

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 135 of 2009

Judgement reserved on 9-10-2018

Judgement delivered on 30-10-2018

- State of Chhattisgarh through Anti Corruption Bureau, Lokayukta, Unit Raipur (Chhattisgarh).

---- Appellant.

Versus

- Rakesh Kumar Pandey s/o. Radheshyam Pandey, aged about 39 years, occupation Principal, Multi-purpose Higher Secondary School, Dhamari, Tahsil and District Dhamtari (CG).

---- Respondent

For Appellant/State : Mr. Vivek Sharma, Govt. Advocate.

For Respondent : Mr. S.C. Verma and Mr. Avinash K. Mishra, Advocates.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 7-1-2005 passed by Special Judge/ First Additional Sessions Judge (under Prevention of Corruption Act, 1988), Raipur in Special Case No. 19 of 2002 wherein the Special Court acquitted the respondent for charge under Sections 7 and 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, "the Act, 1988").
2. In the present case, date of incident is 26-6-2001. At that time respondent was posted as Principal of Government Higher

Secondary School, Dhamtari. Complainant is Rikhiram Sinha (PW/1) whose wife namely Smt. Neelam Sinha (PW/2) was conducted an educational institution in the name of Shradha Suman Vidhya Peeth at Kohka at Bhilai which requires recognition for conducting the school for class 10. The respondent inspected the said school and demanded illegal gratification of Rs.20,000/- for preparing recommendation certificate. It is alleged that wife of the complainant paid Rs.7,000/- to the respondent on 29-6-2001 and for remaining balance of Rs.7,000/- the matter was reported to Anti Bureau Corruption (Lokayukt) at Raipur which investigated the matter. A trap party was arranged and in trap it is found that the respondent received illegal gratification of Rs.7,000/-. Respondent was charge-sheeted and after investigation he was acquitted by the Special court as mentioned above.

3. Learned counsel for the appellant/State submits that demand of acceptance is proved by the evidence of Rikhiram Sinha (PW/1) and Smt. Neelam Sinha PW/2 and acceptance is proved by the evidence of trap party, therefore, trial Court erred in holding that PW/1 Rikhiram Sinha is a person not directly connected with the case. As members of trap party deposed before the court regarding acceptance of illegal gratification, therefore, acquittal of respondent is not proper.

He would further submit that it is established from the evidence of trap witnesses when fingers of the respondent were dipped in sodium carbonate it turned pink which proves acceptance of illegal gratification, therefore, it is not a case where benefit of doubt could be extended, therefore, finding of the trial court is liable to be reversed.

4. On the other hand, learned counsel for the respondent would submit that the evidence of PW/1 Rikhiram Sinha and PW/2 Smt. Neelam Sinha is not inspiring confidence of the Court that is why the court is well within its jurisdiction in acquitting the respondent. He would further submit that solution in which fingers of the respondent were dipped, is not proved to be solution of sodium carbonate, therefore, that evidence is not connecting piece of acceptance of bribe amount. Therefore, finding of the trial Court is just and proper.
5. In this case, though charge has been framed for payment of Rs.20,000/- but as per version of PW/1 Rikhiiram Sinha, trap was arranged for Rs.7,000/- and he produced Rs.7,000/- (70 currency notes of 100 denomination) before Lokayukt. As per version of PW/1 Rikhiram Sinha and his wife Smt. Neelam Sinha (PW/2), Rs13,000/- was already paid to the respondent but there is no description of currency notes for Rs.13,000/-. For Rs.13,000/- only the statement of these two witnesses is

on record which is not sufficient to hold that currency notes valued to Rs.13,000/- was received by the respondent. Both the witnesses have deposed before the trial Court regarding payment of Rs.20,000/- by the respondent, but that payment is not substantiated by evidence because report was lodged for trap of Rs.7,000/- only. There is no shadow account of payment of Rs.7,000/- in the record and the case of the prosecution is based on the statement of PW/2 Rikhiram Sinha who is decoy witness. There is no shadow witness account of acceptance of illegal gratification because acceptance of amount is based on the statement of Rikhiram Sinha (PW/1). Though it is stated by the witness of trap party that when the fingers of the respondent were dipped into solution of sodium carbonate it turned pink, but no one from the trap party is chemical expert for ascertaining whether the solution was prepared of sodium carbonate. The prosecution was under obligation to prove that phenolphthalein powder was applied in currency notes and same was received by the respondent and after receiving when his hand was dipped into solution of sodium carbonate, it turned pink, but no chemical examination is done to the solution collected after dipping the fingers of the respondent. Therefore, it cannot be said that solution which was collected after dipping the fingers of respondent is

solution of phenolphthalein powder and sodium carbonate. In absence of chemical examination that part has to be excluded from evidence. The only evidence remains to be seen is the evidence of Rikhiram Sinha (PW/1) who is decoy witness and he has grudge against the respondent for torturing this witness and his wife for not getting recognition before his inspection. The respondent had come to school of Smt. Neelam Sinha (PW/2) for inspection and when he found that school was running without recognition, he threatened to Rikhiram Sinha (PW/1) and Neelam Sinha (PW/2) for dire consequences, therefore, there was grudge against the respondent in the mind of PW/1 Rikhiram Sinha and looking to the entire circumstances, the trial Court opined that in absence of shadow witness or corroborative piece of evidence, the statement of PW/1 Rikhiram Sinha cannot be acted safely.

6. As per law laid by Hon'ble Supreme Court in the matter of **Banna Reddy and others vs. State of Karnataka and others, reported in (2018) 5 SCC 790** there is presumption of innocence of person charged and presumption of innocence is further reinforced, reaffirmed and strengthened after acquittal of the accused by the judgment in his favour.

7. Looking to the entire facts and circumstances of the case, it appears that finding of the trial Court is based on relevant material on record and same is not based on irrelevant or extraneous material. It cannot be said that finding of the trial Court is perverse and this court, this court has no reason to record contrary finding what is recorded by the trial Court.
8. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

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