IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.587 of 2015

Arising Out of PS.Case No. -3 Year- 2009 Thana -C.B.I CASE District- PATNA

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1. Ratnesh Pathak S/o Late Laxman Pathak, Resident of Village- Birampur, P.S.- Koilwar, District- Bhojpur

.... Appellant/s

Versus

1. The State of Bihar
2. C.B.I. through S.P., ACB, Patna

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Nawnit Kr. Tiwary
Mr. Veveknand Pathak
For the Respondent/s : Mr. Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 29-06-2018

1. The sole appellant, Ratnesh Pathak, has been found guilty for an offence punishable under Section 8 of the Prevention & Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for two years as well as to pay a fine appertaining to Rs.5000/- in default thereof, to undergo rigorous imprisonment of one year additionally by the Special Judge, CBI-I, Patna in Special Case No.2 of 2009 arising out of R.C. Case No.3 of 2009.

2. P.W.6, Arun Prakash filed written complaint before the CBI on 05.02.2009 divulging the fact that he had applied for personal loan at Dumrao Branch of State Bank of India. He met with the Branch Manager, Shailesh Narain, for getting the loan sanctioned whereupon, the Branch Manager asked for payment of three per cent of the loan amount as bribe for getting the loan sanctioned whereupon, he had shown his inability. Then thereafter, the Branch Manager pointed out towards the Ratnesh Pathak (appellant) and had directed to deposit Rs.15,00/- before sanction of the loan amount and remaining amount should be paid after having the loan sanctioned. Because of the fact that he was not inclined to pay bribe, so made complain before the CBI.

3. It is further evident that the aforesaid allegation was verified whereupon, RC case was registered. Then thereafter, pre-trap exercise was performed whereafter the complainant along with CBI personnel, shadow witnesses visited the Dumrao Branch, State Bank of India where appellant/accused was apprehended after accepting the bribe money and then, post trap exercise was completed along with other paraphernalia so required during course of performance of investigation and after completing the same, charge-sheet was submitted only against the appellant exonerating the Branch Manager, Shailesh Narain and the most surprising feature as is evident from the record is that aforesaid Shailesh Narain has been examined as P.W.1.

4. Defence as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that at complete denial of the occurrence, it has also been pleaded that as on the alleged date link of the bank was out of order, on account thereof some of the customers including the Arun Prakash, complainant, requested to get the amount deposited in their account which he accepted and that being so, the so alleged tainted money was recovered.

5. In order to substantiate its case prosecution had examined altogether 9 P.W.s who are P.W.1-Shailesh Narain, P.W.-2-Ranjan Kritaniya, P.W.-3-Sujit Kumar, P.W.-4-Dharmnath Singh, P.W.-5-Jayanto (Baijant) Mukhupadhyay, P.W.-6-Arun Prakash (complaintnat), P.W.-7- Gopal Mishra, P.W.-8-Amitabh Ranjan, I.O. and P.W.-9-Rajeev Kumar as well as had also exhibited as documentary evidence also in which Ext.1 to Ext.1/1 signature on production cum seizure memo and loan application. Ext.2 verification report, Ext.1/2 signature of witnesses on D wash bottle. Ext.1/3 signature of witness on TPP envelop, Ext.1/4 signature of witness on remaining phenolphthalein power, Ext.1/5 signature of witness on envelop remaining sodium corbonate powders, Ext.1/6 to 1/8 signature of witness of preliminary memo, Ext.1/9 signature of witness of RHW Ext.1/10 signature of witness on LHW, Ext.1/11 signature of witness on GC notes envelop, Ext.1/12 to 1/15 signature of witness on recovery memo, Ext.1/16 endorsement with signature of accused, Ext.3 CSFL report, Ext.3/1 forwarding report, Ext.4 complaint, Exkt.1/17 to 1/30 signature of witness on D Wash bottle, sample of piece of papers remaining sodium carbonate powders, envelop, trap memo, C notes LHW and RHW, recovery memo. Ext.5 loan document, Ext.1/31 to 1/42 signature of or Gopal Mishra on D wash, envelop of piece of paper, preliminary memo, envelop GC notes LHW RHW, Ext.6 letter dt.16.03.2009, Ext.1/43 signature of witness on letter dt.17.03.2009, Ext.7 formal FIR, Ext.1/31 to 1/34 signature of witness on D wash, remaining phenolphthalein power, sodium carbonate, Ext.8 pre trap memo Ext.1/35 to 1/37 signature of witness on GC notes RHW LHW, Ext.9 site map, Ext.10 recovery memo, Ext.11 production cum seizure memo.

