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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2829 of 1999

Judgment Reserved on : 12.7.2018

Judgment Delivered on : 9.10.2018

Pramod Kumar Rusia, S/o Mannulal Rusia, U.D.C., Block Education Office, Dondilohara, District Durg, M.P. (now Chhattisgarh)

---- Appellant

versus

The State of Madhya Pradesh (now Chhattisgarh) through Special Police Establishment Force, Lokayukta Karyalaya, Bhopal, Unit – Raipur, M.P. (now Chhattisgarh)

--- Respondent

For Appellant : Ms. Fouzia Mirza, Advocate

For Respondent/State : Mr. Umakant Singh Chandel, Panel Lawyer

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Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 11.10.1999 passed by the Special Judge under the Prevention of Corruption Act, 1947 (henceforth 'the Act of 1947'), Raipur in Special Case No.58 of 1991 convicting and sentencing the accused/Appellant as under:

Conviction	**Sentence**
Under Section 161 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default additional simple imprisonment for 3 months
Under Section 5(1)(d) read with Section 5(2) of the Act of 1947	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default additional simple imprisonment for 3 months The jail sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that on the relevant date, Complainant Vishnuram Narang (PW1) was posted as an Assistant Teacher at Primary School, Khairwahi, Dondilohara. He was absent from his duties during 5.12.1986 to 14.12.1986 and had applied for medical leave for the aforesaid period. The Appellant was dealing clerk of the office which was concerned with sanctioning of leaves and other related works. Allegedly, the Appellant received the application of the Complainant, but the same was not produced before the Block Education Officer for obtaining his signature. Therefore, the Complainant could not receive his salary for the aforesaid period. The Complainant went to the Appellant many times and lastly he met him on 16.7.1987. Then, allegedly, the Appellant demanded Rs.50/- as illegal gratification from the Complainant and told for the payment of the same till 20.7.1987. The Complainant did not want to give the bribe, therefore, he moved a written complaint (Ex.P4) to the Special Police Establishment, Raipur on 20.7.1987. He submitted 3 currency notes of Rs.20/-, 20/- and 10/-. Panch witnesses Raghvendra Singh (PW7) and Mahendra Kumar Pandey (PW8) were called. They were given the complaint made by the Complainant for their reading. They verified the complaint from the Complainant. A preliminary panchnama (Ex.P5) was prepared in which the numbers of the currency notes of Rs.20/-, 20/- and 10/- submitted by the Complainant were noted. A trap party was constituted. The currency notes were smeared with phenolphthalein powder. Different solutions of sodium carbonate were prepared. A demonstration of trap proceedings was also given. The trap party proceeded and reached to the office of the Appellant at 5:00 p.m. He was not present in the office and it was found that he was sick and present at his house. The trap party proceeded towards the house of the Appellant. The Complainant entered the room of the Appellant along with panch witness Raghvendra Singh (PW7). There, the Appellant demanded bribe of Rs.50/- from the Complainant. The Complainant gave him tainted currency notes of Rs.50/-. After coming out of the house of the Appellant, the Complainant gave a signal to the trap party. The trap party entered the house of the Appellant. The currency notes were recovered and seized from the hands of the Appellant vide Ex.P9. Hands of the Appellant were washed in a solution of sodium carbonate. After the wash, colour of the solution turned into pink. Trap proceedings were recorded. Dehati Nalishi (Ex.P11) was recorded on the spot. After return, First Information Report (Ex.P12) was registered. The solutions which were used during the trap proceedings were sent to the Forensic Science Laboratory for chemical examination. FSL report (Ex.P18) is positive. From the office of the Appellant, leave application and medical report of the Complainant were recovered and seized vide Ex.P3. Sanction for prosecution of the Appellant was obtained from the competent authority vide Ex.P19. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Act of 1947. Charges were framed against him under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Act of 1947.

3. In order to prove the guilt of the accused/Appellant, the prosecution examined as many as 11 witnesses. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the circumstances appearing against him. He claimed to be innocent and pleaded false implication in the case. No witness has been examined in his defence.

