

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1296 of 1999

Radheshyam Dubey, son of Ramnarayan Dubey, Constable, P.S. Saraipali,
District Raipur, M.P. (now Chhattisgarh)

---- Appellant

versus

State of Madhya Pradesh through Special Police Establishment, Lokayukt
Office, Bhopal, Unit Raipur

--- Respondent

For Appellant	:	Mr. R.S. Marhas, Advocate
For Respondent/State	:	Mr. Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

20.6.2018

1. This appeal is directed against the judgment dated 26.4.1999 passed by the Special Judge under the Prevention of Corruption Act, 1947 (henceforth 'the Act of 1947'), Raipur in Special Criminal Case No.13 of 1991 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/-, 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 on the relevant date and time, the Appellant was posted as a Constable at Police Station

Saraipali. Nandlal, father of Complainant Bhojram (PW1) performed second marriage with Moharmati. On 6.9.1987, when Moharmati was not at her house and the house was locked by her, Complainant Bhojram also locked the door with a strong lock. On 8.9.1987, Kottwar Sakhiram (PW3) met with the Complainant at Saraipali and informed him that Munshi of police station had called him. When the Complainant reached the police station along with the Kotwar, he saw that Moharmati was already sitting there. The Appellant/Constable was also present there. The Appellant, asking the Complainant that why did he lock the door of the house of Moharmati, slapped him 4-5 times and also asked him to pay Rs.300/- saying that if he does not pay the money he will be sent to custody. The Complainant asked for time for payment of the money. On this, the Appellant asked him to bring the money on 10.9.1987. Since the Complainant did not want to give the bribe, he submitted a written complaint (Ex.P1) before Madan Gopal Pandey (PW8), Superintendent of Police, Lokayukt. The complaint was forwarded to Inspector Rajeshwar Singh (PW9). Rajeshwar Singh called panch witnesses Sheikh Hamidulla Khan (PW7) and Laxman Sarthi (not examined by the prosecution). The panch witnesses were introduced with the Complainant. They verified the complaint (Ex.P1) from the Complainant. The Complainant submitted 3 currency notes of Rs.100/- each. A preliminary panchnama (Ex.P2) was prepared in which numbers of the 3 currency notes submitted by the Complainant were noted. Constable Pothiram (PW4) smeared phenolphthalein powder on those 3 notes and thereafter the same were kept in the pocket of the shirt of the Complainant. A demonstration of the trap proceedings was also given in which the Complainant was

instructed how a signal will have to be given by him after giving the tainted notes to the Appellant. Different solutions of sodium carbonate were prepared. Other formalities regarding the trap proceedings were also completed and a trap party was constituted. At about 8:35 p.m., the trap party reached Saraipali. The Complainant went to Police Station Saraipali, but he returned and informed that the Appellant was not present in the police station. Then the Complainant was sent to the house of the Appellant. The Complainant went to the house of the Appellant, but he returned and informed that the Appellant had asked him to come with the money to Surjeet Hotel. The Complainant was sent to Surjeet Hotel along with the panch witnesses. The Complainant entered Surjeet Hotel. The Appellant demanded the bribe money. The Complainant handed over him the tainted money. The Appellant counted the tainted currency notes and kept the same in the pocket of his pant. The Complainant gave a signal to the trap party. The trap party entered the hotel and caught the Appellant. Hands of the Appellant were washed in a solution of sodium carbonate on which colour of the solution turned into pink. 3 currency notes of Rs.100/- each were recovered from the pocket of the pant of the Appellant. On being compared, the numbers of the recovered notes were matched with the numbers already noted in the preliminary panchnama (Ex.P2). The tainted currency notes were also dipped into a solution of sodium carbonate on which colour of the solution turned into pink. Those notes were seized vide Ex.P6. A panchnama of the trap proceedings was prepared vide Ex.P3. Dehati Nalishi (Ex.P8) was recorded. On the basis of Ex.P8, First Information Report (Ex.P9) was registered. The solutions used for the trap proceedings were sent to the Forensic

Science Laboratory for chemical examination vide Ex.P15. FSL report is Ex.P16. Sanction for prosecution (Ex.P17) 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 Appellant, the prosecution examined as many as 10 witnesses. Statement of the Appellant 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 demand and acceptance are not proved in this case. Complainant Bhojram (PW1) has been declared hostile by the prosecution itself and as per his Court statement, the person, who beat the Complainant and demanded money from him was not the Appellant, but it was some other Munshi of the police station. Though in paragraph 11, Bhojram (PW1) has stated that he had given the tainted money to the Appellant in the hotel, in paragraph 23, he has categorically stated that he had arranged the money for the other Munshi and had given the tainted money to the Appellant

for that Munshi. It was further argued that panch witness Sheikh Hamidulla Khan (PW7) has categorically stated in paragraph 4 that he did not witness the Complainant giving money to the Appellant nor did he hear their conversation. Other panch witness Laxman has not been examined by the prosecution. Therefore, considering the entire evidence adduced by the prosecution, the offence alleged against the Appellant is not proved and he deserves acquittal.