6. Material Ext.1-D Wash bottle, Ext.11 envelope of TPP, Ext.III envelope of remaining power of phenolphthalein, Ext.IV envelope of remaining sodium carbonate power, Ext.V RHW bottle, Ext. VI LHW bottle, Ext.VII GC notes envelope with notes Rs.1500/-. Mark Y for identification, photo copy of office order, Mark Y/1 for identification, photo copy of application received and disposed register, Y/2 photo copy of A/c no.30383454814, Y/3 photocopy of supervising relieve arrangement, Y/4 copy of loan have also been done.

7. It is settled principle of law that mere recovery of tainted money would not liable the accused under P.C. Act unless and until there happens to be demand followed with accept and further, so far prosecution under Section 8 of the P.C. Act is concerned, there should be a demand as well as acceptable by a person otherwise than main accused in order to facilitate the work.

8. In ***State v. Anup Kumar Srivastava reported in (2017) 15 SCC 560***, it has been held as follows under paras 28, 29:-

> **28) Further, what constitutes illegal gratification is a question of law; whether on the evidence that crime has been committed is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established.**
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> **29) In P. Satyanarayana Murthy vs. District Inspector of Police, State of A.P. (2015) 10 SCC 152, this Court has held as under:-**
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> > **22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, 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 Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded 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. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of**

proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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 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 Section 7 or 13 of the Act would not entail his conviction thereunder.

Hence, the proof of demand has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the PC Act which is absent in the case at hand.

9. In the facts and circumstances of the case, first of all, evidence of complainant, P.W.-6 is to be seen. He had deposed that he had made written complain before the CBI on 5.2.2009. He had further stated that he had made complaint against the Branch Manager, Shailesh Narain and Peon, Ranjan of SBI, Dumrao Branch. He had applied for getting personal loan of Rs.1 lakh from Dumrao SBI, Branch and for sanctioning the loan sanctioned, aforesaid both the accused demanded three per cent of the loan amount as bribe which he was not inclined to pay whereupon he made complain (exhibited.). Then had stated that he had complained before the S.P. CBI who entrusted Inspector Ranjan Kritniya to verify. He along with Ranjan Kritniya came directly in the chamber of Branch Manager where the Branch Manager directed to meet with Ratnesh Pathak. When he met with Ratnesh Pathak, he directed him to come on 10.02.2009 along with Rs.15,00/- and further assured that on that day itself, loan will be sanctioned and rest Rs.15,00/- be paid after sanctioning of the loan. Then thereafter, both of them returned back. Kirtinya Saheb came to his office where he returned back to his house. On 09.02.2009, he was called upon by the C.B.I. officials and was directed to come on 10.02.2009 with Rs.1500/-. On 10.02.2009 at about 7.00 A.M. he came at CBI office where pre-trap demonstration were done (detailed). Then thereafter, they all proceeded to State Bank of India, Dumrao Branch and reached there. First of all, he along with Dharmnath (Shadow witness), P.W.4 gone inside the Bank while others followed them. He after going inside the Bank, met with Awadhesh Pathak, who disclosed that Form is not duly filled up. First of all, Form be duly filled up and then thereafter, they will talk. Then, he filled up the Form and handed it over to Ratnesh Pathak. Then, Ratnesh Pathak disclosed that he should pay Rs.1500/- as his commission whereupon loan will be sanctioned, immediately. Rest Rs.1500/- be paid after sanctioning of the loan. Then, he took out tainted money from his pocket and handed over to Ratnesh Pathak who counted it and kept it inside his pocket. Then, Dharmnath Singh, signaled whole, as per instruction, Ratnesh Pathak had gone to Chamber of the Branch Manager. At that very moment, CBI officials came, caught hold both hands of Ratnesh Pathak and then on search tainted money were taken out from the pocket of the Ratnesh Pathank. Then thereafter, there happens to be details relating to post trap exercise. In para 10 he had stated that after apprehension of Ratnesh Pathak, necessary documents were prepared on laptop of Branch Manager (exhibited). CBI officials had seized concerned file (exhibited). At para 12, he had further stated that loan was sanctioned just after two days. During cross-examination at para 14, there happens to be disclosure that he happens to be defaulter relating to loan having granted by the Bank of India, Dumrao Branch and further, as required he failed to divulge the same in the application form. It has also been disclosed in para 15 that SBI officials were insisting upon that first of all, the loan amount having been availed from the Bank of India should be paid then, thereafter, the loan will be sanctioned while he was insisting that loan be sanctioned and then he will re-pay the loan to the Bank of India over which, there was dispute and in the aforesaid background, complain had been made to the CBI. In para 19, he had stated that when he applied for loan, the application form was not properly filled up. He had further stated that CBI had not taken signature of Ratnesh Pathak over any document in his presence at the Bank premises. He is not remembering where the CBI officials took his signatures. Though, the other witnesses who had joined them have put their signature in his presence. Then, had stated that therefrom, they have gone to police station. He is not remembering whether he had put signature over any of the document. Then thereafter, they have come to CBI office at Patna where, his signature was not obtained by the CBI over any document.

