

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1787 of 1998

Judgment Reserved on : 10.8.2018

Judgment Delivered on : 2.11.2018

Vinod Kumar Khare, son of Gokaran Prasad Khare, aged 47 years, Deputy Manager, Bhilai Refractory Plant, Bhilai, Resident of Maroda, Post Office Civic Centre, Police Station Nevai, Bhilai, District Durg

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant : Shri Surendra Singh, Senior Advocate with
Shri N.K. Mehta, Advocate
For Respondent/C.B.I. : Shri Kishore Bhaduri and Ms. Juhi Jaiswal,
Advocates

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 7.8.1998 passed by the 5th Additional Sessions Judge and Special Judge (C.B.I.) [under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988')], Jabalpur in Special Case No.36 of 1990 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Act of 1988	Rigorous Imprisonment for 3 years and fine of Rs.8,000/-, in default additional Rigorous Imprisonment for 6 months
Under Section 13(1)(d) read with Section 13(2) of the Act of 1988	Rigorous Imprisonment for 3 years and fine of Rs.8,000/-, in default additional Rigorous Imprisonment for 6 months The substantive jail sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that on the relevant date and time, the Appellant/accused was posted as a Manager in Bhilai Refractories Plant, where bricks were being prepared for which quartzite minerals were being requisitioned and before giving tenders, samples were being called and after approval of the samples, tenders were being accepted. In June, 1989, Complainant Shambhu Lal Purohit (PW2) had sent some samples for approval which the Appellant had examined and given report (Ex.P5) in which the samples were not found fit for approval. Thereafter, on 20.7.1990, the Complainant again submitted some samples to the Purchase Department and when he did not get any information about the result of his samples, it is alleged that he contacted the Appellant on 24.7.1990 regarding this. The Appellant called him at his house. On 27.7.1990, he visited the house of the Appellant. At that time, the Appellant demanded bribe of Rs.5,000/- for passing the samples. On this, the Complainant contacted the Central Bureau Investigation (C.B.I.) on 1.8.1990 and submitted a written complaint (Ex.P7). Panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) were called. They met with the Complainant and verified the complaint from him. The Complainant submitted 50 currency notes of Rs.100/- each, i.e., total Rs.5,000/-. Investigating Officer Inspector Ashok Kumar Saha (PW7) smeared phenolphthalein powder on those currency notes and gave a demonstration of reaction of the phenolphthalein powder. The tainted currency notes were kept in the right pocket of the shirt of the Complainant. A pre-trap memorandum (Ex.P8) was prepared. The trap party proceeded towards the house of the Appellant. Along with them, Inspector S.K. Sharma (shadow

witness) (not examined) also went. Allegedly, the Complainant and Inspector Sharma, who was in civil dress, entered the house of the Appellant. Panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) stood outside the door of the house of the Appellant. On being demanded by the Appellant, the Complainant gave him the tainted currency notes which the Appellant kept in the pocket of his full pant. The Complainant and Inspector Sharma came out of the house along with the Appellant. The Complainant gave a signal to the trap party and the Appellant was caught there itself. The tainted money was recovered from the pocket of the Appellant. Numbers of those notes were compared with the numbers already noted. The numbers matched. Hands of the Appellant were washed in different solutions of sodium carbonate on which colour of both the solutions turned into pink. Pocket of the pant of the Appellant was also washed in a solution of sodium carbonate on which colour of the solution turned into pink. A panchnama of the complete proceedings was prepared vide Ex.P9. The seized articles and the used solutions were sent to the Forensic Science Laboratory for chemical examination. FSL report is Ex.P12. The report is positive. First Information Report (Ex.P11) was registered. Necessary sanction for prosecution (Ex.P10) of the Appellant was obtained from the competent authority. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Act of 1988. Charges were framed against him under Section 13(2) read with Section 13(1)(d) and Section 7 of the Act of 1988.

3. In order to prove the guilt of the accused/Appellant, the prosecution

examined as many as 7 witnesses. Statement of the Appellant under Section 313 of the Code of Criminal Procedure was also recorded in which he denied the circumstances appearing against him. He claimed to be innocent and pleaded false implication in the case. It was the defence of the Appellant that Jagdalpur Minerals had taken a lease which was about to expire, but despite that, a sample on behalf of Jagdalpur Minerals was submitted and the Complainant wanted him to pass the sample. He (the Appellant) did not agree for this and, therefore, in order to teach him a lesson, a false complaint was lodged by the Complainant. He never demanded or accepted any money as bribe.

