(41)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 594 of 1999

Jagatram Yadu

Versus

The State of Chhattisgarh

C A V JUDGMENT

Post for pronouncement of judgment on..11../01/2018

Sd/-
SHARAD KUMAR GUPTA
Judge

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 5-1-2018

Delivered on 11-1-2018

Criminal Appeal No. 594/1999

(Arising out of judgment dated 22-1-1999 in Special Criminal Case No. 42/91 of the learned Special Judge, Raipur)

Jagatram Yadu son of Kriparam Yadu, Revenue Inspector, Settlement Indagaon, P.S. Deobhog, Distt. Raipur (MP) (now CG)

---- Appellant

Versus

State of Chhattisgarh through Police Station Special Police Establishment, Office of Lokayukt, Bhopal, Unit-Raipur (MP) (now CG)

---- Respondent

For Appellant	:	Mr. Chandresh Shrivastava, Advocate
For State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Mr. Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

1. In this Criminal Appeal, challenge levied is to the judgment of conviction and order of sentence dated 22-1-1999 passed by the Special Judge, Raipur in Special Criminal Case No. 42/91 whereby and whereunder the appellant has been convicted under Section 161 of the Indian Penal Code (hereafter called as 'IPC') and Section 5(1)(d)/5(2) of the Prevention of Corruption Act, 1947 (hereinafter called as 'Act of 1947') and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 1,000/-, in default of payment of fine, to further undergo simple imprisonment for 3 months, on each count. The substantive jail sentences are directed to run concurrently.

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2. It is admitted by the appellant that P.W. 2 C.R. Koram was posted as Asstt. Settlement Officer in Gariyaband from July, 1986. The accused was working as Revenue Inspector in that office since prior to the year 1986. P.W. 2 C.R. Koram had issued certificate of Ex. P-1. He was appointed in village Indagaon to construct the record under the settlement project. Revenue Inspector gets prepared the records regarding revenue land, abadi land, land which has been possessed unauthorizely, and nistar land. The revenue inspector does the inspection of site, the person who is in unauthorized possession of land files application before the revenue inspector, on the basis of which revenue inspector also prepares Khasra and register of unauthorized possession. The person who is in unauthorized possession of the land and whose name is entered in register of unauthorized possession, may apply for settlement and such person gets priority in settlement. A.S.L.R. makes inquiry of the said register. He also made register of unauthorized possession Ex. P-3 wherein the name of the complainant P.W. 9 Nakul Singh was entered in Sr. No. 88 as he was in unauthorized possession of land. The complainant had made complaint before the Lokayukt that he is demanding Rs. 500/- for the settlement of the unauthorized possession of land. On 3-3-1987, the complainant had given him Rs. 500/-.

3. In brief, prosecution story is that complainant was farming in two acre grass land at village Indagaon for last 10 years. The appellant had told him that he would get the *Patta* recorded in his name for which he would take Rs. 1,000/-. On 15-2-1987, he had given him Rs. 500/- to the appellant. The appellant told him that he would come in his house on 3-3-1987 at village Indagaon along with Rs. 500/-. The complainant wanted to trap the appellant

red handed thus on 2-3-1987, he gave an application to the Superintendent of Police, Vigilance Department, Raipur. Under the direction of P.W. 11 B.I.R. Naidu, IO, the complainant produced 5 notes of 100 denomination total Rs. 500/- bearing following numbers:-

i. 2CT 496382
ii. 4LL 748492
iii. 7DV 615326
iv. 2FL 718366
v. 0CU 137701

Under the direction of P.W. 11 B.I.R. Naidu, P.W. 1 Jon Vergis, constable treated the aforesaid currency notes with phenolphthalein powder on both the sides. Search of the complainant was made. Phenolphthalein treated currency notes were kept in left pocket of the shirt of the complainant. Colourless Sodium Carbonate solution was prepared. Fingers of P.W. 1 Jon Vargis were dipped in the solution which turned pink. The solution was sealed in one bottle. A trap party was constituted. A preparatory panchnama was prepared.

4. Further, the prosecution case is that the trap party reached to the village Indagaon. Brother of the appellant told that the appellant had called the complainant at village Devbhog. The trap party reached to village Devbhog. Near Irrigation Colony, the complainant gave the appellant the aforesaid currency notes which the appellant kept in the left pocket of his shirt. The solution of colourless Sodium Carbonate was prepared and the fingers of both the hands of the accused were dipped in that solution. The solution became light pink which was sealed in a bottle. Again the colourless solution of Sodium Carbonate was prepared, the fingers of P.W. 10 H.P.

Sharma were dipped in that solution. The colour of solution was not changed. That solution was also sealed in a bottle. P.W. 10 H.P. Sharma conducted search of the appellant and recovered 5 currency notes of 100 denomination each, the numbers of which were identical to numbers mentioned in the preliminary panchnama. When the currency notes and the shirt of the complainant were dipped in colourless Sodium Carbonate solution, that became pink. The solutions were also sealed in separate bottles. The currency notes and the shirt were seized. Trap panchnama was prepared. P.W. 11 B.I.R. Naidu lodged the Dehati Nalishi on the spot. One application Ex. P-13 and one register were seized from the appellant. Spot map was prepared by the Patwari and as well as P.W. 11 B.I.R. Naidu. Prosecution sanction was obtained. After completing the investigation a charge sheet was filed against the appellant under Section 161 of the IPC, Section 5(1)(d)/Section 5(2) of the Act of 1947 against the appellant. The trial Court framed charges against the appellant under Section 161 of the IPC and Section 5(1)(d)/5(2) of the Act of 1947. The appellant abjured the charges levelled against him and faced trial. To bring home the charges against the appellant prosecution examined as many as 11 witnesses.