10. It is apparent from his evidence that he had made a reference of his complaint as well as exhibited as Ext. '4' and during the course of statement recorded under Section 313 Cr.P.C. the learned lower Court had put questionnaire relating thereto as;

प्रश्न 4 – आपके विरूद्ध यह भी साक्ष्य आया है कि वादी अरूण प्रकाश ने आपके द्वारा रूप्या 3000/– बतौर रिश्वत मांगे जाने की लिखित शिकायत (Ext.-4) दिनांक 05.02.09 को सी. बी. आई. के पटना कार्यालय में किया था, इस बारे में आपको क्या कहना है?

उत्तर– प्रश्न–4 में जो कुछ शिकायत है, वह गलत एवं आधारहीत है।

11. The importance of written report / FIR during the course of trial is only for the purpose of corroboration or contradiction. It is not a substantive piece of evidence. But when the FIR has been exhibited whereupon the contents thereof is confronted by the Court during course of statement recorded under Section 313 of the Cr.P.C, then in that circumstance, in spite of presence of deficiency, the initial version has to be seen and when the same has been gone through, it is apparent that there happens to be no allegation at the end of the P.W.6-informant that the appellant was any way instrumental in making demand nor he approached complainant for the purpose of demand on behalf of Manager, Shailesh Narain rather whatever demand was, that was at the end of the Branch Manager and lastly, when the informant begged, he had directed to pay the Rs.15,00/- to the appellant without any assurance at the end of the appellant nor having his indulgence to the effect that by such payment, he will find favour in getting his loan sanction. That means to say, whatever been deposed at the and of the P.W.6 arraying the appellant happens to be after coming in contact with CBI and that happens to be reason behind that during course of trial, he had identified both (that means to say Branch Manager and the appellant) to pay 3 per cent loan amount and subsequent thereof, shown presence of Awdhesh Pathak and then to appellant who asked his commission of Rs.1500/- and further directed to pay remaining 1500/- after loan is sanctioned. Even during course of examination-in-chief, specific allegation has been attributed by the P.W.-6 against the Branch Manager also but, surprisingly the Branch Manager has not been arrayed as an accused after completion of the investigation nor during course of trial. At the present moment, evidence of P.W.2 Ratan Kirtania has to be seen who claimed tohave verified the allegation. He had specifically stated that he had gone to the chamber of Branch Manager along with complainant who on query had directed to meet with Ratnesh Pathak then the mater will be taken up. Then they met with Ratnesh Pathak who had stated that he had already told him that he will have to part with 3 % of loan amount which was denied whereupon he said that Rs.1500 be paid by 10.02.2009 and rest amount after sanction of the loan. However, on parallel scrutiny of evidence of both the P.W., it is apparent that both are inconsistent on material aspect as complainant had not substantiated the same. That means to say, the verification suggests impurity over its genuineness.

12. The another circumstances which is found adverse to prosecution is that as per evidence of P.W.4 the shadow witness, first of all they met with Ratnesh Pathak who after disclosing that form is not duly filled, presented the form which was filled by the complainant and then on demand tainted money was handed over to Ratnesh Pathak who proceeded towards chamber of Branch Manager in midst thereof was trapped. However, there happens to be no recovery of application form from his possession rather as per evidence of P.W.1 along with Ext.11, it was produced by the Manager. That means to say the evidence of P.W.s over the intermediary event is found completely fortified with imaginal when the evidence in its entirety is considered even having recovery of tainted money from the possession of the appellant and so did not inspire confidence with regard to the allegation as attributed by the prosecution over demand on an assurance that after payment loan will be sanctioned.

13. In the background of the aforesaid evidence, there happens to be no relevancy of the evidence of other witnesses, as mere recovery of tainted money is not going to axe upon the appellant. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. The appellant is on bail, hence he is discharged from its liability.

(Aditya Kumar Trivedi, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	--
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