

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.51 of 2018****Judgment reserved on 27.6.2018****Judgment delivered on 05.7.2018**

- Dr. Ramvijay Sharma S/o Madho Sharma Aged About 57 Years Presently Tahsildar, Baloda, Dist. Janjgir Champa Chhattisgarh At The Time Of Trial The Appellant Was Posted As Tahsildar Kurud, District Dhamtari Chhattisgarh Permanent R/o Village Latta, P. S. Rafiganj, Dist Aurangabad Bihar.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer Police Station Anti Corruption Bureau, Raipur Distt. Raipur Chhattisgarh

---- Respondent

For Appellant	: Shri BD Guru, Advocate
For respondent/State	: Shri Sameer Behar, Panel Lawyer

SB: Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.01.2018 passed by Special Judge under the Prevention of Corruption Act, 1988 (for short 'the Act of 1988')/First Additional Sessions Judge, Raipur in Special Criminal Case No.1434/2014 wherein the said Court convicted the appellant for commission of offence under Sections 7, 13(1)(d) read with Section 13(2) of the Act 1988 and sentenced him to undergo rigorous imprisonment for four years and to pay fine of Rs.2 lakh; RI for four years and to pay fine of Rs.2 lakh respectively with default stipulations.

2. As per the prosecution case, in the year 2011 the appellant was posted as Tahsildar in Tahsil Kurud, Distt. Dhamtari. Basant Kumar Sahu, the complainant in the present case, was having ancestral property in village Chatoud, PH No.4, Tahsil Kurud. The property was recorded in the names of his elder brothers Poshanlal Sahu, Bansi Lal and mother Smt. Leni Bai. They moved an application for mutation after partition and it was pending before the court of the Tahsildar/appellant. It is alleged that when the complainant contacted the appellant in this regard, he demanded Rs.10,000/- and later Rs.8,000/-. The complainant lodged written report before Superintendent of Police, Anti Corruption Bureau, Raipur on 09.9.2011. For verification of the said complaint, the police provided digital recorder to the complainant for recording the conversation in respect of demand of illegal gratification. The complainant intimated the police on 21.9.2011 that on 19.9.2011 he recorded the conversation. On 21.9.2011 two witnesses were arranged and one trap team was constituted. 16 notes of Rs.500/- denomination were smeared with phenolphthalein powder and members of the trap party reached to the office of the appellant. After getting indication from the complainant, the trap team entered into the room, enquired about the matter and thereafter hands of the appellant were washed in Sodium Carbonate solution which turned into pink colour. After completion of investigation, charge sheet was filed

and after completion of trial, the trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Complainant Basant Kumar Sahu has not supported the version of the prosecution and from his statement demand of illegal gratification is not established.

(ii) The complainant has also not supported the prosecution on the point of acceptance of illegal gratification by the appellant.

(iii) Currency notes were found on the floor of the room and as per the version of the complainant, the appellant did not accept the amount tendered to him, therefore, acceptance of illegal gratification is not proved.

(iv) Test of phenolphthalein powder and sodium carbonate solution has no bearing with the acceptance of currency notes because notes were collected from the floor of the room and there is no shadow witness on account of demand of illegal gratification and acceptance of currency notes.

(v) From the evidence of investigating officer, it is clear that he has made false document (Ex-P/16) regarding seizure of the currency notes from full part of the appellant. When preparation of false document is admitted by the investigating officer, the story put forth by the prosecution is wholly unreliable.

(vi) Adjournment of the hearing of the case has no bearing with the demand or acceptance as presumed by the trial Court. Finding of the trial Court is perverse.

(vii) Learned counsel for the appellant has placed reliance in the matters of **State of Kerala and Anr. Vs. CP Rao** reported in **(2011) 6 SCC 450**, **B. Jayaraj vs. State of Andhra Pradesh** reported in **(2014) 13 SCC 55** and **Mukhtiar Singh (Since deceased) through Lrs. vs. State of Punjab** reported in **(2017) 8 SCC 136**.

