

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.964 of 1999

Judgment Reserved on : 16.7.2018

Judgment Delivered on : 12.10.2018

Kartar Singh, son of Lakhan Singh Kshatri, aged about 35 years, Revenue Inspector, SADA, Rampur, Korba, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellant	:	Dr. N.K. Shukla, Senior Advocate with Shri B.D. Guru and Shri Ashwin Panikar, Advocates
For Respondent/State	:	Shri Satish Gupta, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 31.3.1999 passed by the Special Judge under the Prevention of Corruption Act, 1947 (henceforth 'the Act of 1947'), Raipur in Special Criminal Case No.62 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 Both the sentences are directed to run concurrently

2. Case of the prosecution, in brief, is that on the relevant date and time, the Appellant was posted as a Revenue Inspector in Special Area Development Authority, Korba (henceforth 'the SADA'). Complainant Mohd. Israil (PW9) was running a shop of *Rajai* and *Gadda* (blanket and mattress) on a side of the road constructed in front of the office of the State Transport and Police Chowki, Rampur, District Korba. Jurisdiction for removal of encroachment made over that area was of the Appellant. The Complainant was given a notice by the SADA for removal of the encroachment made by him. He had sent a reply to the notice through his Counsel, but he again received a notice on 14.11.1987. Allegedly, on 17.11.1987, the Appellant came to him and asked to remove the encroachment immediately. When the Complainant made a request, the Appellant demanded a bribe of Rs.400/-. Since the Complainant did not want to give the bribe, he asked for time from the Appellant till Sunday and he telephonically intimated about the same to the Lokayukta office, Bilaspur and he made them a request to come to trap the Appellant at Katghora on 21.11.1987. D.L. Markam, Incharge Superintendent called Inspector M.K. Hiradhar (PW10) and panch witnesses Naib-Tahsildar R.N. Singh (PW6) and J.S. Uchhe (not examined by the prosecution). All went to Katghora. They reached to Rest House, Katghora at 11:30 a.m. There, the Complainant reached to the trap party along with his written complaint (Ex.P6) in which he had put only his thumb impression. The complaint was written by Moinuddin, who is not examined by the prosecution. The panch witnesses verified the complaint from the Complainant and thereafter they put their signatures on the complaint. Dehati Nalishi (Ex.P23) was recorded. A demonstration of action of phenolphthalein powder

was given to the Complainant and the panch witnesses. Preliminary panchnama (Ex.P7) was prepared. The Complainant had brought 4 currency notes of Rs.100/- each whose numbers were noted in the preliminary panchnama (Ex.P7). Constable Premchand (PW5) smeared those currency notes with phenolphthalein powder and thereafter kept the same in the left pocket of the shirt of the Complainant. Necessary instructions were given to the Complainant and the panch witnesses. All the members of the trap party proceeded from the Rest House, Katghora. At about 1:30 p.m., they reached near the shop of the Complainant. The Complainant was asked to go to the shop. Panch witness R.N. Singh (PW6) sat on a bench in front of the book depot of the State Transport office. Rest of the members of the trap party stood near the jeep. After 15 minutes, the Appellant reached there on a motorcycle. A talk took place between the Appellant and the Complainant. Thereafter, the Complainant gave tainted currency notes to the Appellant which the Appellant kept in the right pocket of his pant. On a signal being given by the Complainant to the trap party, the trap party proceeded towards the Appellant, but the Appellant having seen them, started his motorcycle and moved ahead. On being stopped, he did not stay. Constable Krishna Pal Singh (PW4) stopped the Appellant by catching the handle of his motorcycle. On this, the Appellant took out the tainted notes from his pocket and threw out them. The trap party caught the Appellant. The hands of the Appellant were washed in a solution of sodium carbonate on which the colour of the solution turned into pink. The currency notes thrown out by the Appellant were picked up by panch witness J.S. Uchhe. On being compared the numbers of those notes with the numbers already

