IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (SJ) No.7 of 2017
Arising Out of PS. Case No.-78 Year-2007 Thana- VIGILANCE District- Patna
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The State Of Bihar Through Maharaja Kanishk Kumar, Son of Sri Awadhesh Kumar Singh, Resident of Station Road, Dehri-on- Sone, P.S.- Dehri-on-Sone, District- Patna at present posted as Deputy Superintendent of Police, Vigilance Investigation Bureau, Patna. ... ... Appellant/s

Versus

Alma Mukhtar, Son of Md. Tahir Ansari, Resident of Mohalla-Bara Pathar, P.S.- Dehir-on-Sone, District – Rohtas ... ... Respondent/s
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Appearance :

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate

For the Respondent/s : Mr. Ashar Mustafa, Advocate
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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 22-11-2018

Heard Mr. Anjani Kumar, learned senior counsel for the appellant and Mr. Ashar Mustafa, learned counsel for the respondent.

This is an appeal against the judgement and order of acquittal 16.12.2016 passed by learned Special Judge, Vigilance (Trap Case), Patna in Special Case No. 49 of 2007 arising out of Vigilance P.S. Case No. 78 of 2007.

The respondent allegedly was demanding money from the complainant (P.W. 3) for the purposes of issuing possession certificate of a land over which a community tank had to be constructed with the government funds. Since the complainant (P.W. 3) did not want to pay any bribe money, a complaint was made before the Vigilance Department. On such complaint, verification was made and after due satisfaction, a trap was led. A pre-trap memorandum was prepared. At the time of laying of trap, the tainted notes were found strewn over the floor of residence of the respondent. A case, therefore, was registered and the respondent was charged under Sections 7/13(2) read with Section 13(1)(d) of the P.C. Act, 1988.

The prosecution has examined ten witnesses to support it's case. No evidence has been adduced on behalf of the respondent.

The complainant who has been examined as P.W. 3 has in his examination-in-chief supported the prosecution version and has repeated that Rs. 10 lakhs was sanctioned by the government for construction of the tank and the only requirement left was issuance of a possession certificate with respect to the land over which the tank had to be constructed. Despite the government sanction of the amount for the purposes of the construction of the tank, the possession certificate was not been given by the respondent, who at the relevant time was the B.D.O.-cum-C.O. of Attari Block.

Similar statement has been made by Dinesh Tiwary, who has been examined as P.W. 9 and who had verified the allegation of the P.W. 3.

It would be relevant to refer to the deposition of Balwant Kumar Singh (P.W. 5), an independent witness, who has also stated that with the tainted money which was touched by the respondent, the colour of the solution of the sodium carbonate turned pink. He has thereby tried to prove the fact that the respondent was caught red-handed while accepting bribe.

Vijay Kumar Srivastava (P.W. 4), a member of the team and another independent witness namely Rajesh Kumar (P.W. 6) along with Lallan Pandey (P.W. 7) and Dilip Kumar, ASI (P.W. 8) have supported the prosecution version.

The Assistant Director of FSL (P.W. 2) has also proved Exhibit-2 which is the sodium carbonate solution as well as Exhibit-A which is the washing solution of the hands of the respondent.

On the basis of the aforesaid materials and evidence, Mr. Anjani Kumar, learned senior advocate has argued that the trial court was absolutely wrong in recording the finding of acquittal as the case stood proved with respect to the demand of bribe money for issuing possession certificate by the respondent. It matters not if the respondent had not kept the tainted currency notes in his hands or in his pocket. It only goes to show, as has been argued, that there was no element of force and it was only when the respondent was accepting the bribe money, the Vigilance Trap Team swooped upon him and arrested him. Had there been any element of force, the respondent would not have been allowed to throw away the tainted money, which he had accepted from the complainant (P.W. 3).

While canvassing his point, Mr. Kumar referred to the provisions of Section 7 with special reference to sub-clause D and Section 13 and submitted that the trial court was absolutely unjustified in holding the respondent not guilty only on the ground that the file/records with respect to the sanction of government money for the purposes of construction of tank was neither available in the office nor was perused, viewed or produced before the trial court.

That money was demanded for a particular purpose, which was not legal, constituted the offence and, therefore, merely the absence of motive and that also inferred on account of non-availability of the concerned file in the office or its production before the trial court, was not a good ground for the trial court to have acquitted the accused.

Mr. Ashar Mustafa, however, disputing the aforesaid arguments, submitted that the trial court clearly took note of the fact that P.W. 3, who is the complainant, though had made an allegation of demand of Rs. 20,000/- for sending the possession report about the land, but the complaint petition (Exhibit-3) bore no reference to any date for filing of the application or number of the letter sent by the District Horticulture Officer to the Circle Officer. There was no existence of any complaint or any letter or communication of the District Horticulture Officer in the office of the respondent or in the District Horticulture Office.

Similarly, the trial court also took note of the fact that one of the members of the raiding team, namely, Vijay Kumar Srivastava (P.W. 4) had in his cross-examination stated that neither before the trap nor after he could lay his hands upon any document to know as to on whose land the tank had to be constructed by government money.

Maharaja Kanishk Kumar, the IO of this case, who has been examined as P.W. 10 also in his cross-examination has stated that he did not find any proof of the fact that there was any correspondence between the various governmental organizations for the purposes of providing fund for construction of a tank which was to be used by public at large. In fact, the IO, on his being cross-examined, admitted that such evidence was necessary for the purposes of bringing home the charges of demand and acceptance of bribe money.

Mr. Mustafa has further argued that it was not believable that the respondent would demand bribe money from the complainant when there was no occasion for him to do so. Unless it was proved by the prosecution that all the records were complete and the money was not being handed over to the NGO of the complainant because of no possession certificate not being issued by the respondent, the very allegation of demand of bribe money becomes doubtful.

It is a matter of common knowledge and has been interpreted by various decisions of this Court as well as the Apex Court that for the offence under PC Act to be completed, there has to be demand and the acceptance of money pursuant to such demand.

In the present case, the situation had not become ripe when there would have been a requirement of obtaining a possession certificate of land. If at all the situation had ripened, in the absence of any correspondence/proof of the fact that the concerned file had been processed, it would be difficult to presume that money was demanded from P.W. 3 for the purposes of issuing possession certificate.

In fact, it has been argued, in the absence of any possession certificate, perhaps the initial process of sanction of loan would not have arisen. The entire case appears to be, therefore, misconceived.

The trial court, after going through the deposition of witnesses and on perusal of records, found that the prosecution had failed to prove that any work of the complainant was pending before the respondent. In the absence of any document/correspondence/office notes, it was difficult to believe that there was demand for money.

The dictionary of the Act clearly defines the motive for an illegal act. In the present case, in the absence of any document with respect to the process of the sanctioning of loan through the District Horticulture Office or any correspondence between the functionaries of the State and the tainted notes being recovered only from the floor of the residence of the respondent, the case could not be said to have been proved beyond all reasonable doubts.

A reasonable/legal view has been taken by the trial court, which requires no interference by this Court.

The appeal, therefore, is without any merit and is dismissed.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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