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 submitted that statement of Complainant Vishnuram Narang (PW1) is not supported by panch witnesses Raghvendra Singh (PW7) and Mahendra Kumar Pandey (PW8). Another witness Nandlal (PW11) was the owner of the house of the Appellant and was present at the spot. He has categorically stated that at the time of incident, the Appellant was sick and there was no demand by the Appelalnt. This witness and Raghvendra (PW7) have also stated that they did not hear even a single word from the room of the Appellant and the Appellant was suffering from high fever and was sleeping there. Thus, both the demand and the acceptance are not proved. Statement of the Complainant suffers from material contradictions. The Complainant himself has accepted the fact that there was no demand by the Appellant while he met with the Appellant many times. There is no reliable evidence on record regarding receipt of illegal gratification by the Appellant. The authority who accorded sanction (Ex.P19) for prosecution of the Appellant has not applied her mind before according the sanction and, therefore, the sanction order (Ex.P19) is not a valid sanction.

6. Learned Counsel appearing for the State/Respondent opposed the arguments advanced on behalf of the Appellant and supported the impugned judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.

8. With regard to validity of the sanction order (Ex.P19), A.K. Singh (PW10), A.G.-I of the Law and Legislative Affairs Department, Bhopal has deposed that the sanction order (Ex.P19) was accorded by Ku. Usha Shukla, the then Additional Secretary, Law and Legislative Affairs Department. Though this witness has not been put any question during his cross-examination yet from the sanction order (Ex.P19) it clearly reveals that after a careful examination of the material available, the sanctioning authority has accorded the sanction for prosecution of the Appellant. The order of sanction also consists brief facts of the offence which shows that after considering the material placed before the sanctioning authority, she has accorded the sanction (Ex.P19). Therefore, the argument that the order of sanction for prosecution of the Appellant is not a valid sanction is not sustainable.

9. There is no dispute that on the relevant date and time the Appellant was posted as an Upper Division Clerk (U.D.C.) in the office of Block Education Officer, Dondilohara. At that time, Complainant Vishnuram Narang (PW1) was posted as an Assistant Teacher at Primary School, Khairwahi which fell within the jurisdiction of Dondilohara. It is also not in dispute that the Complainant was on leave from 5.12.1986 to 14.12.1986. His leave applications were pending and, therefore, his salary for that period was stopped.

10. Complainant Vishnuram Narang (PW1) has stated that his leave applications (Ex.P1 and P2) were forwarded to the office of Block Education Officer, Dondilohara on 22.12.1986. A week thereafter, he met with the Appellant in his office. He asked the Appellant about the status of his applications. The Appellant told him that he will have to incur some expenditure then the work will be done. On this, the Complainant told the Appellant that on release of his stopped salary, he will give him his expenses. He has further deposed that thereafter during summer vacation also, he continued to meet the Appellant and lastly he met with him in his office on 16.7.1987. On this, the Appellant told the Complainant that he will have to pay Rs.50/- and asked him to come to his office along with the money on 20.7.1987. He has further stated that on 20.7.1987, he went to the office of the Lokayukta, Raipur and submitted a written complaint (Ex.P4) and also submitted 3 currency notes of Rs.20/-, 20/- and 10/-. Panch witnesses Raghvendra (PW7) and Mahendra (PW8) were called. They also read the complaint and verified the same from him. A preliminary panchnama (Ex.P5) was prepared in which numbers of the currency notes submitted by him were noted. The currency notes were smeared with phenolphthalein powder. The smeared notes were kept in his pocket by Constable Ishwarlal. Hands of Ishwarlal were washed in a solution of sodium carbonate on which colour of the solution turned into pink. Inspector Pandey, the Investigating Officer gave a demonstration of trap proceedings. A panchnama (Ex.P5) was prepared and thereafter the trap party proceeded for Dondilohara. The trap party reached the office of the Appellant at 5:00 p.m. It was come to know that the Appellant was not present at his seat and he was present at his house. After asking the address of the Appellant from the peon of the office, the trap party went to the house of the Appellant. He and panch witness Raghvendra (PW7) entered the house of the Appellant. The Appellant was sitting on a cot. The Complainant asked the Appellant about his work. The Appellant told him that the work has been done, but signature of the officer is yet to be obtained. On this, the Complainant told him that he had brought the money. The Appellant asked him to give the money. The Complainant gave him the tainted money in his hand. The Appellant received the tainted money in his right hand and thereafter he kept the same in his left hand and covered the money with fist. He has further stated that thereafter he came out of the house of the Appellant and gave a signal to the trap party. At that time, panch witness Raghvendra (PW7) was standing near the Appellant. The trap party entered the house of the Appellant. The currency notes kept in the hand of the Appellant were taken back from him by Raghvendra (PW7) and thereafter hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. Hands of panch witness Raghvendra (PW7) were also washed in another solution of sodium carbonate on which colour of that solution also turned into pink. The currency notes recovered from the Appellant were dipped into another solution of sodium carbonate. After dipping, colour of the solution turned into pink. Hands of this witness were also washed in another solution of sodium carbonate on which colour of that solution turned into pink. A panchnama of the whole proceedings was prepared vide Ex.P6. In paragraph 19, this witness has admitted the fact that on 22.12.1986, when he had met with the Appellant, the Appellant had told him that his work will be done early and at that time he had not demanded any money. He has further stated that thereafter he visited the Appellant many times. On those occasions also, the Appellant had not made any demand for money. In paragraph 22 also, he has admitted the fact that when they went to the house of the Appellant, they met with Nandlal (PW11), owner of the house of the Appellant. Nandlal himself had called the Appellant and told him that some people had come to meet him and he had also entered inside the house of the Appellant along with this witness.

