

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.539 of 2002

Judgment Reserved on : 18.7.2018

Judgment Delivered on : 5.10.2018

Nav Ratan Tiwari, aged about 32 years, S/o Somnath Tiwari, Upper Division Clerk in the Office of Block Education Officer, Farasgaon, District Bastar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Special Police Establishment, Lokayukta Office, Jagdalpur, Bastar Division, District Bastar, Chhattisgarh

--- Respondent

For Appellant : Shri Akhilesh Mishra, Advocate
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 22.4.2002 passed by the 1st Additional Sessions Judge/Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Jagdalpur, District Bastar in Special Case No.3 of 1998 convicting and sentencing the accused/Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the Act of 1988	Rigorous Imprisonment for 2 years and fine of Rs.5,000/-, in default additional Rigorous Imprisonment for 6 months
Under Section 13(1)(d) read with Section 13(2) of the Act of 1988	Rigorous Imprisonment for 2 years and fine of Rs.5,000/-, in default additional Rigorous Imprisonment for 6 months The jail sentences are directed to run concurrently

2. Admittedly, at the relevant time, the Appellant was posted as Upper Division Clerk in the office of Block Education Officer at Farasgaon and was working as a Cashier. At that time, Complainant Laxminath Netam (PW2) was posted as Assistant Teacher at Primary School Gattipalna. As per the prosecution story, Complainant Laxminath Netam lodged a complaint (Ex.P1) to the effect that he had applied for withdrawal from his Provident Fund Account on 27.8.1997, but the Appellant, who was Upper Division Clerk in the office of Block Education Officer, Farasgaon, demanded illegal gratification of Rs.1,000/-. On the basis of said complaint, he was handed over a tape recorder and a cassette. A panchnama (Ex.P2) was also prepared. The Complainant went with the tape recorder to the house of the Appellant. A conversation of demand of bribe was recorded in the tape recorder by the Complainant. The Appellant called the Complainant at his office with the bribe money on 8.9.1997. The Complainant submitted a written complaint (Ex.P3) along with tape recorder in which conversation between him and the Appellant was recorded. Panch witnesses Dinesh Utpreti (PW4) and B.K. Pandey (PW9) were called. They were told about the complaint. They met with the Complainant. They also listened the conversation recorded between the Complainant and the Appellant. A script (Ex.P4) of the recorded conversation was prepared. The Complainant had brought 10 notes of Rs.100/- each which were smeared with phenolphthalein powder. Necessary instructions were given to the Complainant. A demonstration of trap was also given to him. After making complete preparation of the trap, the Complainant and the trap team went to the office of the Appellant. Trap was done and currency notes were seized from the Appellant vide Ex.P9. The

trap party caught the Appellant. His hands were washed in the solution of sodium carbonate. Hands of the Complainant and B.K. Pandey, panch witness were also washed in different solutions of sodium carbonate. Colour of all the solutions turned into pink. Numbers of the recovered currency notes were compared with the numbers already noted in the preliminary panchnama. The numbers matched. Recovered notes were also dipped into a solution of sodium carbonate. Colour of the solution turned into pink. Un-numbered FIR (Ex.P13) and numbered FIR (Ex.P14) were recorded. All the solutions were sent to the FSL. FSL report is positive. Necessary sanction for prosecution was obtained vide Ex.P31 from the competent authority. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988 followed by framing of charges against him under the same provisions.

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. No witness has 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 demand and the acceptance are not proved beyond

reasonable doubt. The Appellant was not the person competent to order for withdrawal of the amount of General Provident Fund Part Final from the account of Complainant. The Trial Court ought to have held that the Appellant has been falsely implicated and that he could not have used his position as public servant for an act for which he was not competent to do. There are so many discrepancies in the prosecution case regarding recorded conversation, its source, its preservation, its lawful production and preparation of script also is not legally admissible. He further submitted that from the statements of the witnesses, it is clear that currency notes were not seized from the possession of the Appellant. Virtually currency notes were found near boundary wall inside one drainage. From the statements of Abhimanyu (PW1) and Himalay (PW3), it is also clear that the Complainant had deliberately left the tainted money on the table and the Appellant after taking up those notes had followed the Complainant asking him to take back his money. Thus, from the above, it is clear that there is no evidence regarding receipt of illegal gratification. He further submitted that there are contradictory statements of the witnesses regarding recovery of tainted money and different stories have been narrated by the prosecution witnesses in this regard. Therefore, the Trial Court ought to have held that the FIR has not been recorded correctly and the said discrepancies completely demolish the prosecution case. There is no concrete evidence available on record to establish that the voice recorded in the tape recorder during conversation with the Complainant was of the Appellant himself. As stated by Ramlal (PW10), script (Ex.P4) of the conversation was prepared by him in his hand writing in Hindi which was typed by Ms. Satya Acharya. That hand written script

