

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.77 of 1999

Judgment Reserved on : 13.2.2018

Judgment Delivered on : 11.5.2018

Tirathram Rathore, son of Shri Daduram, Patwari, Circle No.9, Village Tendwa, Police Station Takhatpur, District Bilaspur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Special Police Establishment, Lokayukta Office, Raipur

---- Respondent

For Appellant : Shri V.C. Ottalwar, Advocate
For Respondent/State : Shri Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 24.12.1998 passed in Special Criminal Case No.3 of 1992 by the Special Judge under the Prevention of Corruption Act, 1947 (henceforth 'the Act of 1947'), Raipur convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 161 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation
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/- with default stipulation

2. Case of the prosecution, in brief, is that on the fateful day, i.e., 16.4.1987, the Appellant was employed as a Patwari of Circle

No.9, Tahsil Kota, District Bilaspur. Complainant Hiradas (PW5) is a resident of Village Tendwa, which falls within the circle of Patwari Halka No.9. For selling his land, the Complainant demanded a copy of Khasra of his land from the Appellant. It is alleged that the Appellant demanded bribe of Rs.200/- from the Complainant. A written complaint (Ex.P1) was submitted by the Complainant. On the basis of the said complaint, Dehati Nalishi (Ex.P10) was recorded. A trap party was constituted. Panch witnesses Chandrakant Shukla (PW4) and Santuram (PW1) were called. The Complainant produced two currency notes each of Rs.100/-. The currency notes were tainted with phenolphthalein powder. Reaction of phenolphthalein powder and sodium carbonate was demonstrated. The currency notes were kept in the pocket of the Complainant and he was directed not to touch those notes before giving them to the Appellant. Preliminary Panchnama (Ex.P2) was prepared in which the aforesaid proceedings and numbers of the tainted currency notes were recorded. The trap party proceeded for the village of the Appellant and they reached there at about 6:30 p.m. Thereafter, the Complainant and his friend Sadheram (PW8) were sent to the Appellant's house. After sometime, Sadheram (PW8) came out of the house of the Appellant and told that the Complainant had given the tainted currency notes. The trap party entered the room of the Appellant. The Appellant was sitting on the floor of the room and was doing some writing work and the Complainant was sitting near the door of the room of the Appellant. After introducing themselves, the trap party caught the hands of the Appellant and washed them in a solution of sodium carbonate. Colour of the solution turned pink. Hands of panch

witness Chandrakant Shukla (PW4) were also got dipped into another solution of sodium carbonate, but colour of the said solution did not turn. Nothing was found in personal search of the Appellant conducted by Chandrakant Shukla (PW4). Room of the Appellant was also searched. Two currency notes each of Rs.100/- were found kept below the shoes and slippers which were kept in front of the *Chulha* (hearth). On being compared, numbers of the currency notes which were recovered from the room of the Appellant were found to be the same which were noted in the preliminary panchnama (Ex.P2). On being dipped the said currency notes into another solution of sodium carbonate, colour of the solution turned pink. Hands of Chandrakant Shukla (PW4) and Complainant Hiradas (PW5) were also dipped into other solutions of sodium carbonate. Colour of the said solutions also turned pink. The currency notes recovered from the room of the Appellant were seized vide Ex.P4. A panchnama (Ex.P3) was prepared in which the whole proceedings of the trap done at the house of the Appellant was recorded. On the basis of the Dehati Nalishi (Ex.P10), First Information Report (Ex.P15) was registered. The seized articles were sent for chemical examination vide Ex.P13. Report of the Forensic Science Laboratory is Ex.P14. Other relevant documents were seized vide Ex.P5. Spot-map (Ex.P6) was prepared. Sanction for prosecution (Ex.P9) of the Appellant was obtained. 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 Appellant, the prosecution examined as many as 9 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him, claimed to be innocent and pleaded false implication. 1 witness, namely, Bhagwat Prasad has been examined in his defence.
4. 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 the prosecution has not proved the factum of demand and acceptance of bribe against the Appellant. As per the Court statement of the Complainant, earlier the Appellant had demanded Rs.500/-, but later on, he made a demand of Rs.200/-. What was the actual demand is not proved by the prosecution. Bribe money has not been recovered from the possession of the Appellant. As per the statement of Santuram (PW1), one Faguram had come and told that the Complainant had given money to the Appellant. Said Faguram has not been examined nor has he been cited as a witness. The evidence adduced on behalf of the prosecution is not

natural and acceptable.

