

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 7-9-2018****Pronounced on 10-9-2018****CRIMINAL APPEAL No. 1463/1999**

(Arising out of judgment of conviction and order of sentence dated 29-04-1999 passed by the Special Judge, Rajnandgaon in Special Criminal Case No. 06/92)

... ..

Rameshwar Lal aged about 45 years, S/o. Late Ghashiram, Patwari Halka No. 43, Tumdibod, presently residing at Sanjay Nagar, Lakholi, Ward No. 43, Opp. Sanjay Garden, Distt. Rajnandgaon, MP (now CG)

-Versus-

State of Chhattisgarh, through Special Police Establishment, office of the Lokayukta, M.P. Bhopal.

For appellant : Shri H.S. Ahluwalia, Advocate

For State : Shri Sumit Jhavar, Panel Lawyer

Hon'ble Mr. Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this Criminal Appeal, challenge is levied to the judgment of conviction and order of sentence dated 29-04-1999 passed by the Special Judge, Rajnandgaon in Special Criminal Case No. 06/92 whereby and whereunder the appellant has been convicted and sentenced as under :-

Section	Sentence
7, Prevention of Corruption Act, 1988 (hereafter called as ' P.C. Act')	R.I. for Six months and fine Rs. 200/- in default of payment of fine S.I. for one month
13(1)(d) read with 13(2) of P.C. Act.	R.I. for one year and fine Rs. 200/- in default of payment of fine S.I. for one month

Both the jail sentences are directed to run concurrently.

2. It is admitted by the appellant that he was the Patwari at Village Kopedih. P.W. 2 Jailal had given him one paper at village Tumdibod signed by Rohit and Preetam. The partition of ancestral property had been made between Complainant Ghanalal Lodhi, his sister Bedan Bai, his brother Jailal and his mother Sanai Bai. One register was seized from his house by seizure Ex.P-9. From his house Rin Pustika was seized by Ex. P-10. On 22-06-1989 complainant Ghanalal had given him Rs. 350/- in hotel at Dongargaon.
3. In brief the prosecution story is that in the year 1989 appellant had demanded from the complainant Ghanalal Lodhi Rs. 350/- as bribe to separate holding. When the complainant Ghanalal Lodhi told him to give income certificate then the appellant told him to first bring the said money then he will sign on the income certificate of his son. He had told him to bring the said money on 22-06-1989. Appellant had given an application on 22-06-1989 to Deputy Superintendent of Police Lokayukta, Raipur. On very day Dehati Nalishi was registered. A trap party was constituted consisting of Complainant Ghanalal Lodhi, Deputy Collector S.L. Dagla, Legal Assistant Raipur B.S. Bais, Deputy Superintendent of Police and Special Police Establishment R.S. Uikey, Inspector C.K. Tiwari, Inspector B.I.R. Naidu, Head Constable Mannulal, Shadow witness Panchram. Complainant Ghanalal Lodhi had brought Rs. 350/- out of them three notes were of Rs.100/- denomination, one was of Rs. 50/- denomination, bearing following numbers -

(I) 2 PH 187365

(II) 1 DH 764271

(III) 2 PH 146933

(IV) O QW 331404

4. Further the prosecution case is that, said notes were treated with phenolphthalein powder from both sides. Search of complainant Ghanalal Lodhi was conducted and all the materials were removed from his pockets of clothes. The said notes had been kept in the left pocket of the shirt of the complainant Ghanalal Lodhi. In one glass colorless sodium carbonate solution was prepared. The fingers of the person who had treated phenolphthalein powder on both sides of said notes, were dipped in the said solution which turned pink. Said solution was sealed in one bottle. Again colorless sodium carbonate solution was prepared, the fingers of the remaining members of trap party were dipped in said solution, solution remained colorless. Sodium carbonate powder and phenolphthalein powder were sealed in separate packets. A preparatory Panchnama was prepared.
5. Further prosecution case is that trap party had proceeded to village Dongargaon on very day. At about 18.15 hours appellant came out from the Tahsil office. In the Shukla Hotel shadow witness Pancham Ram was also present. Appellant had demanded money from the complainant Ghanalal Lodhi. Appellant had placed the said notes between the papers which were already in his hand. The colorless solution of sodium carbonate was prepared. Except complainant Ghanalal Lodhi the fingers of the other members of the trap party were dipped in said