4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that at the time of incident, the Appellant did not demand or accept any bribe money from the Complainant. Both demand and acceptance are not proved. Investigating Officer Ashok Kumar Saha (PW7) has admitted the fact that after the trap proceedings, both the hands of the Appellant were washed and after the wash, both the solutions in which the left and the right hands of the Appellant were washed, were kept separately and the bottles in which those solutions were preserved were marked as No.2 and No.3. The solution in which the shirt of the Appellant was washed was marked as No.4. But, the bottles No.2 and No.3 in which the solutions were kept after the wash of the left and the right hands of the Appellant were not sent to the Forensic Science Laboratory for chemical examination. Why

were the same not sent for chemical examination has not been explained by the prosecution. In these circumstances, it can be inferred that since colour of those solutions had not turned into pink after the wash of the hands of the Appellant as there was no phenolphthalein powder found on the hands of the Appellant, those solutions were not sent for chemical examination nor were the same produced before the Court. Thus, it is clear that the Appellant never handled/touched the tainted notes and the tainted notes were forcibly put by the Complainant in the pocket of the Appellant. It was further argued that according to the statement of Complainant Shambhu Lal Purohit (PW2), he had given a bribe to the Appellant in the sum of Rs.5,000/- and Rs.3,000/- on two occasions for passing of his samples. Despite this, the Appellant did not pass his samples. Therefore, it is highly improbable that the Complainant would again trust the Appellant and give him Rs.5,000/- to pass the samples. In this case, the shadow witness Inspector S.K. Sharma, who accompanied the Complainant, has not been examined by the prosecution. Both the panch witnesses are the witnesses who belong to the Vigilance Department of Bhilai Steel Plant (B.S.P.), therefore, both the panch witnesses are interested and pocket witnesses of the C.B.I. It was further argued that though both the panch witnesses, in their Court statements, have stated that they had heard and witnessed the whole talk, but from the evidence on record, it is clear that both of them were standing outside in the compound. In these circumstances, they heard and witnessed giving and taking of tainted money between the Complainant and the Appellant is not possible.

opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence. He submitted that both the demand and the acceptance are duly proved by the prosecution and, therefore, the Trial Court has rightly convicted the Appellant.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. In the instant case, it is not in dispute that on the relevant date and time, the Appellant was posted as a Manager in Bhilai Refractories Plant, where bricks were being prepared for which quartzite minerals were being requisitioned and before giving tenders, samples were being called and after approval of the samples, tenders were being accepted.
9. Narendra Kumar Pujari (PW1) is the witness, who, at the relevant time, was posted in the Purchase Department of Bhilai Refractories Plant. He has deposed that before inviting tenders, samples were called from the new suppliers and those samples were sent for testing in the Research and Control Department. This witness has further deposed that earlier also, Complainant Shambhu Lal Purohit (PW2) had sent some samples for analysis which were sent to the Appellant for analysis and vide Ex.P3 and P5, the Appellant had returned those samples with a remark that those samples were not fit for approval. This witness has also admitted that Jagdalpur Minerals had never supplied quartzite minerals and their all samples sent for analysis were rejected. In paragraph 13,

this witness has stated that the Complainant had come to him along with samples 3-4 times, but he had never made any complaint.

10. R.B. Gupta (PW3) is the witness, who was also posted as a Chargeman in the Laboratory. As per his statement, on 5.7.1989, samples of quartzite mineral of Jagdalpur Minerals were received for analysis. The samples were chemically examined whose report was prepared by him on which the Appellant had made an endorsement and signed the same.
11. Thus, from the statements of Narendra Kumar Pujari (PW1) and R.B. Gupta (PW3), it is clear that earlier also, on two occasions, samples of the Complainant were rejected.
12. Complainant Shambhu Lal Purohit (PW2) has deposed that in June, 1989, he had sent samples of his specimen stones to Bhilai Refractories Plant for analysis. But, when he did not get any result of his samples, he went to the Purchase Department in the month of October. At that time, Narendra Kumar Pujari (PW1) asked him to send 200-300 Kgs. of stones for analysis. On this, on 23.10.1989, he sent 200-300 Kgs. of quartzite stones for sample analysis. But, when he did not get any result of his samples, he met with the Appellant on 26.10.1989. The Appellant asked him to send some more samples. Thereafter also, he did not get any result. He has further stated that on 20.7.1990, he again sent samples to Narendra Kumar Pujari (PW1) for analysis. Narendra Kumar Pujari (PW1) told him that he would send those samples to

