

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2361 of 2000

Judgment Reserved on : 28.11.2017

Judgment Delivered on : 16.1.2018

State of Madhya Pradesh through Special Police Establishment, Lokayukt
Office, Bhopal

---- Appellant

versus

Babulal Dewangan, aged about 45 years, S/o Late D.L. Dewangan, Forester,
Bilaspur

--- Respondent

For Appellant/State : Smt. Madhunisha Singh, Panel Lawyer
For Respondent : Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal preferred by the State is directed against the judgment dated 16.2.1999 passed in Special Criminal Case No.1 of 1997 by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988')/1st Additional Sessions Judge, Bilaspur acquitting the Respondent of the charges framed under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988.
2. Facts of the case, in brief, are that at the relevant time, the Respondent/accused was posted as a Vanpal (Forester) in Forest Range Office, Ratanpur under Van Parichhetra Adhikari (Forest Range Officer) Uttam Kumar Majumdar, PW7. As per the prosecution story, on 6.10.1996, at the house of Complainant Lahorikdas, PW1, the Respondent along with other forest officers had made a raid and recovered 29 pieces of fire wood. The

Respondent had demanded bribe of Rs.1,000/- for not making a case against the Complainant. Finally, he had agreed to receive bribe of Rs.800/-. Since Complainant Lahorikdas did not want to give him bribe, he submitted a written complaint, Ex.P1 in the office of Special Police Establishment, Lokayukta, Bilaspur on 11.10.1996. Unnumbered First Information Report, Ex.P41 was registered. On 11.10.1996 itself, a trap party went to the office of the Respondent, but he was not found there. Again on 14.10.1996, the trap party went to the house of the Respondent situated at Deonandan Nagar, Bilaspur, where the Complainant gave tainted currency notes of Rs.800/- to the Respondent which he kept in the pocket of the pant worn by him. The trap party immediately reached there and recovered the tainted currency notes from the pocket of the pant worn by the Respondent. The said pant of the Respondent was seized by the trap party. Hands of the Respondent, the Complainant, Panch Witness L.L.Diwan and the pocket of the pant of the Respondent were washed in the solutions of sodium carbonate. After the wash, colour of the solutions turned into pink. The said solutions were seized vide Ex.P5. Numbered First Information Report, Ex.P40 was registered at Special Police Establishment, Bhopal. The seized articles were sent to the Forensic Science Laboratory for chemical examination. FSL Report is Ex.P46. Sanction for prosecution, Ex.P29 was obtained. On completion of the investigation, a charge-sheet was filed against the Respondent for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988. Charges were framed against him under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988.

3. To rope in the Respondent, the prosecution examined as many as 15 witnesses. Statement of the Respondent was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him, pleaded innocence and false implication. No witness has been examined in his defence.
4. The Trial Court found that the prosecution has failed to prove the demand and acceptance of Rs.800/- as illegal gratification. The Special Judge, on due scrutiny of the evidence available on record, held that the version of the prosecution was suspicious. Therefore, the Special Judge did not rely the testimony of the prosecution witnesses and acquitted the Respondent of the charges framed against him. Hence, this appeal by the State.
5. Learned Counsel appearing for the Appellant/State argued that the Trial Court failed to see that the Respondent/accused was not authorised to compound the offence. There is nothing on record to show that the Respondent was authorised to receive the money. The Court below failed to see the fact that the Complainant had lodged the report to the effect that the Respondent had demanded the money other than legal remuneration which is sufficient to convict the Respondent.
6. On the contrary, Learned Counsel appearing for the Respondent, supporting the impugned judgment, opposed the above arguments.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. In **(2006) 9 SCC 731 (Budh Singh v. Sate of U.P.)**, the Supreme

Court held vide para 9 that in a matter of appeal against acquittal, the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although the view of the Appellate Court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the Trial court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the Trial Court has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court.