has not been submitted by the prosecution. The typist Ms. Satya Acharya, who had typed the said script in Hindi, has also not been examined in the Trial Court. In these circumstances, it is also not proved that the script typed by Ms. Satya Acharya was the same which was prepared by Ramlal (PW10) in his hand writing. It also does not seem to be possible that the Appellant would demand illegal gratification for making sanction for which he was not authorised. Looking to the entire evidence, the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988 is not proved beyond reasonable doubt. The Appellant is, therefore, entitled to 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. He submitted that the demand and acceptance of the illegal gratification has properly been proved by the prosecution and, therefore, the Appellant has rightly been convicted and sentenced by the Trial Court.
7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. Complainant Laxminath Netam (PW2) has deposed that on 27.8.1997, he had discussed with the Appellant about withdrawal of Rs.15,000/- from his General Provident Fund for treatment of his wife. The Appellant asked the Complainant to bring Rs.1,000/-. Since the Complainant did not want to give bribe, he complained the matter vide Ex.P1. He has further stated that Lokayukta police gave him a blank cassette along with a tape recorder whose panchnama was prepared vide Ex.P2. He along with tape recorder

went to the house of the Appellant on 5.9.1997. There the Appellant told that he will work only on receiving Rs.1,000/- and he called on 8.9.1997 along with money. The Complainant recorded the whole conversation in the tape recorder. On 8.9.1997, he first went to the Lokayukta office. He gave a cassette, a tape recorder and 10 currency notes of Rs.100/- each. He also gave complaint (Ex.P3). He has further stated that panch witnesses Dinesh Utpreti (PW4) and B.K. Pandey (PW9) were called by Lokayukta. They read his complaint. They also heard the tape recording. A script of the conversation recorded in the tape recorder was prepared in their presence vide Ex.P4. Both panch witnesses Dinesh Utpreti (PW4) and B.K. Pandey (PW9) have supported the above statement of the Complainant. Constable Ramlal (PW10) has also supported the above statement of the Complainant and he has further deposed that on 8.9.1997 he had prepared a script of the conversation recorded in the tape recorder in Hindi in his own hand writing. He had got the script typed and the typed script is Ex.P4. In para 25 of his cross-examination, he has admitted the fact that he had given both the handwritten and typed scripts to the Investigating Officer R.S. Dhruw (PW12), but his handwritten script is not on record. As stated by this witness, his handwritten script was typed by Ms. Satya Acharya. This witness has further admitted the fact that at the time when he had heard the conversation in the tape recorder and written its script in his hand writing, Ms. Satya Acharya was not present there. She was in another room.

9. Complainant Laxminath Netam (PW2) has further deposed that the currency notes which he had submitted were smeared with

phenolphthalein powder by Guniram (not examined). The tainted notes were kept in his shirt's pocket and he was given a demonstration of the trap proceedings. A panchnama thereof was prepared vide Ex.P6. Thereafter, the trap team along with panch witnesses went for Farasgaon by a jeep. The Complainant entered the office room of the Appellant and asked the Appellant about completion of his work but the Appellant told him that his work has not been completed. On being asked by the Appellant whether he had brought money, the Complainant replied him that he had brought the money. Thereafter, the Complainant gave the tainted money in the hand of the Appellant. The Appellant counted those currency notes. At that time, Peon Abhimanyu (PW1) entered the room. The Appellant saying the Peon that it was his payment tried to give the tainted currency notes to him.

10. Abhimanyu (PW1) has deposed that when he entered the room, at that time, the Complainant had put currency notes of Rs.100/- on the table. At that time, what conversation went on between the Complainant and the Appellant, he did not hear. He has further deposed that the Appellant took the currency notes in his hand and told him (Abhimanyu) that the same was his payment.
11. Complainant Laxminath Netam (PW2) has further stated that he came out and gave a signal to the trap party. At that time, the Appellant came behind him and he started throwing away the currency notes which he had with him. At that time, the trap party reached there and caught the hand of the Appellant. The hands of the Appellant and the Complainant were washed in different solutions of sodium carbonate. Colour of those solutions turned

into pink. In paragraph 9 of his cross-examination, he has admitted the fact that as soon as he came out, the Appellant came behind him saying “*Netam Netam*”. In paragraph 10 of his cross-examination, this witness has stated that when 2 members of the trap team caught the Appellant, the Appellant told them that he had not taken any money. This witness has further stated that the currency notes which were kept by the Appellant in his hand were taken back from the hand of the Appellant by the 2 members of the trap team and thereafter, those notes were seized from the Appellant. Abhimanyu (PW1), in paragraph 9, has stated that the notes were lying near the gate where the Appellant was caught and the persons who had caught the Appellant had asked the Appellant to catch those currency notes in his hand.