the Laboratory. On 24.7.1990, he visited the Laboratory where the Appellant met with him. The Appellant asked him to meet at his house on the same day. On 27.7.1990 at about 9:00 p.m., he visited the house of the Appellant. The Appellant told him that if he gives him a bribe of Rs.5,000/-, he will get the samples passed and he asked him to arrange the money till the night of 1.8.1990. Since he did not want to give money to the Appellant, he visited the Central Bureau of Investigation (C.B.I.) in Room No.3 of Railway Retiring Room and submitted a written complaint (Ex.P7). The C.B.I. officials asked him to come with the bribe money in the evening. In the evening, he went to them. At that time, panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) met with him there and read his complaint and they also verified the complaint from him. The C.B.I. officials asked him to submit the bribe money of Rs.5,000/-. He submitted total 50 currency notes in the denomination of Rs.100/- each. A preliminary panchnama (Ex.P8) was prepared in which numbers of the currency notes submitted by him were noted. The above statement of Complainant Shambhu Lal Purohit (PW2) has been corroborated by Ashok Kumar Saha (PW7) and both panch witnesses J. Pandey (PW4) and P.S. Nair (PW6). Ashok Kumar Saha (PW7), J. Pandey (PW4) and P.S. Nair (PW6) have stated before the Court as has been stated by Complainant Shambhu Lal Purohit (PW2) in the Court.

13. Investigating Officer Ashok Kumar Saha (PW7) has further deposed that phenolphthalein powder was smeared on the currency notes submitted by Complainant Shambhu Lal Purohit (PW2). Thereafter, those notes were kept in the pocket of the pant of the Complainant and he was given instructions that the said

tainted notes were to be given to the Appellant only on being demanded by him. Thereafter, the trap party proceeded towards the house of the Appellant. They reached to the house of the Appellant at about 9:00 p.m. He has further deposed that Inspector S.K. Sharma and the Complainant entered the house of the Appellant. The panch witnesses stayed outside the house. The panch witnesses were also instructed to witness giving and taking of tainted money between the Complainant and the Appellant and hear the talk carefully. After sometime, the Complainant gave a signal then they entered the house of the Appellant and caught him there. In paragraph 10 of his cross-examination also, this witness has categorically stated that on being given the signal by the Complainant, all they entered the house of the Appellant. At that time, Inspector S.K. Sharma had caught the hands of the Appellant inside his house. Here, he has also categorically stated that the Appellant was caught at the gate of the compound. In this regard, Complainant Shambhu Lal Purohit (PW2) has stated that he and C.B.I. Inspector S.K. Sharma entered the house of the Appellant. At that time, the Appellant was sitting on a bench. He introduced Inspector S.K. Sharma with the Appellant as his business partner. At that time, the door of the house of the Appellant was closed from inside. They pushed the door-bell and got the door opened and thereafter they entered the house. When the Appellant asked him whether he had brought the money, he took out the tainted money and gave the same to the Appellant. The Appellant kept the tainted money in the pocket of his kurta. The Appellant told that the work will be done and he accompanied them till the door of his house for their departure. At that time, he gave a signal to the trap party. Inspector S.K. Sharma, at that time itself, caught the hands of the

Appellant and the trap party reached there and they also caught the Appellant. The hands of the Appellant were washed in two solutions of sodium carbonate on which colour of the solutions turned into pink. On being asked by C.B.I. officials, the Appellant took out the tainted money from his pocket. In paragraph 11 of his cross-examination, this witness has stated that earlier also, on two occasions, he had given bribe of Rs.5,000/- and Rs.3,000/- to the Appellant and he had told this to the C.B.I. officials, but his this statement was not written by the C.B.I. officials. In paragraph 14 of his cross-examination, this witness has stated that he told the Appellant that lease of his friend is going to be cancelled and if he (the Appellant) passes the sample then they will go for renewal of the lease. Thereafter, he gave the tainted money to the Appellant. He denied the suggestion that he deliberately put the tainted money in the pocket of the Appellant. One of the panch witnesses J. Pandey (PW4) has stated that when the Complainant and Inspector Sharma entered inside the house of the Appellant, they [J. Pandey himself and other panch witness P.S. Nair (PW6)] were standing outside the drawing room. At that time, the Appellant was sitting inside the drawing room. The Appellant asked the Complainant and Inspector Sharma to take their seat. On being asked by the Appellant about Inspector Sharma, the Complainant introduced him as his business partner. Thereafter, the Appellant demanded money. The Complainant gave the tainted money to the Appellant which the Appellant kept in the right pocket of his kurta. Thereafter, they came out of the house of the Appellant. The trap party also reached there and on being asked by Inspector Sharma, the Appellant took out the money and gave the same to the trap party. In paragraph 16, this witness has stated that