9. In **AIR 2006 SC 2667 (V.N. Ratheesh v. State of Kerala)**, the Supreme Court held that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Supreme Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence

where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The Supreme Court referred to the decision in **2002 (2) Supreme 567 (Bhagwan Singh v. State of Madhya Pradesh)**. It was further held that the principle to be followed by the Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

10. In the light of above, I shall now examine the evidence available on record of the instant case.
11. Complainant Lahorikdas, PW1 has not supported the entire case of the prosecution. He has stated that employees of the forest department including the Respondent had raided at this house and recovered 29 pieces of fire wood. The Respondent called him to his office for settling the matter. He went to the office of the Respondent next day along with his friend Dhanau. He has further stated that the Respondent had asked him to pay fine for the seized pieces of wood. On being asked about the amount of fine, the Respondent had asked him to pay a sum of Rs.1,000/-. He asked for some time to pay the fine. He was given a week's time therefor. He has further stated that other than his house, raid was conducted at the houses of some other persons also including Achambhilal, PW2. He went to the village of Achambhilal for discussing the matter with him. Both of them decided that since

the forest department seizes the fire wood every year, therefore, they will make a complaint. Thereafter, they came to Bilaspur and he (the Complainant) submitted a written complaint, Ex.P1 in the office of the Special Police Establishment, Lokayukta, Bilaspur. He has further stated that the officers of the Special Police Establishment asked him to submit the amount of fine in their office. On this, he submitted 8 currency notes of Rs.100/- each. He has further stated that on 14.10.1996, he along with the trap party went to the house of the Respondent at Deonandan Nagar, Bilaspur. On being called by him, the Respondent came out. He told the Respondent that he had brought the fine amount of Rs.800/- and he will pay the remaining amount of Rs.200/- in the forest depot. The Respondent told him that he should not have come to his house because he was not having the receipt book. On this, he told the Respondent that he was a poor person and made a request to accept the amount of fine and he also told the Respondent that he will collect the receipt from the forest depot. In response, the Respondent told him that he should collect the receipt from the depot office tomorrow and thereafter he kept the sum of Rs.800/- in the pocket of the pant worn by him. In his cross-examination in paragraphs 22 and 23, he has stated that on 6.10.1996, he had consented for compounding the forest offence and had made a request for imposition of lesser fine. The Respondent had told him that the fine may be to the extent of the price of seized wood and, hence, the fine can be to the extent of Rs.1,000/-. On 7.10.1996, he had signed the documents relating to compounding of the offence in the depot office and on that day also, the Respondent had told him that he will have to pay fine of Rs.1,000/- for the seized wood. Since he felt that the amount of

fine of Rs.1,000/- was excessive, he submitted the written complaint, Ex.P1.

12. Achambhilal, PW2 and Dhanau, PW6 have also supported the above statement of Complainant Lahorikdas, PW1. All the above three witnesses have been declared hostile by the prosecution. Even thereafter they have not supported the case of the prosecution any further.
13. In paragraph 25 of his cross-examination, Lakhanlal, PW3 has stated that on being inquired by the trap party, he had stated that the fine amount had to be deposited in the office, but the Complainant had paid the amount of fine at the house. On being inquired about this from the Complainant, he also supported the statement of Lakhanlal, PW3.
14. Forest Range Officer Uttam Kumar Majumdar, PW7 has also stated that when the pieces of wood were seized from the Complainant, he had made a request for compounding the offence.
15. Divisional Forest Officer Atul Kumar Shrivastava, PW10 has stated that if an accused admits the offence and makes a request for compounding the offence, the inquiry officer can allow him for compounding the offence. He has further stated that below the rank of Vanpal (Forester), no officer can make an inquiry into a forest offence. From the above, it is clear that the Respondent, who was, at the relevant point of time, a Vanpal, was competent to allow the accused for compounding the offence.
16. Rajnarayan Mishra, PW11 has proved the search warrant, Ex.P16

and stated that as per the search warrant, the Respondent was authorised to search the house of Complainant Lahorikdas. From the above, it is also clear that the Respondent was duly authorised to make search of the house of the Complainant and he was also authorised to allow the accused for compounding the forest offence.