6. On the other hand, Learned Counsel appearing for the State, supporting the impugned judgment, opposed the above arguments and submitted that the evidence of Complainant Hiradas (PW5) and Panch Witnesses Chandrakant Shukla (PW4) and Santuram (PW1) are sufficient for proving the offence alleged against the Appellant and the Trial Court has rightly convicted and sentenced the Appellant.
7. I have heard Learned Counsel appearing for the parties and in order to appreciate the evidence available on record I have carefully gone through the same.
8. It is not disputed that the Appellant was a public servant and on the relevant date he was posted as a Patwari of Patwari Halka No.9. In order to take cognizance of the offence punishable under Section 5(1)(d) read with Section 5(2) of the Act of 1947 and Section 161 of the Indian Penal Code, sanction for prosecution is *sine qua non*. In the present case, in order to prove such sanction, the prosecution has examined A.K. Singh (PW7), A.G.-I of Law and Legislative Affairs Department, Bhopal. He has deposed that the sanction order (Ex.P9) was accorded by the State Government. The sanction order (Ex.P9) itself is a speaking order which reveals that the sanctioning authority accorded the sanction for prosecution of the Appellant after due application of mind.

9. As regards the complicity of the Appellant, the case of the prosecution is substantially based on the evidence of Complainant Hiradas (PW5), two Panch Witnesses Santuram (PW1) and Chandrakant Shukla (PW4) and Sadheram (PW8).
10. Complainant Hiradas (PW5) has stated that for selling his land, he had demanded a copy of the revenue record of his land from the Appellant. For supply thereof, the Appellant had demanded from him a sum of Rs.500/-, but later on, he agreed to receive Rs.200/-. He has further stated that he went to Santuram (PW1). Thereafter, both they went to the C.I.D. office.
11. Santuram (PW1) has supported the above statement of Complainant Hiradas (PW5) and stated that Hiradas had come to him and told him that the Appellant had demanded bribe of Rs.200/- for giving a copy of Khasra of his land. On this, both of them went to the Vigilance Office, Bilaspur. There, he wrote a complaint (Ex.P1) as stated by Hiradas and the said complaint was submitted in the Vigilance Office, Bilaspur.
12. Another panch witness Chandrakant Shukla (PW4) has also stated that he was telephonically called by Lokayukta Office. There, he was given the written complaint (Ex.P1) submitted by Hiradas (PW5) for reading. For verification, he asked Hiradas about the complaint. Hiradas told him that he was illiterate and, therefore, he had got the said complaint written by his friend. No question was put to Hiradas (PW5) and Santuram (PW1) during their cross-

examination regarding demand of Rs.200/- by the Appellant as bribe.

- 13.** Investigating Officer S.K. Verma (PW9), the then Deputy Superintendent of Police, Lokayukta, Bilaspur has stated that on 16.4.1987, Hiradas (PW5) had submitted a written complaint (Ex.P1) against the Appellant on the basis of which he recorded Dehati Nalishi (Ex.P10). He has further stated that for arranging a trap, he called two panch witnesses Santuram (PW1) and Chandrakant Shukla (PW4). He has further stated that he had directed N.K. Pandey, a Clerk of the Lokayukta Office for giving a demonstration of chemical reaction of phenolphthalein powder and sodium carbonate powder. The reaction was demonstrated by Clerk N.K. Pandey. He also prepared the solutions. The Complainant had brought two currency notes each of Rs.100/-. Their numbers were recorded in the preliminary panchnama (Ex.P2). Those currency notes were smeared with phenolphthalein powder and kept in the pocket of the shirt of the Complainant. The Complainant was directed not to touch the said tainted currency notes before giving them to the Appellant and he was also directed that after giving the said tainted notes to the Appellant he will give a signal to the trap party. He has further stated that thereafter the trap party went to the village of the Appellant. There, Sadheram (PW8), a friend of Complainant Hiradas (PW5) met. Hiradas and Sadheram were sent to the house of the Appellant. Panch witnesses Santuram (PW1) and Chandrakant Shukla (PW4) and Complainant Hiradas (PW5) have duly corroborated the above

statement of S.K. Verma (PW9). Sadheram (PW8) has also stated that he had gone along with Complainant Hiradas to the house of the Appellant. Santuram (PW1) has stated that Faguram came out and told that the money was given by Complainant Hiradas (PW5) to the Appellant. On this, they entered the house of the Appellant. The Appellant took out Rs.200/- from his pocket. Those currency notes were seized vide Ex.P4. He has further stated that when those currency notes were dipped into a solution of sodium carbonate, colour of the solution turned pink. In paragraph 5 of his cross-examination, he has stated that he did not know about the conversation took place between the Complainant and the Appellant regarding demand of money because he was not present there at that time. In paragraph 6 of his cross-examination, he has further stated that when he reached inside the room of the Appellant, he saw that the money was lying below the *kothi* and on being scolded by the officers of the Vigilance Team, the Appellant lifted up the currency notes from there and gave the same to the Vigilance Team. He denied the fact that the currency notes were found hidden between the shoes or slippers.

14. Another panch witness Chandrakant Shukla (PW4) has stated that on being entered the room of the Appellant, his personal search was conducted, but no money was found from his possession. The money was found kept between shoes and different articles collected in the room. On being dipped his hands and the hands of the Complainant, colour of the solutions had turned pink.