solution, the solution remained colorless. When in colorless sodium carbonate solution the fingers of the appellant were dipped, the color turned pink. This solution was sealed in one bottle. The fingers of the complainant Ghanalal Lodhi were dipped in colorless sodium carbonate solution which turned pink, which was sealed in one bottle. Rs. 350/- recovered from the appellant were found identical to the numbers mentioned in the preparatory panchnama. Said recovered notes and said papers were dipped in colorless sodium carbonate solution, the same became pink, which was sealed in one bottle. After getting dry the said notes and said papers were seized and sealed in separate packets, sealed bottles were seized. On the spot a trap panchnama was prepared. Report from RFSL was obtained. Prosecution sanction was obtained from the Law & Legislative Department. After completion of the investigation a charge-sheet was filed against the appellant under Sections 7 and 13(1)(d) read with 13(2) of P.C. Act against the appellant. Trial Court framed the charge against the appellant under Sections 7 and 13(1)(d) read with 13(2) of P.C. Act. Appellant abjured the charges levelled against him and faced trial. To bring home the charges against the appellant, prosecution examined as many as 18 witnesses. Appellant examined two witnesses in his defence.

6. Trial Court convicted and sentenced appellant as aforesaid. Being aggrieved appellant preferred this criminal appeal.
7. Counsel for the appellant argued that trial Court had not appreciated the evidence in proper perspective. Complainant Ghanalal Lodhi had admitted that he had given Rs. 350/- from

appellant towards the expenses incurred by him in getting prepared the documents. He succeeded to prove his defense. Thus, the aforesaid judgment of the conviction and order of sentence are bad in eyes of law and deserve to be set-aside. Hence the appellant may be acquitted of the aforesaid charges.

8. State counsel has argued that the aforesaid conviction and sentence are based on clinching evidence available on record against the appellant. Thus, the aforesaid conviction and sentence do not call for interference by this Court.
9. In para 3 of **Punjabrao v. State of Maharashtra** {AIR 2002 SC 486}, the Hon'ble Supreme Court has held as under :-

“3.....It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the Investigating Officer seized the amount from the Patwari-accused, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused. It also transpires that the High Court, while setting aside an order of acquittal recorded by the Special Judge, has not focussed its attention to the reasoning advanced by the Special Judge, and by mere re-appreciation has come to the conclusion, and in our view the conclusion is based upon a mis-

reading of the relevant evidence including the evidence of PW-2. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court erred in interfering with the well reasoned judgment of the Special Judge in an order of acquittal. We, therefore, set aside the impugned conviction and sentence passed by the High Court. The appeal is allowed. The accused-appellant is acquitted of the charges leveled against him. The bail bond stands discharged.”

10. In para-20, 21 and 22 of **C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala** {AIR 2009 SC 2022}, the Hon'ble Supreme Court has held as under:-

“20..... It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.”

21. It is against this background of principles we have examined the contention of the appellant that the charges under Section 7 of the Act have not been proved against him. It was argued by Shri U. U. Lalit, Senior counsel, that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs.1500/- as gratification. Having examined the findings of both the Courts, we are satisfied that

the appellant has proved his case by the test of preponderance of probability and we accordingly reach the conclusion that the amount was not taken by the appellant as gratification. He was made to believe that amount paid to him was towards the repayment of loan taken by PW2 from Accused no. 1.

22. The prosecution failed in establishing the guilt of the accused beyond reasonable doubt that the appellant received any gratification.”

- 11.D.W. 1 Garib Ram says in para No. 2 of his statement given on oath that complainant Ghanalal Lodhi had come to appellant to get prepared documents regarding partition.
12. D.W. 2 Manrakhan says in para No. 1 of his statement given on oath that in his presence appellant had told to complainant Ghanalal Lodhi that partition documents would be prepared on stamp and some expenses would come, complainant Ghanalal Lodhi was agreed to pay the expenses. Appellant had got prepared the documents and told the complainant Ghanalal Lodhi that expenses are Rs. 350/-. Complainant Ghanalal Lodhi had promised that he would pay the said amount later.
13. There is no such evidence on record on the strength of which it can be said that aforesaid statements of D.W. 1 Garib Ram and D.W. 2 Manrakhan are not simple, not natural, not normal.
14. Moreover, PW-5 Ghanalal Lodhi says in para No. 13 of his statement given on oath that, he had asked the appellant that documents are to be prepared regarding partition, get it prepared. Then he got prepared the documents. Appellant had told that Rs.350/- would be the expenses for this work. He was agreed to pay him Rs.350/-. He says in para No. 14 that till the separation

of holding he had not paid Rs.350/- to the appellant. Appellant was demanding Rs.350/- which had been incurred by him. He was not demanding Rs.350/- as bribe. He had doubt that appellant is demanding the money more than amount which was actually incurred. He further says in para No. 18 that at the time of giving Rs.350/- he had told the appellant that he is giving Rs.350/- towards his balance expense.