12. Himalay (PW3) has stated that he was also present at the time of incident. He has deposed that when the Complainant came out of the room of the Appellant at that time the Appellant saying that “Netam Ruk Ruk apna paisa leja in noton ko table par kaise rakh diye” came out behind the Complainant, but the Complainant did not stop and went ahead.
13. Dinesh Utpreti (PW4), one of the panch witnesses, has stated in paragraph 4 of his examination that he had reached the office after sometime. At that time, he had seen that Lokayukta Officials had caught the hand of the Appellant and he was told that the tainted notes were lying near the drainage beside the boundary. Thereafter, the notes were taken up and the Appellant had said that he had not received the tainted notes. In paragraph 7, this witness has further stated that when they reached the spot, he had

seen that police officials were taking up the notes from inside the drainage and thereafter after counting the notes the police officials kept the notes with them. In paragraph 10 of his cross-examination, he has categorically stated that the police officials had taken up the notes from inside the drainage.

14. Another panch witness B.K. Pandey (PW9) has stated that when they reached the spot, at that time, the Appellant was throwing the tainted notes of Rs.100/- near the gate of boundary wall and he had taken up those thrown notes. In paragraphs 28 and 29, he has stated that he had taken up the notes from inside the drainage and he had also counted those notes there. As per statement of Constable Ramlal (PW10), the tainted notes were found outside the boundary wall.
15. Kishore (PW6) is the witness who had caught the hand of the Appellant at the spot. He has deposed that when the Complainant, by itching his head, gave a signal, at that time, this witness and Som Singh entered the office. At that time, the Appellant was throwing away the currency notes. At that time, he and Som Singh caught the hands of the Appellant. He has further stated that when they caught the hands of the Appellant, at that time, the Appellant had already thrown away all the currency notes and no note was in his hands. This witness has also admitted the fact in paragraph 6 that a drainage was constructed around the office near boundary wall and tainted notes were recovered from inside the drainage.
16. Patwari J.S. Verma (PW5) prepared spot-map (Ex.P8). He has admitted the fact that a drainage was constructed near the boundary wall.

17. Hirasingh (PW7) was Block Education Officer. As per his statement, the Appellant was posted under him as a Clerk and was looking after the work of Establishment and after preparation of GPF bills, their encashment was his duty. In paragraph 4 of his cross-examination, this witness has stated that the work of the Appellant was only to forward the applications of the Applicants to the office of the Collector.
18. S.R. Yuvane (PW8), S.D.O. (Police)/Deputy Superintendent of Police, Lokayukta is the witness who was also one of the members of the trap party. Inspector R.S. Dhruw (PW12) is the Investigating Officer. He investigated the offence in question.
19. On minute examination of the evidence adduced by the prosecution, it is clear that at the relevant time, the Appellant was posted as a Clerk in the office of Block Education Officer, Farasgaon. Complainant Laxminath Netam (PW2) was Assistant Teacher at Primary School Gattipalna. Allegedly, the Appellant had demanded bribe of Rs.1,000/- from the Complainant for completing the work. As stated by the Complainant, on 5.9.1997, he along with tape recorder had gone to the house of the Appellant. At that time, the Appellant had made demand of bribe of Rs.1,000/-. He also recorded their conversation in the tape recorder and thereafter he went to the office of Lokayukta and submitted the tape recorder along with Rs.1,000/-. Panch witnesses were called and in their presence the conversation recorded in the tape recorder was listened. Thereafter, Constable Ramlal (PW10) prepared a script of the conversation recorded in the tape recorder and the said script was got typed by Ms. Satya Acharya. As also stated by

Ramlal, he had written a script in his own hand writing and he had given the said handwritten script to Investigating Officer R.S. Dhruw (PW12), but the said hand written script has not been placed on record by the prosecution. Ms. Satya Acharya was not present in the room where Ramlal was writing the script. Thus, Ms. Acharya did not listen the conversation recorded in the tape recorder. The hand written script which was got typed has not been placed on record and the prosecution has not explained why the said hand written script was not placed on record. From the evidence, it is also clear that as stated by Abhimanyu (PW1) and Himalay (PW3), when Abhimanyu had reached inside the room of the Appellant, at that time, the Complainant was present there and he, in presence of this witness, had put currency notes of Rs.100/- on the table and when the Complainant began to go out of the room, the Appellant went behind the Complainant saying "*Netam Netam*" and as stated by Himalaya (PW3), the Appellant, saying at that time that how the notes were kept on the table, went behind the Complainant saying that "*Netam Netam Ruk Jao Apna Paisa Le Jao*".

