

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.459 of 2011

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SHEO RAJ KUMAR, son of Late Jageshwar Yadav, resident of Anandpura,
Police Station Deo, District Aurangabad

... .. Appellant

Versus

THE STATE OF BIHAR through Vigilance

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shravan Kumar, Sr. Adv. Mr. Dinesh Maharaj Mr. Satish Kumar Singh
For the Respondent/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Rakesh Kumar Sharma Mr. Amresh Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 16-01-2018

The appellant is aggrieved by the judgment of conviction and the order of sentence, dated 28.03.2011, passed by learned Special Judge, Vigilance (Trap), Patna, in Special Case No. 43 of 2007/07 of 2007, arising out of Vigilance Police Station Case No. 71 of 2007, whereby and whereunder he has been convicted of the offences punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, and has been sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 5,000/- for the offences punishable under Section 7 of the Prevention of Corruption Act, 1988. For the



offences punishable under Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, he has been sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 5,000/-. In case of default in payment of fine, the appellant has been made to undergo simple imprisonment for a further period of three months each.

2. The appellant, at the relevant point of time, was working as a Class-III employee in the Office of the erstwhile Patna Regional Development Authority (in short PRDA).

3. One Arun Kumar Sinha (PW 1) is the complainant, who had made a complaint before the Vigilance Police Station leading to the appellant falling in a trap, laid by the Vigilance Investigation Bureau.

4. The case of the prosecution, in brief, is that the complainant, Arun Kumar Singh, claiming to be resident of Lilawati Apartment, Flat No. 104, had filed a petition on 31.05.2007, before the Officer-in-Charge of the Vigilance Police Station, alleging that he wanted the said flat to be registered in the name of his wife under the provisions of the Bihar Apartment Ownership Act, 2006, since the landlord was absent. An application was made before the competent authority under PRDA for requisite sanction for getting the said flat registered in the name



of his wife. The appellant is said to have demanded an amount of Rs. 2,500/-, as bribe, to get the work done. Since the complainant was not willing, he approached the Vigilance Investigation Bureau, making the allegation. One Santosh Kumar Singh (PW 4) was deputed by the Officer-in-Charge of the Vigilance Police Station for the purpose of verification of the allegation made in the petition, on the same day. The said Santosh Kumar Singh did the verification and submitted his verification report on 01.06.2007 to the Officer-in-Charge of the Vigilance Police Station, reporting the allegation of the complainant to be correct. A trap team was thereafter constituted, headed by the Deputy Superintendent of Police Maharaja Kaniska Kumar Singh and other officers of the Vigilance Police Station. It is the specific case of the prosecution that the verifier introduced the complainant to the members of the trap team. The informant gave the bribe amount of Rs. 2500/-, being 5 G. C. notes of 500 denomination each. In the meeting between the complainant and the officials of the vigilance team, a demonstration of chemical reaction of sodium carbonate and phenolphthalein power was made and the tested solution was sealed in a glass phial, marked as 'A'. After rubbing phenolphthalein powder with the G. C. notes, the said notes were returned to the informant with a direction to give them to the



accused only on demand. The verifier was instructed to give signal after acceptance of the bribe money by the accused; whereas the remaining members of the trap team were directed to remain nearby, in the vicinity. The members of the Vigilance Team, namely, Raghav Mishra and Ajay Pratap Singh, were directed to catch the right and left hands of the accused respectively, upon reaching the place of occurrence after having received the signal from the verifier. On the same day, i.e. on 01.06.2007, the members of the trap team reached the Office of the PRDA, located in Maurya Lok Complex, Patna. The verifier and the complainant went to the Office of the accused. On getting the signal, the members of the trap team surrounded the accused, whereafter Raghav Mishra and Ajay Pratap Singh caught the right hand and the left hand respectively of the accused. Independent witnesses were called and were asked to co-operate. Because a crowd had gathered, the members of the trap team, instead of completing the necessary formalities at the place of occurrence proceeded to the vigilance headquarters and all formalities, including search of the appellant and preparation of the post-trap memorandum were completed at the Vigilance Police Station.