4. On the other hand, learned counsel for the State submits as under:

(i) Demand and receipt of the illegal gratification is established by the evidence of complainant Basant Kumar Sahu and the same is also established by other witnesses and corroborative piece of evidence regarding the test of phenolphthalein powder and sodium carbonate solution.

(ii) When the appellant has failed to explain the circumstances established against him, the finding arrived at by the trial Court is just and proper and is strictly in accordance with law and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. Heard learned counsel for the parties and perused the record of the trial court with utmost circumspection.

6. To substantiate the charges, the prosecution has examined as many as 10 witnesses. Palsingh Dhruw (PW-1) is the Patwari who prepared spot map. Basant Kumar Sahu (PW-2) is the complainant. Head Constable Nathe Singh (PW-3) is a person who smeared phenolphthalein power on the currency notes and he was also the member of the trap team. Nohar Singh Kanwar (PW-4) is person in whose presence the record of the revenue case of mutation in which the complainant was the party was seized. Dr. Vijay Joshi (PW-5), Constable Shiv Prasad Sahu (PW-6), Constable Rampravesh Mishra (PW-7) were the members of the trap party. Constable Shiv Prasad Sahu (PW-6) is the person who made the solution of Sodium Carbonate and supplied it to the members of the trap party. He also gave a digital voice recorder to the complainant. Mukesh Kumar Thakur (PW-8) is translator in the Legal Affairs Department who gets the sanction of the prosecution. Jerom Lakra (PW-9) is investigating officer. Inspector Ranjeet Ekka (PW-10) recorded the First Information Report.

7. The appellant has been charge sheeted under Sections 7 and 13(1)(d) of the Act, 1988. Section 7 of the Act reads as under:

“7. Public servant taking gratification other than legal remuneration in respect of an official act. - whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any

official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than {three years] but which may extend to [seven years] and shall also be liable to fine.”

Section 13(1)(d) reads as under:

“13. Criminal misconduct by a public sservant (1) A public servant is said to commit the offence of criminal misconduct,-

- | | | | |
|-----|------|------|------|
| (a) | xxxx | xxxx | xxxx |
| (b) | xxxx | xxxx | xxxx |
| (c) | xxxx | xxxx | xxxx |

- (d)if he,-
- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.”

8. In the matter of State of Kerala and Anr. Vs. CP Rao reported in (2011) 6 SCC 450, the Hon'ble Apex Court held that when there is no corroboration of testimony of the complainant regarding demand of bribe by the accused, evidence of the complainant cannot be relied on.

9. The first question for consideration before this Court is whether the appellant demanded illegal gratification from the

complainant. With regard to demand, case of the prosecution is based on statement of complainant Basant Kumar Sahu (PW-2). There is no shadow witness account on the demand of illegal gratification. As per the version of this witness (para 3), his brother Peshan Lal contacted Reader of the Tahsildar and his brother informed him that the reader has demanded Rs.10,000/-. He again stated (para 12) that the demand was made by the reader of the Tahsildar. He further deposed (para 22) that till the date of submission of his written complaint, no demand was made by the appellant. From his statement it is clear that the demand was made by the reader and till his written report (Ex-P/2), no demand was made by the appellant. Though this witness deposed that (para 4) the appellant demanded firstly ten and thereafter demanded eight. But deposition of this witness is entirely different from the prosecution story. As per the prosecution, the appellant has demanded illegal gratification, but as per the deposition of the complainant on oath reader of the appellant's office demanded illegal gratification. Statements of this witness is not stable regarding demand by the appellant. When there is no shadow witness to the account of demand of illegal gratification, the version of the complainant should be of sterling quality but that is not the case here. When the version of the complainant is different in different stages no reliance can be placed on the said witness. Therefore, it is not established that

the appellant has demanded illegal gratification from the complainant.