Inspector Sharma and the Complainant entered inside the house of the Appellant. 5-10 minutes thereafter, they returned to the compound of the house. This witness has also stated that he heard the talk by standing near the door of the house. At that time, other panch witness P.S. Nair (PW6) was also standing with him at the door of the house.

14. P.S. Nair (PW6) has deposed that Complainant Shambhu Lal Purohit (PW2) and Inspector S.K. Sharma entered the house of the Appellant and they (panch witnesses) were standing outside the house. Everything was visible and audible to them from the place where they were standing. In paragraph 8 of his cross-examination, this witness has stated that at the time when they reached to the house of the Appellant, the door of the house was already opened and the Appellant was present inside the house. The Complainant taking the name of the Appellant told that they have reached. On this, the Appellant asked them to come in. The Complainant and Inspector Sharma entered the house and they stayed at the door of the house. This witness has further stated in paragraph 9 that there was a gallery after crossing the door of the house. Another gallery was there after crossing another door and thereafter the drawing room of the house was there. A curtain had fallen on the door of the drawing room.
15. Investigating Officer Ashok Kumar Saha (PW7) has further deposed that after catching the Appellant, on being asked by the trap party, the Appellant took out the tainted money from his pocket. Thereafter, hands of the Appellant were washed in two solutions of sodium carbonate on which colour of the solutions

turned into pink. Bottles of the used solutions were sealed. The kurta in which the currency notes were kept by the Appellant was also washed in a solution of sodium carbonate on which colour of the solution turned into pink. Bottle of that solution was also sealed. The tainted currency notes were also dipped in a solution of sodium carbonate on which colour of the solution turned into pink. Bottle of that solution was also sealed. In paragraph 12 of his cross-examination, this witness has admitted that after the wash of both the hands of the Appellant in two solutions of sodium carbonate, both the solutions were kept in two different bottles and those bottles were marked as No.2 and No.3. Both the panch witnesses and the Complainant have also stated that both the hands of the Appellant were washed in two solutions of sodium carbonate on which colour of the solutions had turned into pink and thereafter both the solutions were kept and sealed in two bottles.

- 16.** On a minute examination of the above evidence, it reveals that as stated by Complainant Shambhu Lal Purohit (PW2), when they reached to the house of the Appellant, at that time, the Appellant was sitting outside on a bench kept in the compound of his house. The door of the house was closed from inside. The door was got opened after pushing the door-bell and thereafter they entered the house of the Appellant. But, both panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) have stated contrary to this and as per their statements, when they entered the house of the Appellant, the door of the house was already open. P.S. Nair (PW6) has categorically stated that the door of the house was not got opened after pushing the door bell from outside. As stated by P.S. Nair (PW6), the Appellant was sitting in the drawing room from before

and he did not come out and he called Inspector Sharma and the Complainant from inside the drawing room itself. Apart from this, as stated by the Complainant, after opening the outside door of the house of the Appellant, directly the drawing room of the house had fallen and no gallery had fallen between the outside door and the drawing room. J. Pandey (PW4) has also stated in similar fashion. But, P.S. Nair (PW6) has stated that after the outside door of the house of the Appellant, a gallery had fallen inside. Thereafter, a second door had fallen on which a curtain had fallen. After opening the second door, drawing room of the house had fallen.

17. With regard to the place where the trap party caught the hands of the Appellant, as stated by Complainant Shambhu Lal Purohit (PW2), panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) that the Appellant came out along with Inspector Sharma and the Complainant, at that time, at the gate of the garden, the trap party caught the Appellant. But, Ashok Kumar Saha (PW7) has stated that the Appellant was caught by them inside the drawing room itself. During cross-examination, in paragraph 10, he has again repeated this fact and has categorically stated that the Appellant was caught in the drawing room itself and he denied that the Appellant was caught at the gate of the garden. Thus, there is a material contradiction with regard to the place of catching the Appellant.