11. Ishwarlal (PW2) is the witness who had smeared phenolphthalein powder on the currency notes submitted by the Complainant. He has stated that he had kept the tainted currency notes in the pocket of the Complainant. Constable Ram Prakash (PW4) and Constable Pothiram (PW6) were also members of the trap party. Both have stated that at the time of trap, they were standing 25-30 *Gaj* away from the house of the Appellant and after receiving signal from the Complainant, they entered the house of the Appellant. At that time, the Appellant was having tainted notes in his hand. Both have admitted the fact that in their presence the Complainant had not given any money to the Appellant nor had they listened any talk between the Complainant and the Appellant regarding transction of any money.

12. Panch witnesses Raghvendra (PW7) and Mahendra (PW8) have stated that they were called in the office of Lokayukta. They had read the complaint and verified the same from the Complainant. The Complainant had submitted currency notes of total Rs.50/- on which phenolphthalein powder was smeared. A demonstration of trap proceedings was given. Thereafter, they had gone to Dondilohara.

13. Raghvendra (PW7) has further stated that first the Complainant entered the house of the Appellant and he was standing 15 feet away from the house. He has further stated that the Appellant was sitting on a cot and he had covered his body with a blanket. The Complainant started talking with the Appellant. 5 minutes thereafter, the Complainant came out of the house and gave a signal. Thereafter, he and the trap party entered the house of the Appellant. Trap was done. The tainted currency notes were recovered and seized from the Appellant. He has admitted the fact that he did not listen the talk of transaction of money nor did he see giving any money by the Complainant to the Appellant. He has further admitted that when they went to the house of the Appellant, one person had met with them outside the house of the Appellant and that person had knocked the door of the house of the Appellant and got the door opened and told the Appellant that someone had come to meet him.

14. Mahendra (PW8) has also admitted the fact that the Complainant and Raghvendra (PW7) had gone inside the house of the Appellant. He was standing outside the house of the Appellant. He did not listen any talk of transaction of money nor did he witness giving of money by the Complainant to the Appellant.

15. Inspector L.L. Pandey (PW9), who conducted the trap proceedings and investigated into the offence in question, has also admitted the fact that he was standing outside the house of the Appellant and he did not listen any talk about any transaction of money nor did he witness giving of money by the Complainant to the Appellant.

16. Nandlal (PW11), owner of the house of the Appellant, has stated that at about 4:00 p.m., a teacher (the Complainant) had come to him and asked about the address of the house of the Appellant. At that time, the Appellant was sick and was sleeping in his house. He has further stated that the said teacher after getting the door of the house of the Appellant opened entered the room of the Appellant. He (this witness) remained standing at the door. He saw that the said teacher gave currency notes to the Appellant. Thereafter, the teacher immediately came out of the house and thereafter many persons entered the house of the Appellant and started getting the hands of the Appellant washed in a solution. At that time, money was in the hand of the Appellant which was seized from him. This witness has also admitted the fact that he did not hear any talk took place between the Complainant and the Appellant. This witness has further stated that at the time when the teacher entered the house of the Appellant, the Appellant, due to fever, had covered his body with a blanket and was sleeping. At that time, the teacher kept the money in the hand of the sleeping Appellant. Thereafter, 4-5 persons entered the house of the Appellant. This witness has been declared hostile by the prosecution.