5. At the Vigilance Police Station, on search of the appellant, 5 pieces of G. C. notes, of the denomination 500 were



recovered, which, on tallying with the pre-trap memorandum, were found to be the same. In three separate glass phials, solution of sodium carbonate was prepared in which right, left, fingers and left hand pocket of the shirt, respectively, was washed, whereafter colour of the solution turned pink. The glass phials were sealed and marked 'A', 'B' and 'C'. The members of the trap team put their signatures over the G.C. notes and post-trap memorandum was prepared on which the signatures of the trap team members as well as the accused were obtained.

6. Based on the aforesaid allegation, the Deputy Superintendent of Police -cum- Incharge, Vigilance Police Station, registered vigilance Police Station Case No. 71 of 2007.

7. Upon completion of investigation, charge sheet was, accordingly submitted against the appellant for commission of offence punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. Cognizance was subsequently taken by the learned Special Judge I, Vigilance, on 30.07.2007, and charges were framed for the commission of the offence under the aforesaid provisions.

8. The prosecution got examined altogether 10 witnesses, including the complainant (PW 1), the team leader of the vigilance trap team, Maharaja Kaniska Kumar Singh, Deputy Superintendent



of Police (PW 2), Santosh Kumar Singh, the verifier (PW 4), and other members of the trap team, namely, Shashi Shekhar Jha (PW 3), Raghav Mishra (PW 5) and Ajay Pratap Singh (PW 8). In addition, the prosecution got examined one Assistant, working in the Patna Municipal Corporation (the successor body of the Patna Regional Development Authority), namely, Anjani Kumar Sinha (PW 6), Technical Officer, Forensic Science Laboratory, Patna, namely, Suresh Paswan (PW 7) and the Investigating Officer, Sri Kant Rai (PW 10). The seizure witness, Narayan Jha was also examined by the prosecution as PW 9.

9. Upon consideration of the evidence available at the trial, the learned Trial Court has held the appellant guilty of the offence punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988, and has sentenced the appellant to undergo imprisonment and fine, as indicated at the very outset.

10. Mr. Shravan Kumar, learned Senior Counsel, appearing on behalf of the appellant, pointing out the lacunae in the case of the prosecution and the evidence adduced on behalf of the prosecution at the trial, has submitted that the evidence of the prosecution witnesses are full of contradictions and the prosecution has failed to prove, beyond all reasonable doubt the fact whether



any such money was ever handed over to the appellant. He has submitted that it is the case of the prosecution itself that the entire formalities of search, preparation of post-trap memorandum etc. were done by the vigilance trap team at the Vigilance Police Station, though, according to the case of the prosecution, the appellant had received the bribe amount in the Office of the erstwhile Patna Regional Development Authority. He has further submitted that as a matter of fact, before the complainant had made the complaint to the Vigilance Police Station about the demand of bribe being made by the appellant for ensuring sanction for registration of the said flat on 31.05.2007, the necessary sanction was already granted. According to him, since there was nothing pending before the appellant to do, there was no occasion for him to have asked for bribe. He has further submitted that failure of the vigilance trap team to search the appellant in the office itself and complete all other formalities of putting the hands and fingers in the solution of sodium carbonate and phenolphthalein powder at the place where the trap was held and instead completing such formalities in the Police Station after taking the appellant from the office of the Patna Regional Development Authority to the Vigilance Police Station, casts a serious doubt on the case of the prosecution.



11. Mr. Ramakant Sharma, learned Senior counsel appearing on behalf of the Vigilance Investigation Bureau has submitted, on the other hand, that the appellant was caught red-handed and a witness present at the place of occurrence had accompanied the Trap Team to the Vigilance Police Station in whose presence the search was undertaken and who supported the case of the prosecution at the trial. According to him, minor discrepancies or contradictions in the evidence of witnesses cannot weaken the case of the prosecution, which according to him, the prosecution was able to establish at the trial beyond all reasonable doubts.

12. I have perused the Lower Court's records and I have examined the depositions of the witnesses at the trial and I have considered the rival submissions made on behalf of the parties.

13. There is no dispute over the fact that the search was not made immediately after the appellant was said to have accepted the bribe money in the office. It is the case of the prosecution rather tht the appellant was taken from the place of occurrence to the police Station where his finger was dipped in the chemical solution which turned pink. It is the case of the prosecution that when trap was laid there were 30-40 persons present. No witness other than members of the trap team was examined at the trial



except forensic expert and one Narayan Jha as seizure witness. Another witness, namely, Anjani Kumar Sinha, Assistant, Patna Municipal Corporation was also examined as P.W.6.

