

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.465 of 1998

Judgment Reserved on : 19.6.2018

Judgment Delivered on : 14.9.2018

Jeevanlal Banjara, son of Hirwadas Banjara, aged 23 years, R/o Rajpalpur, Tahsil Lormi, District Bilaspur, Assistant Teacher, Primary School, Rajpalpur

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh) through Special Police Establishment, Office of the Lokayukt

--- Respondent

For Appellant	:	Mr. Pawan Kesharwani, Advocate
For Respondent/State	:	Mr. Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 6.2.1998 passed by the Special Judge under the Prevention of Corruption Act, 1947 (henceforth 'the Act of 1947'), Raipur in Special Case No.51 of 1990 convicting and sentencing the accused/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/-, in default 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 simple imprisonment for 3 months The jail sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that in the year 1988, on the relevant date and time, the Appellant was a teacher in Government Primary School, Rajpalpur. Nephew of Complainant Anuj Kumar (PW2), namely, Nanachand (PW3) was studying in the same school in 5th Standard. After Nanachand passed the examination of 5th Standard, Anuj Kumar wanted him to keep with him at his place for further studies and, therefore, he asked the Appellant to prepare transfer certificate and mark-sheet of Nanachand for which the Appellant demanded illegal gratification of Rs.50/-. Complainant Anuj Kumar told the Appellant that he will give the said amount after 2-4 days because he had to arrange the same. Thereafter, Anuj Kumar submitted a written complaint (Ex.P1) before the Deputy Superintendent of Police, Office of Lokayukta, Bilaspur on 10.6.1988. On the basis of the written complaint (Ex.P1), unnumbered Dehati Nalishi (Ex.P11) was registered. Panch witnesses P.D. Shrivastava (PW6) and K.K. Singh (PW7) were called and told about the complaint. The panch witnesses verified the complaint from Complainant Anuj Kumar. Anuj Kumar submitted a currency note of Rs.50/- whose number was noted by Sub-Inspector Parmeshwar Singh and that note was smeared with phenolphthalein powder. Solutions of sodium carbonate were also prepared. The currency note of Rs.50/-, which was smeared with phenolphthalein powder, was kept in the rear pocket of the pant of Complainant Anuj Kumar and he was instructed not to touch the note before handing over the same to the Appellant. A preliminary panchnama (Ex.P3) was prepared. The trap party reached Village Rajpalpur at 1:45 p.m. On the way, Nanachand (PW3) was also taken. He was also inculcated about the trap proceedings. Both Anuj Kumar and Nanachand went towards the house of the

Appellant. The trap party followed them and before the house of the Appellant they stopped. Anuj Kumar and Nanachand entered the house of the Appellant. After some time, Nanachand came out of the house of the Appellant with mark-sheet and transfer certificate and indicated the trap party that the Appellant, after receiving the tainted money of Rs.50/- from the Complainant, had given the mark-sheet and transfer certificate to Nanachand. Thereafter, S.K. Verma (PW11), Deputy Superintendent of Police, Office of the Lokayukta, Bilaspur entered the house of the Appellant along with the trap party. It was found that the Appellant was sitting on a stool in the courtyard of his house and the currency note of Rs.50/- was in his left hand. On being asked, the Appellant admitted that he had received Rs.50/-. On being washed his hands with the solution of sodium carbonate, the solution turned into pink colour. Number of the tainted note was compared with the number already noted in the preliminary panchnama. The number matched. The tainted note was dipped into the solution of sodium carbonate. The solution turned into pink colour. On being washed the hands of Complainant Anuj Kumar with the solution of sodium carbonate, the solution turned into pink colour. The tainted currency note of Rs.50/- was seized vide Ex.P4. The transfer certificate and mark-sheet were seized from Nanachand vide Ex.P2. T.C. Register, Result Register and Attendance Register were seized vide Ex.P5. A Panchnama of the complete proceedings drawn was prepared vide Ex.P6. A certificate relating to appointment of the Appellant was seized vide Ex.P9. On the basis of Dehati Nalishi, numbered Nalishi (Ex.P12) was recorded. The solutions kept in different bottles and the used power of phenolphthalein were sent to the Forensic Science Laboratory for