18. As stated by panch witnesses J. Pandey (PW4) and P.S. Nair (PW6), the Complainant and Inspector Sharma first entered inside the house of the Appellant and both these witnesses stayed outside the door of the house and from there they heard and

witnessed the talk took place between the Complainant and the Appellant and from there itself, they witnessed giving of money by the Complainant to the Appellant. But, as stated by J. Pandey (PW4) and P.S. Nair (PW6), a curtain had fallen in the drawing room. Therefore, it does not appear to be possible that both these witnesses could have witnessed giving of money by the Complainant to the Appellant. Furthermore, as stated by P.S. Nair (PW6), when the Complainant and Inspector Sharma entered inside the house of the Appellant, at that time, the Appellant had called them from inside the drawing room and he had not come out for calling them. P.S. Nair (PW6) has not stated that he was already aware of the voice of the Appellant. In these circumstances, P.S. Nair (PW6) was not in a position to state that between whom the talk took place inside the drawing room behind the curtain fallen on the door of the drawing room. In these circumstances, the statement of shadow witness Inspector S.K. Sharma, who had entered inside the house of the Appellant, is essential in this case. It was Inspector Sharma only, who could state that what talk had taken place inside the drawing room or how giving and taking of money took place between the Complainant and the Appellant. But, Inspector Sharma has not been examined by the prosecution. Why has Inspector Sharma not been examined by the prosecution has not been explained by the prosecution. Therefore, an adverse inference can be drawn against the prosecution.

19. It was the defence of the Appellant that he never demanded or accepted/received any money as bribe from the Complainant and inside the drawing room, while going out, the Complainant

deliberately put the tainted money in his pocket. From the statement of Investigating Officer Ashok Kumar Saha (PW7), after the trap, both the hands of the Appellant were washed in two solutions of sodium carbonate on which colour of the solutions had turned into pink. Pocket of kurta of the Appellant was also washed in a solution of sodium carbonate on which colour of that solution had turned into pink. After the wash, the used solutions were kept and preserved in different bottles. Complainant Shambu Lal Purohit (PW2) and panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) have also stated in similar fashion. But, for chemical examination, only the bottles marked as No.1, No.4 and No.5 were sent in which result/report was received to be positive. Investigating Officer Ashok Kumar Saha (PW7) has categorically stated that the bottles marked as No.2 and No.3 had contained the preserved solutions which were used for washing the hands of the Appellant. In these circumstances, why were the said bottles No.2 and No.3 not sent to the FSL for chemical examination has not been explained by this witness. Had the colour of the solutions which were used for washing of the hands of the Appellant been turned into pink, the bottles marked as No.2 and No.3 in which those solutions were preserved would have been sent to the FSL for chemical examination. But, the bottles No.2 and No.3 have not been sent for chemical examination. Therefore, a suspicion is raised that whether the colour of those solutions which were used for washing of the hands of the Appellant had turned into pink or not. Thus, the defence of the Appellant that the currency notes were deliberately put in his pocket and he had not touched those currency notes has a substance.

20. From the above discussion, it is clear that there are material contradictions in the statements of Complainant Shambu Lal Purohit (PW2), panch witnesses J. Pandey (PW4) and P.S. Nair (PW6) and Investigating Officer Ashok Kumar Saha (PW7) on the material points. There is also contradiction in the statement about the place of catching the Appellant. Whether the Appellant was caught at the gate of the garden or was caught inside the drawing room of his house is not clear. Looking to the contradictions in the statements of panch witnesses J. Pandey (PW4) and P.S. Nair (PW6), their presence on the spot, their hearing conversation between the Complainant and the Appellant and their witnessing giving and taking of money between the Complainant and the Appellant are doubtful. In these circumstances, statement of shadow witness Inspector Sharma is essential, but he has not been examined by the prosecution. Therefore, an adverse inference can be drawn against the prosecution. Furthermore, the aforesaid two bottles marked as No.2 and No.3, in which the solutions were preserved after washing of the hands of the Appellant, were not sent for chemical examination. This also creates a doubt that whether colour of those two solutions, after washing of the hands of the Appellant, had turned into pink or not. Even if recovery of tainted currency notes from the pocket of the Appellant is accepted, this does not establish that the Appellant had made a demand for bribe money or had accepted the money as bribe. Thus, in my considered view, the offence alleged against the Appellant is not proved beyond reasonable doubt. The Appellant is entitled to get benefit of doubt.

21. Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.

22. It is reported that the Appellant is on bail. His bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
23. 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