- 20.** With regard to recovery of the tainted money, Kishore (PW6), who first caught the hands of the Appellant, has admitted that when he caught the hands of the Appellant, at that time the currency notes were lying in the drainage. Panch witness B.K. Pandey (PW9) has also deposed that the currency notes were lying in the drainage from where he had taken out those notes. Another panch witness Dinesh Utpreti (PW4) has also admitted the fact that when he reached the spot, at that time the police officials were taking up the notes from inside the drainage. Complainant Laxminath Netam

(PW2) has stated that notes were in the hand of the Appellant and the same were seized from the hand of the Appellant itself. Abhimanyu (PW1) has stated that the Appellant was caught along with the notes at the gate. As stated by him, the notes were lying near the gate and the Appellant was asked to take up those notes and the Appellant had taken up those notes on being asked. From the above, it is also clear that all the prosecution witnesses have given contradictory statements regarding place of finding of the tainted currency notes. Thus, it is doubtful that recovery of the currency notes were made from the possession of the Appellant. Regarding the turning of colour of the solution of sodium carbonate into pink after being washed the hands of the Appellant into the said solution, it is stated by Abhimanyu (PW1) that after putting the currency notes by the Complainant on the table, the Appellant had taken up those notes and went behind the Complainant asking him "Netam Netam Ruk Jao Apne Paise Le Jao". Abhimanyu (PW1), in paragraph 9, has also stated that the tainted notes were lying near the gate and the Appellant had taken up those notes on being asked by the police officials. Therefore, turning of the colour of solution of sodium carbonate in which the hands of the Appellant were washed is natural. Even if it is considered for the sake of argument that the Appellant had made any demand for illegal gratification, from the above evidence adduced by the prosecution it is not established beyond reasonable doubt that he accepted the illegal gratification. It is also not established that the tainted money was recovered from his hands. I find that demand and acceptance of bribe by the Appellant is doubtful. Mere recovery of tainted currency notes from the possession of the Appellant is not enough to prove the guilt.

21. In **2015 (4) Crimes 308 (SC) (N. Sunkanna v. State of Andhra Pradesh)**, it was held that unless demand of illegal gratification is established, offence under Section 7 of the Act of 1988 is not proved. Therefore, question of its acceptance will not arise. Mere recovery of tainted money from the possession of the Appellant is not enough.

22. In **2015 CriLJ 4670 (SC) (P. Satyanarayana Murthy v. Dist. Inspector of Police)**, the Supreme Court observed thus:

“21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

23. In **2015 CriLJ 3928 (Dashrathbhai Vadilal Nayak v. State of Gujarat)**, it is observed by the Gujarat High Court thus:

“11. This Court in “Kanubhai Kantibhai Patel v. The State of Gujarat”, 1998 (1) GLH 924 (H.R. Shelat, J.), held that the 'demand' and 'acceptance' being vital ingredients, they must be proved by the prosecution. In “B. Jayraj v. State of Andhra Pradesh” (2014) 13 SCC 55, the original accused-appellant came to be prosecuted on the basis of a complaint filed by PW-2. Later on, PW-2 turned hostile and despite that trial Court convicted the

accused-appellant on the basis of the evidence of panch witness (PW-1) and recovery of tainted currency notes from appellant-accused. The Apex Court, hence, hold that once the original complainant (PW-2) turned hostile and no other person, who had witnessed the transaction between the complainant and the accused-appellant, was examined, the contents of the complaint cannot be relied on and in absence of proof of demand for illegal gratification, mere recovery of tainted currency notes from the accused-appellant did not establish commission of offence, and thereby, set aside the conviction of the accused-appellant. In the case on hand also, from the material on record, the demand on the part of the accused is not clearly coming out. If, we go by the omissions and contradictions in the complaint, then, there is not demand of Rs.500/-. On the contrary, it is the complainant, who, himself, stated that he had come with money. However, why he had come with money, for what purpose, nothing is coming on record. Further, the complainant, himself, does not possess a sterling personality, and therefore, his evidence cannot be believed in the absence of corroboration. Therefore, the submission of Ms. Mehta that there are no omissions or contradictions in the evidence of the witnesses and that the learned trial Court rightly convicted the accused and that the demand, acceptance and recovery are proved cannot be accepted, as from the record it is clear that the apron was not put on the by accused-doctor, but, it was hanging on the peg. Thus, the case put forward by the prosecution cannot be accepted. Once, the edifice is gone, the entire case of the prosecution falls on the ground. Hence, the accused is entitled to be given him the benefit of doubt and the appeal requires to be allowed.”

- 24.** Therefore, in my considered opinion, the offence alleged against the Appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988 is not proved beyond reasonable doubt. Looking to the facts and circumstances of the case and the evidence adduced by the prosecution, the Appellant is entitled to get benefit of doubt.

- 25.** In the result, the appeal is allowed. The judgment under challenge is set aside. The Appellant is acquitted of the charges framed under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- 26.** 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.
- 27.** 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