10. The second question for consideration before this Court is whether the appellant accepted currency notes tendered to him. As per the version of the complainant (PW-2) at para 9, he tendered currency notes to the appellant, but he replied that no money is required, even then he kept the currency notes on the table. There is no shadow witness account of acceptance of illegal gratification. From the statement of the complainant it is clear that the appellant did not accept the currency notes tendered to him. Therefore, there is no direct evidence regarding acceptance of currency notes.

11. Head Constable Nathe Singh (PW-3) is a member of trap party. As per the version of this witness (para 5) when he entered into the office currency notes of Rs.500 denomination were lying on the floor of the room. Dr. Vijay Joshi (PW-5), one of the member of the trap party deposed (para 5) that the currency notes were lying on the floor. Ram Pravesh Mishra (PW-7) though deposed (para 5) that currency notes were thrown by the appellant from the pocket of his full pant, but in his cross-examination (para 14) he deposed that he has not seen the appellant throwing the currency notes from pockets of his pants. He further deposed (para 14) that he has not seen the appellant inserting the currency notes in his pockets or taking out the notes from his pocket.

12. From the evidence of the members of the trap team, it is not established that said currency notes were inserted by the appellant in his pocket or removed from his pocket. Direct evidence of complainant is not establishing the fact of acceptance of illegal gratification by the appellant.

13. The next question for consideration before this Court is whether the test of phenolphthalein powder and Sodium Carbonate solution is sufficient to establish the acceptance of currency notes as illegal gratification. Complainant Basant Kumar Sahu (PW-2) deposed (para 9 & 10) that when the appellant denied to accept currency notes he kept the same on the table of the appellant. He further deposed that currency notes were pushed by the appellant by his hands. From the evidence of other witnesses it is established that when they entered into the room, currency notes were lying on the floor. As stated by the witnesses, the appellant pushed the currency notes by his hands, then it would be natural that his hands would turn pink in colour while washing in the Sodium Carbonate solution. Hands turning pink in colour, in the facts and evidence of the case has no bearing with the fact of acceptance of bribe because the appellant denied to accept the same and threw the same from the table which was later found lying on the floor by the trap witnesses. Possibility of keeping the hand in to pocket of full pant by the appellant can not be ruled out and he thrown the notes smeared

with powder, therefore, Sodium Carbonate test on full pant has no bearing with acceptance of currency notes.

14. Inspector Jerom Ekka (PW-9), who was the investigating officer deposed (para 22) that he has not seized currency notes from the pocket of the appellant, but the currency notes were found on the floor of the room. He further deposed that entries made in Ex-P/16 regarding seizure of currency notes from the pants of the appellant is wrong and as such he himself admitted that Ex-P/16 which is a documents of seizure of currency notes is a false document. When the documents regarding seizure itself is a false document the factum of seizure is wholly unreliable.

15. As per the prosecution evidence, one digital voice recorder was provided to the complainant for recording conversation with the appellant but the complainant admits in para 13 that he forgot to switch on the tape recorder and no conversation was recorded. Other witnesses have also deposed that there is no concrete evidence regarding conversation between the complainant and the appellant. Therefore, investigation in this part is immaterial. This Court is in agreement with arguments advanced on behalf of the appellant that adjournment of any case has no bearing with demand or acceptance of illegal gratification as observed by the trial Court.

16. On overall assessment of the evidence adduced by the prosecution, charges under Sections 7 & 13(1)(d) read with Section 13(2) of the Act, 1988 are not established against the

appellant, hence, the finding arrived at by the trial Court is not sustainable.

17. Consequently, the appeal is allowed and conviction and sentence of the appellant are hereby set aside. He is acquitted of the charges framed against him. He is reported to be on bail. His bail bonds shall discharge as per provisions of the Code of Criminal Procedure. Unexhibited compilation filed by the appellant shall be returned to him.

Sd/-
Judge
(Ram Prasanna Sharma)