14. On perusal of the evidence of the prosecution witness, it is significant to note that the complainant deposed in his evidence said that when the said amount of Rs. 2500/- was given to the appellant, he took it and kept the amount in his pocket whereafter, Santosh Kumar, who was accompanying him, caught the appellant and gave signal for the members of the trap team. Members of the trap team thereafter came and took the appellant into custody. The deposition of Santosh Kumar, P.W.4 is at variance. He, in his deposition, does not say that he had caught hold of the appellant after he had received the amount, rather he had given signal only whereafter members of the trap team Ajay Pratap and Raghav Mishra had come and one caught right and other caught left hand of the appellant.

15. It is noticeable that even as per the pre-trap memorandum the person who was accompanying the complainant was not required to catch the accused. This contradiction gains significance in view of the fact that the search was not made instantaneously and for the said purpose rather the appellant was taken to police station for completing the formalities.



16. Further, it has never been the case of the prosecution that after receiving the complaint in respect of demand of bribe money by the appellant any enquiry was made by the Vigilance as to whether any matter of the complainant was in fact pending in the PRDA which matter was required to be processed by the appellant. No enquiry of any nature appears to have been made as regards the *bona fide* or otherwise of the complainant himself. At the time when the actual transaction allegedly took place, there were three persons, namely, the appellant, the complainant and Santosh Kumar (the member of the trap team). The independent witness Narayan Jha, P.W.9 is apparently not the eye-witness of the occurrence. It has also come in his evidence that at the time of occurrence he was on the ground floor. He described himself to be the Guard appointed in the Apartment of the complainant for the security of the residents of the said Apartment.

17. My attention has been drawn to deposition of P.W.3, a police Inspector, who was member of the raiding party. Whereas it is the case of the prosecution that the office at the second floor of Maryua Lok was the place of occurrence situated at the 4th floor of the said office, P.W.8 Ajay Pratap Singh, Havildar, who had caught the appellant after getting the signal deposed that he could not keep the details of the place of occurrence and he further deposed



that no signature of the appellant was obtained on any material exhibit.

18. It is thus evident from comparative examination of the evidence of the witnesses that they have not been consistent and sure about the place of occurrence. This aspect coupled with the fact that required formalities were not completed immediately after the appellant had alleged accepted the bribe money rather everything was done in the Vigilance Police Station casts a doubt on the case of the prosecution.

19. I had requested Mr. Ramakant Sharma, learned senior counsel to inform this Court as regards the procedure which is followed by the Vigilance Bureau for laying trap in such types of cases. Learned senior counsel has informed this Court that there is no specific guidelines laid down. He has, however, produced before this Court a communication, dated 16.10.2017 made to him by the Superintendent of Police, Vigilance Investigation Bureau, Patna narrating the practice adopted by the Bureau for laying such traps. It is evident from the said communication that the State Government or the Vigilance Investigation Bureau has not laid down any structured guidelines to be strictly or generally followed by the trap team in such matters.



20. There are three reasons, which cast serious doubt on the case of the prosecution:-

(1) Non-preparation of the post trap memorandum at the place of occurrence.

(2) Absence of the signature of the appellant on the post trap memorandum.

(3) The serious contradictions as noted above, in the evidence of the witnesses.

21. In my view, therefore, the prosecution failed to prove its case beyond all reasonable doubt.

22. The impugned judgment of conviction and the order of sentence, dated 28.03.2011, deserve interference.

23. Accordingly, the impugned judgment of conviction and the order of sentence, dated 28.03.2011, are set aside. The appellant stands acquitted and is discharged from the bail bonds.

24. Before I part with this judgment, I consider it appropriate to observe that it is high time for the State of Bihar or the Vigilance Bureau of Investigation to try and frame specific guidelines to be generally and consistently followed in trap cases in a manner that it serves dual purpose of:-

(a) Effective and meaningful investigation and trial,



(b) lessening the chance of false implication of the public servants.

25. This, in my view, will be in the interest of the prosecution and in public interest too.

26. Let a copy of the judgment and order be communicated to the Director General of Police for the needful.

Prabhakar Anand/-

(Chakradhari Sharan Singh, J.)

AFR/NAFR	AFR
CAV DATE	N/A
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