noted in the preliminary panchnama (Ex.P7), the numbers matched. Remaining post trap proceedings were completed. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Solutions used for the trap proceedings were sent to the Forensic Science Laboratory for chemical examination vide Ex.P25. FSL report is Ex.P26. The report is positive. Necessary sanction for prosecution (Ex.P4) of the Appellant 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 10 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. The Appellant examined himself as DW5 and he also examined 4 other witnesses in his defence. In his statement under Section 313 of the Code of Criminal Procedure and in his Court statement as DW5, the Appellant has stated that there was a previous enmity between him and Moinuddin. Moinuddin, with the connivance of the Complainant, has falsely implicated him in the present case. He never demanded or accepted any money from the Complainant 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 Senior Counsel appearing for the Appellant submitted that on the relevant date and time, the Appellant was posted as a Revenue Inspector and was an employee of the Special Area Development Authority (SADA), Korba. He could be removed from service by the Chairman of the SADA only, but in the present case, sanction for prosecution (Ex.P4) has been accorded by the Additional Secretary, Department of Law, Madhya Pradesh. Since the State has no role to play either in the appointment or in removal of a Revenue Inspector employed in the SADA, the present sanction accorded for prosecution of the Appellant is invalid. He further submitted that Complainant Mohd. Israil (PW9) has not supported the case of the prosecution and turned hostile. He has categorically stated that the Appellant never demanded any money from him as bribe nor did he accept any money from him as bribe. As stated by the Complainant (PW9), he gave the tainted money on being asked by Moinuddin to do so. Thus, it cannot be said that the Appellant accepted the said tainted money as bribe. Mere recovery of tainted money from the Appellant does not prove demand or acceptance of bribe money. Therefore, no offence under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Act of 1947 is made out against the Appellant and, therefore, he deserves acquittal.
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. It is not in dispute that on the relevant date and time, the Appellant was posted as a Revenue Inspector in the Special Area Development Authority, Korba. With regard to his prosecution, the sanction (Ex.P4) was accorded by the Additional Secretary, Department of Law, Government of Madhya Pradesh, Bhopal. Madhya Pradesh Special Area Development Authority (Chairman and Officers and Servants Recruitment and Conditions of Service) Rules, 1976 (henceforth 'the Rules of 1976') was framed by the State Government in exercise of the powers conferred by Sections 67(2) and 85 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973. Rule 2(d) of the Rules of 1976 defines "Government servant", Rule 2(e) of the Rules of 1976 defines "Authority Employees", Rule 2(f) of the Rules of 1976 defines "Authority service" and Rule 2(j) of the Rules of 1976 defines "Appointing Authority", which read as under:

"2. Definitions.—In these rules, unless the context otherwise requires:—

xxxxx

xxxxx

xxxxx

(d) "Government servant" means the servant of the State Government of Madhya Pradesh;

(e) "Authority Employees" means a person appointed to or borne on the cadre of the Authority staff;

(f) "Authority service" means the service or group of posts in connection with the affairs of the Authority;

(j) "Appointing Authority" means:

(i) The authority empowered to make appointments to the service of which the authority servant is for the time being a member or to the grade of the service in which the authority servant is for the time being includes; or

(ii) The authority empowered to make

appointments to the post which the authority servant for the time being holds; or

(iii) The authority which appointed the authority servant to such service, grade or post, as the case may be; or

(iv) Where the authority servant having been a permanent member of any other service or having subsequently held any other permanent post, has been in continuous employment of the authority, the authority which appointed him to that service or to any grade in the service or to that post.

Whichever authority is the higher authority.”

9. Part II of the Rules of 1976 defines Cadre. Rule 3 of the Rules of 1976 deals with classification of posts. It is provided therein that there shall be Class-I, Class-II, Class-III and Class-IV posts under the Authority for the purpose of the Rules of 1976. Rajaswa Nirikshak (Revenue Inspector) is one of the posts mentioned in Rule 3(1) of the Rules of 1976. Rule 8 of the Rules of 1976 deals with “Appointing Authority”, which reads as under:

“8. Appointing Authority.—(1) All appointments to Authority Services, Class I and Class II shall be made by the Chairman with the prior approval of the Authority.