5. The case of the appellant is that the complainant had obtained loan of Rs. 500/- from him on 10-12-1986 and executed receipt Ex. D-1. When despite of several demands the complainant did not return loan amount, he gave threatening him that he will spoil his case of the settlement regarding the land of unauthorized possession. Thus the complainant became annoyed. On 3-3-1987, the complainant returned him Rs. 500/- as repayment of loan amount. After the trap, the complainant admitted his mistake and again executed receipt Ex. D-2. The appellant examined two

defence witnesses in his defence.

6. The trial Court after conclusion of the trial convicted and sentenced the appellant as aforementioned. Being aggrieved by the conviction and sentence, the appellant preferred this appeal.

7. Mr. Chandresh Shrivastava, counsel for the appellant strenuously argued that the complainant has admitted execution of receipt Ex. D-1 and Ex. D-2. The reasons given by the trial Court for disbelieving these documents are based on surmises. The prosecution has failed to prove the demand of illegal gratification. In these circumstances, the appellant could not be convicted and sentenced for the aforesaid offences. Hence, he may be acquitted from the aforesaid offences.

8. Ms. M. Asha, Panel Lawyer appearing for the respondent supported the aforesaid conviction and sentence of the appellant and argued that the prosecution has produced clinching evidence. Thus, no interference is called for by this Court.

9. Considerable question for adjudication of this criminal appeal is that, whether the appellant had allegedly demanded illegal gratification from complainant and received amount of Rs. 500/- as an illegal gratification.

10. The learned counsel for the appellant relied on **Punjabrao v. State of Maharashtra {AIR 2002 SC 486}** wherein in para-3, 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

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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."

11. The learned counsel for the appellant further relied on **C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala {AIR 2009 SC 2022}** wherein in para-20, 21 and 22, 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."

12. As per the alleged receipt Ex.D-1 dated 10.12.1986 the complainant had taken Rs. 500/- as loan from the appellant promising that he will return back the loan amount on demand of the appellant.

13. As per the alleged receipt Ex. D-2, the complainant had taken loan of Rs. 500/- from the appellant. The appellant had also told the complainant

that as he is causing delay to repayment of the loan amount, he will spoil his settlement case regarding unauthorized possession over the land. Thus, the complainant had paid him Rs. 500/- at village Devbhog on account of repayment of loan.

14. P.W.9 Nakul Singh says in para-13 and 15 of his statement given on oath during his cross-examination that he had written Ex.D-1 and Ex.D-2 and had put his signature on them.

15. P.W. 9 Nakul Singh says in para-13 and 15 that Ex. D-1 and D-2 had got written under threat given by the appellant. This witness says in para-16 that he had not made any complaint to anyone that allegedly he had written and singed Ex.D-1 and Ex.D-2 under the threat of the appellant. This witness had not lodged report in any police station regarding aforesaid threat. He had also not got the decree of the Civil Court with this effect that Ex. D-1 and Ex. D-2 are voidable. Thus, this Court finds that alleged fact of threat is not natural, not normal and not simple. Thus, this Court disbelieves the statements of para-13 and 15 of this witness regarding threat.

16. Looking to the above mentioned judicial precedents and circumstances, this Court finds that this possibility cannot be ruled out that allegedly received Rs. 500/- was on account of repayment of loan of Rs. 500/- given by the appellant to the complainant. Thus, the prosecution case that allegedly the appellant had demanded illegal gratification and received Rs. 500/- as an illegal gratification become week.

17. In **P. Satyanarayana Murthy v. Dist. Inspector of Police and Anr. {2015 AIR SCW 5263}** the Hon'ble Supreme Court has observed in para-23 as under:-

"23. 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."

18. P.W.9 Nakul Singh says in para-6 that the appellant asked him whether he has brought money then he replied that he has brought the money.

19. P.W.7 T.L. Shrivastava says in para-5, P.W. 8 Constable Pothi Ram in para-3 and P.W. 10 H.P. Sharma in para-7 during their cross examination that they had not heard the conversation took place between the complainant and the appellant. P.W. 11 B.I.R. Naidu does not say that he had heard the appellant saying anything.

20. On the strength of the above mentioned judicial precedent this Court finds that from the aforesaid statement of para-6 of P.W.9 Nakul Singh, it could not be inferred that the appellant allegedly demanded illegal gratification and received Rs. 500/- as an illegal gratification. This circumstance go against the said prosecution case.

21. 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."

22. Looking to the above mentioned circumstances, facts and above mentioned judicial precedent, this Court finds that receiving of Rs. 500/- *ipso facto* is not sufficient to proof of demand. Thus, this circumstance adversely affects the said prosecution case.

23. After the appreciation of the evidence, this Court finds that the prosecution failed to prove that, the appellant allegedly demanded illegal gratification and received Rs. 500/- as an illegal gratification.

24. After the appreciation of the evidence, this Court finds that the prosecution failed to prove the charges punishable under Section 161 IPC, Section 5(1)(d)/5(2) Act, 1947 against the appellant. Thus, the appeal is allowed and the impugned judgment of the conviction and order of the sentence are hereby set aside.

25. The appellant is on bail. His bail bond stands discharged subject to the provisions contained in Section 437-A of the CrPC.

Sd/-
SHARAD KUMAR GUPTA
Judge

Pathak/kishore