17. Inspector Rajendra Mishra, PW14 is the witness who investigated the offence in question. He has supported the case of the prosecution.
18. Considering the entire evidence adduced by the prosecution, even if it is supposed that tainted currency notes of Rs.800/- were recovered and seized from the Respondent, there is nothing on record to show that the Respondent had made a demand of bribe of Rs.1,000/- and had accepted the sum of Rs.800/- as bribe. Rather, it is established that the Respondent had made a raid on the house of the Complainant and seized 29 pieces of wood and asked the Complainant to pay fine of Rs.1,000/- therefor and on being requested by the Complainant for compounding the offence, he had allowed him for compounding the offence and accepted the amount of Rs.800/- not as a bribe but as the amount of fine paid by the Complainant against the compounding of offence.
19. In **2015 CriLJ 72 (SC) (M.R. Purushotham v. State of Karnataka)**, the Supreme Court observed thus:

“6. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW1 Ramesh did not

support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. In this context the recent decision of a three Judge bench of this Court in *B. Jayaraj v. State of Andhra Pradesh* reported in 2014 (4) SCALE 81 : (AIR 2014 SC (Cri) 1041 : 2014 AIR SCW 2080) is relevant and it is held as follows:

“8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as 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 established.”

The above decision is squarely applicable to the facts of the present case. When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh. P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude

that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)(d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside.

7. For the aforesaid reasons the appeal is allowed and the conviction and sentence imposed on the appellant/accused under Section 13(1)(d) read with Section 13(2) of the Act are set aside and he is acquitted of the charges. Bail bond, if any furnished by the appellant, be released.”

20. In **2015 CriLJ 4670 (SC) (P. Satyanarayana Murthy v. Dist. Inspector of Police)**, the Supreme Court observed thus:

“21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(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.

22. 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 or 13 of the Act would not entail his conviction thereunder.”

21. In **2015 CriLJ 3928 (Dashrathbhai Vadilal Nayak v. State of Gujarat)**, it is observed by the Gujarat High Court thus:

“11. This Court in “**Kanubhai Kantibhai Patel v. The State of Gujarat**”, 1998 (1) GLH 924 (H.R. Shelat,

J.), held that the 'demand' and 'acceptance' being vital ingredients, they must be proved by the prosecution. In “B. Jayraj v. State of Andhra Pradesh” (2014) 13 SCC 55, the original accused-appellant came to be prosecuted on the basis of a complaint filed by PW-2. Later on, PW-2 turned hostile and despite that trial Court convicted the accused-appellant on the basis of the evidence of panch witness (PW-1) and recovery of tainted currency notes from appellant-accused. The Apex Court, hence, hold that once the original complainant (PW-2) turned hostile and no other person, who had witnessed the transaction between the complainant and the accused-appellant, was examined, the contents of the complaint cannot be relied on and in absence of proof of demand for illegal gratification, mere recovery of tainted currency notes from the accused-appellant did not establish commission of offence, and thereby, set aside the conviction of the accused-appellant. In the case on hand also, from the material on record, the demand on the part of the accused is not clearly coming out. If, we go by the omissions and contradictions in the complaint, then, there is not demand of Rs.500/-. On the contrary, it is the complainant, who, himself, stated that he had come with money. However, why he had come with money, for what purpose, nothing is coming on record. Further, the complainant, himself, does not possess a sterling personality, and therefore, his evidence cannot be believed in the absence of corroboration. Therefore, the submission of Ms. Mehta that there are no omissions or contradictions in the evidence of the witnesses and that the learned trial Court rightly convicted the accused and that the demand, acceptance and recovery are proved cannot be accepted, as from the record it is clear that the apron was not put on the by accused-doctor, but, it was hanging on the peg. Thus, the case put forward by the prosecution cannot be accepted. Once, the edifice is gone, the entire case of the prosecution falls on the ground. Hence, the accused is entitled to be given him the benefit of doubt and the appeal requires to be allowed.”

- 22.** In the instant case, after going through the entire evidence available on record, I do not find any compelling and substantial reason to interfere with the judgment of acquittal. It is not a case in

which the judgment may be said to be unreasonable or a case in which relevant and convincing materials have been eliminated. The Special Judge has taken into consideration all the relevant materials and has also considered each and every aspects of the matter to test the veracity of the evidence adduced by the prosecution and has thereafter recorded the finding of acquittal which appears to be reasonable. I do not find any good ground to interfere with the impugned judgment.

23. Resultantly, the appeal filed by the State is dismissed. The judgment under challenge is affirmed.
24. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
JUDGE