- 15.** Complainant Hiradas (PW5) has stated that he entered the house of the Appellant and gave him Rs.200/-. The Appellant threw those currency notes towards the wood kept in the room. He did not know why the Appellant threw those currency notes towards the wood. In paragraph 5, he has stated that he had given the currency notes to the Appellant in courtyard and thereafter the Appellant had come inside the room and threw those currency notes in the room.
- 16.** Sadheram (PW8) has stated that he had gone to the house of the Appellant along with the Complainant. At that time, the Appellant had received the money in his hand and kept the same in the pocket of his shirt. He has further stated that he thereafter came out and intimated the officers that the Appellant had received the money. Thereafter, he went away from there.
- 17.** S.K. Verma (PW9) has stated that on being intimated by Sadheram (PW8), he, along with the trap party, went inside the room of the Appellant. There he saw that the Appellant was sitting on the floor of the room and was doing some writing work. Thereafter, hands of the Appellant were washed in a solution of sodium carbonate. On this, colour of the solution turned pink. A personal search of the Appellant was conducted in which nothing was found. On making search of his room, two currency notes each of Rs.100/- were found hidden between the shoes and slippers which were kept near the hearth (*Chulha*). On being compared, numbers of the recovered currency notes were matched with the numbers earlier

noted in the preliminary panchnama (Ex.P2).

18. In **2010 AIR SCW 2282 (Banarsi Dass v. State of Haryana)**, it is held by the Supreme Court that demand and acceptance of bribe is essential ingredient of the offence. Mere proof of recovery of bribe money from the accused is not sufficient to prove the offence.
19. In **2010 (1) CGLJ 68 (Ram Kumar Verma v. State of M.P.)**, it is held by this Court that mere recovery of money from the accused without any proof of demand and acceptance is not sufficient to convict the accused for the offence punishable under Section 5(1) (d) read with Section 5(2) of the Act of 1947.
20. Present is a case of demand and acceptance of illegal gratification other than legal remuneration by misusing the office by a public servant. A heinous offence relating to a public servant is sufficient for termination of his services. In such circumstances, degree/standard of proof of ingredient of the offence is high and the prosecution is required to prove the offence by adducing cogent evidence without leaving any room for doubt or ambiguity.
21. In the light of above, if I examine the evidence adduced by the prosecution in the instant case, I find from the statements of Complainant Hiradas (PW5) and panch witness Santuram (PW1) that demand of Rs.200/- as bribe by the Appellant from the Complainant is established. But, regarding acceptance of bribe, contradictory evidence is available on record. As per the

prosecution story and the seizure memo (Ex.P4), the tainted currency notes were seized from the place where shoes and slippers were kept in the room of the Appellant. But, panch witness Santuram (PW1) has categorically stated that the Appellant had received the currency notes of Rs.200/- and kept the same in the pocket of his shirt and he had given those currency notes to the officers of the Vigilance Team after taking the notes from the pocket of his shirt. During cross-examination, he himself has contradicted his statement and stated that the notes were lying below the *kothi* and the Appellant, on being scolded by the officers, had lifted up those currency notes and given the same to the officers. He denied the suggestion that the currency notes were found hidden between the shoes and slippers.

22. Sadheram (PW8) is the witness who entered the house of the Appellant along with Complainant Hiradas (PW5). He has stated that the Appellant had received the money in his hand and kept the same in his pocket. But, Complainant Hiradas has not supported the above statements of Santuram (PW1) and Sadheram (PW8) and has stated that he had given two currency notes of Rs.100/- each to the Appellant in the courtyard and thereafter the Appellant entered the room of his house and threw those currency notes between the wood kept in the room. Why did the Appellant throw the currency notes, he was unable to explain the same.

23. S.K. Verma (PW9) and Chandrakant Shukla (PW4) have stated that when they entered the house of the Appellant, they saw that

the Appellant was sitting inside the room of his house on the floor and was doing some writing work. Had the Appellant received the tainted currency notes from the Complainant and had he been in any apprehension or fear, he would not have been found by the trap party doing his normal writing work. Though the solution in which the hands of the Appellant were washed had turned pink yet from the statement of Santuram (PW1) it is clear that when they entered the room of the Appellant they saw that the currency notes were lying below *kothi* and on being scolded by the officers of the trap party, the Appellant lifted up those currency notes and gave them the same. In these circumstances, if the solution had turned pink in which the hands of the Appellant were washed, it was natural and it cannot be held to be proof of acceptance of bribe money. The tainted currency notes were not recovered from the pocket or hands of the Appellant. In these circumstances, especially in the absence of any direct recovery of tainted currency notes from the Appellant, it is difficult to hold that the tainted notes were found in possession of the Appellant and he had demanded or accepted or was in possession of the illegal gratification other than legal remuneration.

24. As held by the Supreme Court in **Banarsi Dass case** (supra) and by this Court in **Ram Kumar Verma case** (supra), mere recovery of amount of bribe is not sufficient to prove the factum of demand and acceptance. In the present case, though the prosecution has proved the demand, acceptance part is not proved beyond reasonable doubt and recovery of bribe money from the

possession of the Appellant is also not proved beyond reasonable doubt.

- 25.** For the foregoing reasons, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
- 26.** 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