chemical examination vide Ex.P15. FSL report is Ex.P16. The report is positive. Sanction for prosecution (Ex.P19) was obtained. 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 12 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. 2 witnesses have 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 both the shadow (panch) witnesses P.D. Shrivastava (PW6) and K.K. Singh (PW7) have stated before the Court that neither they heard the talk of giving of tainted money to the Appellant nor did they witness giving the tainted money to the Appellant. He further submitted that statements of Complainant Anuj Kumar (PW2) and Nanachand (PW3) are contradictory. There was a previous enmity between the Complainant and the Appellant. Thus, the Appellant has been falsely implicated by the Complainant. Since both the demand and the acceptance are not proved, the Appellant is

entitled to get acquittal. He further submitted that though vide Ex.P19 sanction for prosecution was accorded, but the sanctioning authority while granting the sanction did not apply her mind and, therefore, the sanction for prosecution is not a valid sanction. Reliance was placed on **(2016) 3 SCC 108 (Krishan Chander v. State of Delhi)**.

6. On the other hand, Learned Counsel appearing for the State opposed the arguments raised on behalf of the Appellant and supported the impugned judgment. He submitted that there is sufficient evidence on record on the basis of which the Trial Court has rightly convicted and sentenced the Appellant.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. With regard to validity of the order of sanction (Ex.P19) for prosecution of the Appellant, D.R. Yadav (PW12), Assistant Clerk of the Law and Legislative Affairs Department has deposed that vide Ex.P19, sanction for prosecution was accorded by the then Under Secretary of the Law and Legislative Affairs Department. In his cross-examination, though he has admitted that he is not aware whether while according the sanction for prosecution of the Appellant, all the documents were perused by the sanctioning authority or not yet the sanction order (Ex.P19) clearly reveals that after careful examination of the material available, the sanctioning authority has accorded the sanction for prosecution. 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 vide Ex.P19. Therefore,

the argument that the order of sanction for prosecution is not a valid order is not sustainable. With regard to the facts of the case, there is no dispute that at the relevant time, the Appellant was working as an Assistant Teacher in the school at Rajpalpur. As stated by Sayeed Ahmed (PW5), the register, which was being maintained for issuance of transfer certificates, was with the Appellant and the Appellant was engaged in the duty of issuing transfer certificates and mark-sheets. This statement is not rebutted by the Appellant during cross-examination of Sayeed Ahmed (PW5). Thus, it is clear that at the relevant time, the Appellant was in possession of the register relating to issuance of transfer certificates and duty of issuance of transfer certificates and mark-sheets was of the Appellant.

9. Complainant Anuj Kumar (PW2) has deposed that since he wanted to keep his nephew Nanachand (PW3) with him at his place Bilaspur and prosecute his further studies at Bilaspur, he had gone to the Appellant for getting the transfer certificate and mark-sheet of Nanachand issued. For issuance of the transfer certificate and mark-sheet of Nanachand, the Appellant had demanded bribe of Rs.50/- from him. Assuring the Appellant that he will give the money within 1 or 2 days, he returned. Thereafter, he made the written complaint (Ex.P1) before the Lokayukta. He has further stated that he submitted a currency note of Rs.50/- in the office of the Lokayukta. The said currency note was smeared with phenolphthalein powder and was thereafter kept in the pocket of his pant and he was instructed to give the same to the Appellant. He has further stated that thereafter he reached to Rajpalpur along with the trap party at 1:45 p.m. Thereafter, he along with

Nanachand (PW3) entered the house of the Appellant. The Appellant met in the courtyard of his house. He asked about the money. He gave the tainted currency note of Rs.50/- to the Appellant. The Appellant kept the said note in his left hand. Thereafter, the Appellant handed over the mark-sheet and transfer certificate to Nanachand (PW3). Nanachand came out of the house of the Appellant and gave a signal to the trap party. The trap party entered the house of the Appellant, caught the Appellant and recovered the tainted currency note of Rs.50/- from his left hand. He has further stated that after the trap proceedings, his and the Appellant's hands were washed with different solutions of sodium carbonate. After the wash, the solutions had turned into pink colour. The recovered tainted note was also dipped into another solution of sodium carbonate. That solution had also turned into pink colour. This witness has denied the suggestion made to him that he deliberately put the tainted currency note on the table and the said note was recovered and seized from the said table. He has further denied the suggestion that he had any previous enmity with the Appellant.

10. Nanachand (PW3) has supported the above statement of Complainant Anuj Kumar (PW2) and has categorically stated that he along with Anuj Kumar had gone to the house of the Appellant where the Appellant, for giving his mark-sheet and transfer certificate, had made demand of Rs.50/- from Anuj Kumar and on the demand being made, Anuj Kumar gave the tainted currency note of Rs.50/- to the Appellant, which was kept by the Appellant in his left hand and thereafter the Appellant gave him (this witness) the mark-sheet and transfer certificate. Thereafter, he came out of

the house of the Appellant and gave a signal to the trap party and thereafter the trap party entered the house of the Appellant and caught the Appellant. The above whole statement of this witness has not been rebutted during his cross-examination. This witness has also admitted the fact that when he came out of the house of the Appellant along with his mark-sheet and transfer certificate, what talk took place between Anuj Kumar and the Appellant inside the house of the Appellant is not known to him.

11. P.D. Shrivastava (PW6) and K.K. Singh (PW7) are the shadow witnesses. Both have deposed that they were called in the office of Lokayukta, where Anuj Kumar (PW2) was already present. Both have further stated that complaint (Ex.P1) of Anuj Kumar (PW2) was given to them for perusal and they had verified the complaint from Anuj Kumar. Thereafter, Anuj Kumar had submitted a currency note of Rs.50/- which was smeared with phenolphthalein powder and thereafter it was kept in the pocket of Anuj Kumar for giving it to the Appellant. A preliminary panchnama (Ex.P3) of the aforesaid proceeding was prepared in their presence. Both the witnesses have also stated that thereafter they went to the house of the Appellant along with the trap party. Thereafter, Anuj Kumar (PW2) and Nanachand (PW3) entered the house of the Appellant. After sometime, Nanachand came out of the house and gave a signal to the trap party. Then the trap party entered the house of the Appellant and recovered the tainted currency note from the hand of the Appellant. P.D. Shrivastava (PW6) has further stated that the hands of the Appellant and the hands of Anuj Kumar were washed with different solutions of sodium carbonate on which the solutions had turned into pink colour. The tainted currency note

was also dipped into another solution of sodium carbonate. That solution had also turned into pink colour. Both P.D. Shrivastava and K.K. Singh have admitted the fact that they did not hear the talk took place between the Appellant and Anuj Kumar nor did they witness giving the tainted money by Anuj Kumar to the Appellant.

- 12.** S.K. Verma (PW11) is the Investigating Officer of the case. On the relevant date, he was posted as Deputy Superintendent of Police, Lokayukta. He has stated that on 10.6.1988, Anuj Kumar (PW2) had submitted a written complaint (Ex.P1), wherein it was mentioned that the Appellant had demanded bribe of Rs.50/- for issuance of mark-sheet and transfer certificate. On the basis of the written complaint, he had registered a crime and called two shadow witnesses P.D. Shrivastava (PW6) and K.K. Singh (PW7). He had given them the written complaint (Ex.P1) for perusal. They had discussed about the complaint and put their signatures over the complaint. Thereafter, a demonstration of trap, which included applying of phenolphthalein powder, reaction of solution of sodium carbonate etc., was given by Sub-Inspector Parmeshwar Singh. Complainant Anuj Kumar (PW2) had brought a currency note of Rs.50/-. He had noted the number of that currency note in the preliminary panchnama (Ex.P3). That note was smeared with phenolphthalein powder and thereafter the note was kept in the back pocket of Anuj Kumar and he was given necessary instructions. This witness has further stated that thereafter the trap party proceeded further in a government vehicle. They reached Rajpalpur, where they took Nanachand (PW3) along with them. Anuj Kumar and Nanachand were sent inside the house of the Appellant. This witness has further stated that after sometime,

Nanachand came out of the house and told that the Appellant had received the tainted money of Rs.50/- from Anuj Kumar and had given mark-sheet and transfer certificate to Nanachand. Thereafter, the trap team entered the house of the Appellant. They saw that the Appellant was sitting on a stool in the courtyard of his house and a currency note of Rs.50/- was kept in his left hand. This witness has further stated that he gave his identity to the Appellant. Thereafter, the currency note kept in the left hand of the Appellant was taken from him and kept over a machine and hands of the Appellant were washed with a solution of sodium carbonate. The solution turned into pink colour. Number of the recovered currency note was compared with the number already noted in the preliminary panchnama (Ex.P3). The number matched. The recovered currency note was dipped into another solution of sodium carbonate on which the solution turned into pink colour. Hands of Anuj Kumar were also washed with another solution of sodium carbonate. That solution also turned into pink colour. All the used solutions were kept in different bottles and sealed. The tainted currency note was also seized vide Ex.P4 and sealed. A panchnama of all the proceedings was prepared vide Ex.P6. Dehati Nalishi (Ex.P11) was recorded by him and he also obtained numbered Nalishi (Ex.P12). The sealed solutions were sent to the Forensic Science Laboratory for chemical examination vide Ex.P15. FSL report is Ex.P16. The report is positive.

13. Patwari Shiv Sahai (PW10) has stated that he had prepared spot-map (Ex.P13). Shankarlal Dharsey (PW9) has stated that he had recorded numbered Dehati Nalishi (Ex.P12) on the basis of Ex.P11.

14. On minute examination of the above evidence, it is clear that though both the shadow witnesses P.D. Shrivastava (PW6) and K.K. Singh (PW7) have admitted that they did not witness giving tainted money to the Appellant nor did they listen the talk took place between Complainant Anuj Kumar (PW2) and the Appellant yet both have categorically stated that the written complaint (Ex.P1) made by Complainant Anuj Kumar (PW2) was read by them and they had verified the complaint from the Complainant. They have also stated that a currency note of Rs.50/- was submitted by the Complainant in their presence and the said note was smeared with phenolphthalein powder and thereafter the note was kept in the back pocket of the pant of the Complainant. Both have also categorically stated that Complainant Anuj Kumar (PW2) and Nanachand (PW3) had gone to the house of the Appellant and Nanachand, after coming out of the house of the Appellant, had given a signal to the trap party about giving of the tainted money to the Appellant. Thereafter, these shadow witnesses had entered the house of the Appellant and thereafter a tainted note was recovered from the hand of the Appellant. Both have also categorically stated that hands of the Appellant and hands of Complainant Anuj Kumar were washed with different solutions of sodium carbonate and thereafter the solutions had turned into pink colour. They have also stated that the tainted note was dipped into another solution of sodium carbonate and thereafter the solution had turned into pink colour. Nanachand (PW3) has also categorically stated that he along with Anuj Kumar (PW2) had entered the house of the Appellant and in his presence the Appellant had demanded bribe of Rs.50/- for giving his mark-sheet and transfer certificate and on the demand being made, Anuj

Kumar had given the tainted note of Rs.50/- to the Appellant and the Appellant had kept the said note in his left hand. The above statement of Nanachand has not been rebutted by the Appellant during his cross-examination. On examination of the used solutions of sodium carbonate by the FSL, its report (Ex.P16) is also positive. The defence of the Appellant is that the currency note was kept by the Complainant on the table. If it was so, then how the solution of sodium carbonate in which the hands of the Appellant were washed turned into pink colour after the wash is not properly explained by the Appellant. Nanachand (PW3) has categorically stated that the demand was made in his presence and on making the demand, the tainted currency note of Rs.50/- was given to the Appellant by Complainant Anuj Kumar and the said note was kept by the Appellant in his left hand. Shadow witnesses P.D. Shrivastava (PW6) and K.K. Singh (PW7) have also stated that when they entered the house of the Appellant, they saw that the tainted currency note was kept in the left hand of the Appellant and the same was recovered from his left hand.

- 15.** Considering the above evidence, I am of the opinion that both the demand of bribe money and the acceptance thereof by the Appellant have been duly proved by the prosecution. Thus, I find that the Trial Court has rightly convicted the Appellant. Therefore, the conviction imposed upon the Appellant under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 is affirmed.
- 16.** So far as sentence part is concerned, the Appellant has lost his job about 30 years ago. He is facing the *lis* since the year 1988. He is

presently aged about 51 years. He has remained in custody for about 1 month during pendency of this appeal. Due to the conviction imposed upon him, he will also not be able to get pension. Taking into consideration all the facts and circumstances of the case, I am of the opinion that the ends of justice would not be served by sending the Appellant back to jail after passage of about 30 years. Sentencing him for a lesser period would serve the interest of justice. Therefore, he is sentenced with the period already undergone by him. The sentence of fine imposed upon him by the Trial Court is affirmed.

17. Consequently, the appeal is allowed in part to the extent indicated above.
18. 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