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 of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Bhojram (PW1) is the Complainant in this case. He has stated that his father had performed second marriage with Moharmati. Moharmati had gone away after locking the door of the house. After going away of Moharmati, he had put a strong lock on the said door. Thereafter, Kotwar Sakhiram (PW3) informed him that Munshi of the police station had called him. He went to the police station. There he saw that his step mother Moharmati was sitting. A Munshi was present in the police station. He took him inside and threatened that if he does not pay him Rs.300/-, he will send him to custody. Thereafter, the Appellant came there and he also abused this witness. This witness has been declared hostile by the prosecution. After he has been declared hostile, he has further stated that he was not aware of the name of the person who had demanded money from him. Later on, in the evening, he came to

know about his name to be Radheshyam. He has further stated that he had submitted the written complaint (Ex.P1), which was in his handwriting, but the same was written by him on being dictated by some other person. This witness has admitted that name of Radheshyam was told to him by the person who had dictated him the written complaint (Ex.P1). But, this witness has not disclosed the name of the person who had dictated him the written complaint (Ex.P1) nor has the prosecution examined that person. This witness has further stated that he had gone to the police station along with the trap party. At that time, the Appellant was not found there. Thereafter, he went to the house of the Appellant. The Appellant called him to Surjeet Hotel. He went to Surjeet Hotel. There, the Appellant asked him about the money. On this, he put the tainted money into the pocket of the pant of the Appellant. The Appellant put his hand into the pocket of his pant. At that time, the trap party entered the hotel and caught the Appellant. In paragraph 16 of his cross-examination, he has categorically stated that Munshi of the police station had demanded money from him in the police station. When he was returning from the police station, on the way, the Appellant met him and advised him to pay as was told by the Munshi otherwise he will be sent to custody. In paragraph 23 of his cross-examination, he has further admitted that he had arranged the money for that Munshi only.

9. Sheikh Hamidulla Khan (PW7) is one of the panch witnesses. He has stated that when he reached the hotel along with the trap party, at that time, the Appellant was caught and bribe money was recovered from the pocket of the pant of the Appellant. In paragraph 4 of his cross-examination, he has categorically stated

that he did not witness giving of bribe money nor did he hear any conversation between the Complainant and the Appellant. Other panch witness Laxman Sarthi has not been examined by the prosecution for the reasons best known to the prosecution.

10. Ushar (PW2) and Sakhiram (PW3) are the witnesses of the village of the Complainant. They have not stated anything regarding any demand made by the Appellant from the Complainant in their presence. Patwari Upendra (PW6) has stated that he had prepared spot-map (Ex.P5). Constable Pothiram (PW4) is the witness who had smeared phenolphthalein powder on the currency notes and prepared solutions of sodium carbonate. He has supported these facts.
11. Assistant Sub-Inspector R.B. Dubey (PW5) has stated that on 8.9.1987, the Appellant was on duty in the police station since 12:00 noon. Madan Gopal Pandey (PW8) is the witness who had received the written complaint (Ex.P1) submitted by the Complainant. Rajeshwar Singh (PW9) is the witness who was Investigating Officer of the offence in question. He has stated that he investigated into the offence and conducted the trap.
12. A.K. Singh (PW10), Assistant Grade-I, Law and Legislative Affairs Department has stated that the sanction for prosecution (Ex.P17) was accorded by the Additional Secretary, Law and Legislative Affairs Department.
13. A minute examination of the above evidence adduced by the prosecution makes it clear that as per the Court statement of Complainant Bhojram (PW1), the bribe money was demanded

from him by one Munshi of Police Station Saraipali not by the Appellant at the police station. Though as per statement of this witness, he gave the tainted money to the Appellant on his demand at Surjeet Hotel, it was given by him for the said Munshi only. Panch witness Sheikh Hamidulla Khan (PW7) has also stated that he did not witness giving of bribe money nor did he hear any conversation in this regard between the Complainant and the Appellant. Other panch witness Laxman has not been examined by the prosecution. There is nothing on record from which it could be established that demand of bribe was made by the Appellant and the Appellant had accepted the bribe money for himself. Even if it is considered for the sake of argument that the tainted money was recovered from the possession of the Appellant, Complainant Bhojram (PW1) has categorically stated that he had given the tainted money to the Appellant for giving the same to other Munshi. From the statement of the Complainant, it is also clear that the Complainant was not aware of the name of the Appellant and in his written complaint (Ex.P1) he had mentioned the name of the Appellant on being told by some other person who has not been examined by the prosecution. Looking to the entire evidence on record, I find that no offence 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 proved against the Appellant beyond reasonable doubt.

14. 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.

- 15.** 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.
- 16.** 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