(2) All appointments to the Authority Services, Class III and Class IV shall be made by the Chairman.”

10. Rule 53 of the Rules of 1976 deals with “Disciplinary Authorities”, which reads as under:

“53. Disciplinary Authorities.—Subject to the provisions of the Act and these rules, the Appointing Authority shall have the powers to impose any of the penalties specified in rule 53 on any Authority employee, excepting those on deputation to the Authority from Government.”

11. From the above, it is clear that a Revenue Inspector under the Rules of 1976 is an employee of the SADA and his appointing authority is the Chairman of the SADA. It is also clear that the State Government has no control over the employees of the SADA. Even in the case of disciplinary authority under Rule 53 of the Rules of 1976, the State is appellate authority only for Class-I and Class-II officers. While for Class-III and Class-IV employees, the appellate authority is only the Chairman of the SADA. Thus, it is clear that in the instant case, the State Government is neither the controlling authority nor is the appointing authority and nor is the disciplinary authority in respect of the Appellant. Therefore, in the instant case, the sanction for prosecution (Ex.P4) accorded by the State Government is not a valid sanction.
12. In the instant case, the prosecution has examined as many as 10 witnesses.
13. Mohd. Israil (PW9) is the star witness of the prosecution. Allegedly, he is the Complainant in this case. This witness has turned hostile during his examination. As per his Court statement, he was running a shop of *Rajai* and *Gadda* (blanket and mattress) in front of the Police Chowki, Rampur, District Korba on a side of the road. There itself, Moinuddin was also sitting. He did not have any acquaintance with the Appellant. Moinuddin had told this witness that a sum of Rs.400/- would be required to be given to the Appellant, but he had not told him the reason for giving the said money to the Appellant. 15 days thereafter, he along with Moinuddin went to one office in Bilaspur. Moinuddin had entered the office and this witness had stayed outside the office.

Thereafter, Moinuddin called him inside the office and he asked him to put his thumb impression on a written paper. After putting the thumb impression by him, Moinuddin took the said paper from him and thereafter he gave the said paper and currency notes of Rs.400/- from his pocket to the Superintendent Markam. Next day, he went along with Moinuddin to the Rest House, Katghora. There, along with Superintendent Markam, 5-6 other persons were also present. Moinuddin sent this witness inside the room and asked him to bring the money. He entered the room of the Rest House, Katghora. There, one person was smearing a powder on the currency notes. He has further stated that the person who was smearing the powder on the currency notes asked him to keep those notes in his pocket. Therefore, he kept those notes in his pocket. Thereafter, all the persons proceeded for Korba. There, this witness was sent to his shop to work. He went to his shop and started working there. 15-20 minutes thereafter, he saw that the Appellant was passing from there. This witness called the Appellant. The Appellant reached to his shop and asked him why was he called by him. On this, this witness saying that Moinuddin had given Rs.400/- for him, gave him the tainted currency notes. The Appellant kept those notes in his hands. At that time, the trap party reached there and they gave a fist blow to the Appellant. As a result of the blow, the Appellant fell down. Thereafter, the Appellant was taken to the police chowki. There, hands of the Appellant and the Complainant were washed in different solutions of sodium carbonate. After the wash, colour of the solutions turned into pink. This witness has categorically stated that no talk or meeting had taken place between him and the Appellant nor had the Appellant ever demanded any money from him and nor had he

ever harassed him therefor. The prosecution has declared this witness to be hostile. In paragraph 14 of his cross-examination, this witness has further stated that on the written complaint (Ex.P6), at the time when this witness had put his thumb impression, Moinuddin had told him that he had written the said application for providing him a shop. This witness has further stated that when he was giving the sum of Rs.400/- to the Appellant saying him that the said money was given by Moinuddin for the Appellant and the Appellant asked him why the said money was given by Moinuddin for him, at that time, the trap party reached there and when they snatched the money from the Appellant, the currency notes fell down.

14. One of the panch witnesses, namely, J.S. Ucche has not been examined by the prosecution. Other panch witness Naib-Tahsildar R.N. Singh (PW6) has stated that on 21.11.1987, at the Katghora Rest House, Complainant Mohd. Israil (PW9) had submitted a written complaint (Ex.P6) and he had read the said complaint and verified the same from the Complainant. The Complainant had submitted 4 currency notes of Rs.100/- each whose numbers were noted and on those notes phenolphthalein powder was smeared and thereafter those notes were kept in the pocket of the Complainant. He has further stated that he went to the spot along with the trap party. At that time, the Complainant went to his shop and sat there. After sometime, the Appellant reached to the shop of the Complainant. A talk took place between the Complainant and the Appellant. Thereafter, the Complainant took out the tainted money from his pocket and gave the same to the Appellant. The Appellant kept the said money in the pocket of his pant and

thereafter he began to go away on his motorcycle. Thereafter, this witness reached to the spot and saw that the tainted money was lying down on the earth. In his cross-examination, this witness has admitted that he was standing 25-30 metres away from the spot. What talk took place between the Complainant and the Appellant, he could not hear.

15. Inspector M.K. Hiradhar (PW10) was the Investigating Officer of the offence in question. He has also admitted the fact that he could not hear the talk took place between the Complainant and the Appellant because he was standing far away from the spot.
16. Constable Krishna Pal Singh (PW4), who was driver of the jeep of the trap party, has stated that when the trap party proceeded towards the Appellant, he tried to move away on his motorcycle, but this witness caught him by catching the handle his motorcycle. At that time, the Appellant took out 4 currency notes from the right pocket of his pant and threw out the same.
17. A minute examination of the above evidence makes it clear that Mohd. Israil (PW9) has not supported the case of the prosecution. He has categorically stated that neither the Appellant made any demand for money from him nor did he even harass him therefor. This witness has only supported the case of the prosecution to the extent that he had given the tainted money to the Appellant. On reaching the trap party to the Appellant, the tainted notes were found to be fallen down on the earth. When the hands of the Appellant were washed in a solution of sodium carbonate, colour of the solution had turned into pink. But, as stated by this witness, he

himself had called the Appellant and given the tainted currency notes to the Appellant saying him that the said money was given by Moinuddin for him. When the Appellant asked the Complainant what for Moinuddin had given the said money for him, at that time, the trap party reached there and caught the Appellant. Though panch witness R.N. Singh (PW6) and Investigating Officer M.K. Hiradhar (PW10) have also stated that a talk had taken place between the Complainant and the Appellant and the Complainant had taken out the tainted money from his pocket and given the same to the Appellant and the Appellant had kept the same in the pocket of his pant, on being reached the trap party to the Appellant, the Appellant took out the money from his pocket and threw away the same. But, they have admitted the fact that what talk had taken place between the Complainant and the Appellant, they could not hear the same because they were standing far away from the spot. As stated by Complainant Mohd. Israil (PW9), he had given the tainted money to the Appellant saying him that the said money was given for him by Moinuddin. Thus, in these circumstances, even if it is considered that the tainted notes were recovered and seized from the Appellant, as stated by the Complainant, he had given the said money to the Appellant saying him that the same was sent for him by Moinuddin. In these circumstances, the Appellant had accepted the said money as bribe is not established.

- 18.** 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 Senior Counsel on behalf of the appellant.

36. The relevant para 7 from *B. Jayaraj case* reads thus: (SCC p. 58)

“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.”

19. 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 innocent. Carrying this enunciation further, it was expounded 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.”

20. 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 interpretation of 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.”

21. 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.”

- 22.** As a consequence of the above discussion, I find 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. The alleged demand and acceptance are not proved and the sanction accorded for prosecution of the Appellant is also not found to be a valid sanction. 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.
- 23.** In the result, 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