15. Looking to the above mentioned facts and circumstances of the case, judicial precedents laid down by Hon'ble Supreme Court in **Punjab Rao** (supra) and **CM Girish Babu** (supra), this Court finds that there is strong possibility that the appellant had allegedly received Rs. 350/- towards expenses of getting prepared partition documents.
16. P.W 4 Bedan Bai says in para 1 of her statement given on oath that applicant had demanded Rs. 350/- for separation of holding and she had given him said amount.
17. P.W. 5 Dhanna Lal says in para 1 of his statement that in 1989, the appellant had demanded Rs. 350/- for separating holding. When he had approached him to get income certificate then appellant told that first he pay the said amount then he will give the income certificate.
18. There is omission in police statement Ex. D-3 of P.W. 4 Bedan Bai that allegedly appellant had demanded Rs. 350/- for separating the holding and she had paid said amount to him. This is material omission, thus this Court disbelieves aforesaid statement of para 1 of P.W. 4 Bedan bai.
19. P.W. 5 Ghana Lal Lodhi says in para 14 that 3-4 month prior to

lodging the report, the holding was separated. He further says in para 16 that he got income certificate later from Tahsildar, he had not obtained any certificate from Patwari. In these circumstances, this Court disbelieves aforesaid statement of para 1 of P.W. 5 Ghanalal Lodhi.

20. In **P. Satyanarayana Murthy v. State of A.P.** {(2015) 10 SCC 152} the Hon'ble Supreme Court has observed in para-24 as under:-

“24. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1-S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/- from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW1- S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW1- S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand

of illegal gratification as enjoined by law to hold that the offence under Sections 7 or 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4.10.1996. However, the testimony of PW1- S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Sections 7 or 13(1)(d)(i) & (ii) of the Act against the appellant has been proved beyond reasonable doubt.”

21. P.W. 5 Ghanalal Lodhi says in para 5 that he had told appellant that he had brought the remaining cash.
22. P.W. 7 Head Constable Mannulal in para 5, P.W. 8 Sushil Shukla, Hotel owner in para 3, P.W. 9 Joint Collector S.L. Dagla in para 5, P.W. 12 Inspector B.I.R. Naidu in para 6, P.W. 13 C.K. Tiwari, Retd. Inspector in para 2, P.W. 18 Additional Police Superintendent Ravindra Singh Uikey in para 11, say that they have not heard the conversation took place between appellant and the complainant Ghanalal Lodhi.
23. On the strength of the above mentioned judicial precedent laid down by Hon'ble Supreme Court in **P. Satyanarayan Murthy** (supra), this Court finds that from the aforesaid statement of para-5 of P.W.5 Ghanalal Lodhi it can not be inferred that the appellant allegedly demanded illegal gratification and received Rs. 350/- on this account.

24. In **A. Subair v. State of Kerla** {(2009) 6 SCC 587}, **B. Jayaraj v. State of A.P.** {(2014) 13 SCC 55}, **P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Another** {(2015) 10 SCC 152}, **Mukhtiar Singh (Since Deceased) through his L.R. v. State of Punjab** decided on 14.07.2017 in Criminal Appeal No. 1163 of 2017, the Hon'ble Supreme Court has laid down the following judicial precedent:-

“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 6 (2014) 13 SCC 55 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 Sections 7 and 13 of the Act would not entail his conviction thereunder.”

25. Looking to the above mentioned facts and circumstances and above mentioned judicial precedent laid down by Hon'ble Supreme Court in **A. Subair** (supra), **B. Jairaj** (supra), **P. Satyanarayana Murthy** (supra), **Mukhtiyar Singh (since deceased)** (supra), this Court finds that receiving of Rs. 350/- and recovery thereof *ipso facto* is not sufficient proof of demand.
26. Looking to the above mentioned facts and circumstances of the case, this Court finds that the presumption which is enumerated in Section 20 of the P.C. Act is not available to the prosecution with reference to Section 7 of the P.C. Act.

27. After appreciation of the evidence discussed herebefore, this Court finds that the prosecution failed to prove the charges punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act against the appellant.
28. In view of above discussion, the appeal is allowed and the impugned judgment of the conviction and order of the sentence are hereby set aside. The appellant is acquitted of the charges punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C. Act. The fine amount, if deposited, be refunded to the appellant after expiration of prescribed period of appeal/revision.
29. The appellant is on bail. His bail bond stands discharged subject to the provisions contained in Section 437-A of the Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge