

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.222 of 2009**

State of Chhattisgarh, Special Police Establishment,
Lokayukt Office, Bilaspur (CG)

---- Appellant**Versus**

Rishiraj Saxena, S/o. Harihar Saxena, Aged about 58 years,
R/o. At & Post 30, Vivekanand Nagar, University Road,
Gwalior (MP)

---- Respondent

For the appellant/State : Shri Vinod Tekam, Panel Lawyer
For the respondent : Ms. NT Quadri, Advocate on behalf of
Shri YC Sharma, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****25.10.2018.**

1. This appeal is directed against the judgment of acquittal dated 30.12.2004 passed by Additional Sessions Judge/Special Judge under Prevention of Corruption Act, 1988, Bilaspur (CG) in Special Case No.06/2002, wherein the said Court acquitted the respondent for the charges under Section 13(1)(d) read with Section 13(2) of the Act, 1988.

2. As per the prosecution case, the respondent was posted as Chief Assistant in the Office of Chief Engineer in Hasdeo Bango Project. It is alleged that some arrears bill of one KK Banjhalwar (PW-1), who was posted as Asst. Engineer in the said office, was pending and for clearing the said bill, the respondent demanded

illegal gratification of Rs.2000/- on 01.01.2001 and received the illegal gratification to the tune of Rs.500/-.

3. Case of the prosecution is based on the statement of complainant KK Banjhalwar (PW-1). There is no shadow witness before whom the demand was made by the respondent. Again there is no shadow witness on account of receipt of the illegal gratification by the respondent and therefore, it has to be seen whether the evidence of KK Banjhalwar (PW-1) is of a sterling quality or not. As per the earlier version of KK Banjhalwar (PW-1) he entered into the office near technical branch, he called the respondent and then they have conversation regarding arrears and then he paid the amount of illegal gratification to the respondent. This version was recorded by the investigating officer under Section 161 CrPC during investigation, but this witness KK Banjhalwar (PW-1) improved his version while deposing before the trial Court that the respondent after seeing this witness came from upper floor of the said office. Looking to this material contradiction, the trial Court opined that the version of the witness is under cloud. As per the version of KK Banjhalwar (PW-1) one Meenaram, Head Constable of Police saw the respondent throwing the currency notes from his pocket, but Head Constable Meenaram has admitted before the trial Court that he has not seen the respondent receiving the illegal gratification. As per the version of KK Banjhalwar (PW-1) currency notes were thrown by the respondent when he was caught hold by the members of the trap party, but, one member of the trap party namely RR Sonber

(PW-3) deposed that the respondent did not throw the currency notes given to him and when they searched the pocket of the respondent no currency notes were found in his pocket. As per the version of this witness, currency notes were lying here and there on the floor. Looking to the entire evidence adduced by the prosecution regarding throwing of the currency notes, the trial Court opined that the evidence is contradictory in nature and each witness has his own story.

4. It is not a case of the prosecution that the member of the trap party were known to him. If the members of the trap party is unknown there is no reason to throw the currency notes after seeing the unknown persons which establish the fact that the respondent was not aware of the fact that the persons coming towards the place of incident are the members of the trap party. Therefore, the trial Court opined that defence version regarding insertion of the currency notes by the complainant without consent of the respondent is one of the probable version, therefore, demand and acceptance of illegal gratification have not been proved beyond the shadow of doubt.

5. Unless receipt of illegal gratification is established presumption under Section 20 of the Act 1988 is not available to the prosecution. This Court has reassessed the entire evidence and after reassessing the evidence, this Court has no reason to substitute a finding recorded by the trial Court and is in agreement with the finding recorded by the trial Court, therefore, acquittal order passed by the trial Court is not liable to be reversed.

6. Accordingly, the appeal is liable to be and is hereby dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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