17. In **(2016) 3 SCC 108 (Krishan Chander v. State of Delhi),** it has been observed by the Supreme Court as under:

> "**35**. It is well-settled position of law that the demand for the bribe money is sine qua non to

> convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in *B. Jayaraj* v. *State of A.P.,* (2014) 13 SCC 55, *A. Subair* v. *State of Kerala,* (2009) 6 SCC 587 and *P. Satyanarayana Murthy* v. *State of A.P.,* (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senor Counsel on behalf of the appellant.
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> **36**. The relevant para 7 from *B. Jayaraj case* reads thus: (SCC p. 58)
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> > "7. Insofar as the offence under Section 7 is concerned, *it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.* The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma* v. *State of A.P.,* (2010) 15 SCC 1 and *C.M. Girish Babu* v. *CBI,* (2009) 3 SCC 779."

18. In **(2017) 8 SCC 136 (Mukhtiar Singh (since deceased) through his Legal Representative v. State of Punjab)**, it has been observed by the Supreme Court thus:

> "**13**. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A. Subair* v. *State of Kerala,* (2009) 6 SCC 587, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be inno9cent. Carrying this enunciation further, it was exposited in *State of Kerala* v. *C.P. Rao,* (2011) 6 SCC 450, that mere recovery by itself of the amount said to have been

> paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained."

19. In **(2015) 11 SCC 314 (C. Sukumaran v. State of Kerala),** it has been observed by the Supreme Court thus:

> "**13**. With reference to the abovementioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretatio0nof the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW 2, lies on the prosecution."

20. In **(2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin, High Court of Kerala)**, it has been observed by the Supreme Court as follows:

> "**18**. In *Suraj Mal* v. *State (Delhi Admn.)*, (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

21. In the light of above-quoted observations, if I examine the evidence adduced by the prosecution in the instant case, I find that though Complainant Vishnuram Narang (PW1) has deposed that he along with panch witness Raghvendra (PW7) had entered the house of the Appellant, as deposed by the Complainant in his examination-in-chief in paragraph 11 when he told the Appellant that he had brought money then the Appellant demanded money and on this he took out the tainted money from his pocket and gave the same in the hand of the Appellant, the Complainant has not stated that the Appellant had demanded the money as bribe for getting his leaves sanctioned. As stated by the Complainant, at that time, Raghvendra (PW7) was also present inside the house of the Appellant and before him the Appellant had demanded the money. Other panch witness Mahendra (PW8) has also stated that Raghvendra (PW7) had entered the room of the Appellant along with the Complainant. But, Raghvendra (PW7) has denied this fact and has stated that at the time, when the Complainant entered the room of the Appellant, he was standing outside the house of the Appellant at a distance of 15 feet away from the house and he also did not hear any talk took place between the Complainant and the Appellant regarding any transaction. Panch witness Mahendra (PW8) has also admitted the fact that he was also standing outside the house of the Appellant. He also did not listen any talk took place between the Complainant and the Appellant regarding any transaction nor did he witness giving of tainted money by the Complainant to the Appellant. Both the Complainant and Raghvendra (PW7) have also admitted the fact that when the Complainant entered the house of the Appellant, Nandlal (PW11), who was owner of the house of the Appellant, had met there and he himself had got the door of the house of the Appellant opened.

Nandlal (PW11) has also stated that at that time the Appellant was sick and he was sleeping on a cot and had covered his body by a blanket. The Complainant entered the house of the Appellant and kept money in the hand of the Appellant and thereafter he came out of the house and thereafter the trap party entered the house of the Appellant and seized the tainted money from the hand of the Appellant.

22. From the above discussion, it is clear that there is no evidence on record on the basis of which it could be inferred that the Appellant had made any demand for bribe or he had accepted any money from the Complainant as bribe. Nandlal (PW11) has stated that the Complainant had kept the money in the hand of the Appellant when he was sleeping and later on that money was seized from the hand of the Appellant. In the circumstance, on washing of the hands of the Appellant in a solution of sodium carbonate, turning of colour of that solution into pink is natural. Mere recovery of tainted money from the Appellant does not prove demand or acceptance of bribe money. Therefore, in my considered view, the offence alleged against the Appellant under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Act of 1947 is not proved beyond reasonable doubt.

23. 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.

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

25. 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

Gopal