden box in courtyard. The Dy. Superintendent of Police recovered the said currency notes from the wooden box. The number of recovered currency notes tallied with the number of currency notes of the memorandum.



25. PW 5, who is leader of the Trap Team, has stated in his evidence that the Complainant, Mani Kant Mishra, and verifier, Bhagwan Singh, were sent inside the house of accused. They were directed to give signal by wiping their mouth with handkerchief when the accused takes money. After sometime, Bhagwan Singh (PW 4) gave signal to the members of the Trap Team. The members of the Trap Team rushed to residence of the accused. Harishanker Singh caught right hand, whereas, Ramesh Chandra Giri, Inspector, caught left hand of the accused and members of the Trap Team disclosed their identity before the accused. Two members amongst the gathering, Sushil Kumar Yadav and Md. Sahabuddin were called before whom search of accused was made but nothing was recovered from him. During course of query, the accused confessed his guilt and at his instance all the 70 notes of Rs.100/- each were recovered kept in wooden box in courtyard of the accused. The notes were same as G.C. notes of memorandum.

26. In this manner, from the evidence of PW 2, 4 and 5, it appears that there is apparent contradiction in giving money to the Appellant. The Complainant has stated in his evidence that he has given money to the Appellant and Appellant kept the envelope in his pocket. Dy. Superintendent of Police has recovered the said



notes from the wooden box. PW 5 has stated that the Complainant and PW 4 went inside the residence of the Appellant with direction to give signal when money is given. Bhagwan Singh (PW 4) gave signal to the members of the Trap Team and they rushed inside the residence of the accused. Harishankar Singh caught right hand, whereas, Ramesh Chandra Giri, Inspector, caught left hand of the accused and members of the Trap Team disclosed their identity before the accused. Two members amongst the gathering, Sushil Kumar Yadav and Md. Sahabuddin were called before whom search of accused was made but nothing was recovered from him. During course of query, the accused confessed his guilt and at his instance all the 70 notes of Rs.100/- each were recovered kept in wooden box from courtyard of the accused. PW 4 (Bhagwan Singh) has not stated anywhere in his evidence that notes were given in his presence. He has only stated that he had gone to the residence of the Appellant with the Complainant on 25.10.1991. The Complainant had agreed to make payment on 29/30.10.1991. The Jail Superintendent told the Complainant that three bills have already been paid in which his commission is 3% which he should get to which the Complainant agreed. The Jail Superintendent brought his dairy and put a chit of paper which showed Rs.3,245.55 of his commission was due against the Complainant. He has proved that



paper (marked Ext.4). He submitted his report marked Ext.5. As such, Bhagwan Singh (PW 4) as well as none of the members of Trap Team has stated that money was paid by the Complainant to the accused in their presence. PW 4, Bhagwan Singh, (verifier), did not appear for cross-examination as would appear from the case record.

27. PW 5 has stated in his evidence that at the time of search, two independent witnesses, namely, Sushil Kumar Yadav and Md. Sahabuddin were called for search of the accused, but nothing was recovered. Sushil Kumar Yadav has been examined as PW 6. He has stated in his evidence that nothing was recovered in his presence. He has been declared hostile. Another witness, Md. Sahabuddin, never appeared for his evidence in Court.

28. The Trial Court merely on the basis that colour of the solution became pink from white when left hand of the Appellant was put in solution as well as left pocket of the pant also became pink from white has convicted the Appellant, whereas, PW 5 (leader of the Trap Team) has stated in his evidence that nothing was recovered from the possession of the Appellant. Notes were recovered from the courtyard of house of the Appellant kept in a wooden box. Similarly, PW 2 has stated that notes were recovered from the wooden box kept in the courtyard. From the Complaint



Petition, it appears that Complainant was supplier of food articles in Purnea Jail. There was bill pending for payment of the Complainant with the Appellant. It further appears from the evidence of the Complainant and allegation in the Complaint Petition that Jail Superintendent has made demand of money of rupees ten thousand. But, in the evidence the Complainant has stated that he was asked to pay rupees twelve thousand as bribe by the Jail Superintendent. Thereafter, he paid the bribed amount amounting to rupees seven thousand to the Appellant. Jail Superintendent has not been charge-sheeted in this case. Police has submitted charge-sheet only against the Appellant.

29. It has been submitted on behalf of the Appellant that he has no role in passing of the bill. He was working as Assistant Jailor. The bill is passed by the Jail Superintendent. Actual authority of passing the bill is with Jail Superintendent against whom final form has been submitted by the police. Alleged demand of bribe is not against the Appellant, but it is against the Jail Superintendent. It has also been submitted that marked currency notes has been recovered from a broken wooden box kept in the courtyard of the house.

30. DW 1 has stated in his evidence that PW 2 was seen in the courtyard of the house from where alleged recovery was



made by the Trap Team after entering into the house. Verifier has not stated anywhere about payment of money to the Appellant by the Complainant. There is no eye witness as to demand or acceptance of bribe in this case. There is contradiction in the prosecution story on vital issues inasmuch as every witness has come out with his own version of the alleged occurrence. There was animosity between the Complainant and the Appellant.

31. This Court after looking into the evidence, as mentioned above, in detail, and hearing the submission of counsel for the Appellant, finds that there is no eye witness except the Complainant to prove that money was paid to the Appellant. Moreover, from the evidence of PW 5 itself, it is apparent that money was not recovered from the conscious possession of the Appellant. The same has been recovered from the wooden box kept in the courtyard. The Trial Court has convicted the Appellant merely on surmises that left hand and pant of the Appellant got pink when the same was dropped in the solution of sodium carbonate. But, it is admitted position that witnesses including Complainant have stated in their evidence that no recovery of money was made from conscious possession of the Appellant. Therefore, on the basis of evidence of prosecution witnesses, as discussed above, prosecution has failed to prove the Charge against the Appellant beyond all



reasonable doubt.

32. Accordingly, impugned judgment of conviction and order of sentence dated 15.06.2010 passed by the Special Judge, Vigilance II, Patna, in Special Case No.25 of 1991, arising out of Vigilance P.S. Case No.42 of 1991, is hereby set aside. The Appellant is acquitted of the charges levelled against him. He is discharged from the liability of his bail bond.

33. This Criminal Appeal is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	10-05-2018
Uploading Date	30-07-2018
Transmission Date	30-07-2018

