AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.341 of 2004

Judgment Reserved on : 9.8.2018

Judgment Delivered on : 2.11.2018

Mohammad Hanif, S/o Late Shri Rehman Ali, age 52 years, Occupation Patwari, R/o Village Pondi (Bachra), R.I. Circle Khadgawan, District Korea, Chhattisgarh — **Dead, through L.Rs.:**

1. Fahiman Nisha, W/o Late Mohammad Hanif, aged about 63 years,
2. Sardar Mirza, S/o Late Mohammad Hanif, aged about 38 years,
3. Mohammad Umar Sunni, S/o Late Mohammad Hanif, aged about 32 years,

All R/o Village Bhanwarahi, Tahsil Bhaiyathan, District Surajpur, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through Special Police Establishment, Lokayukt, Bilaspur, Chhattisgarh

--- Respondent

For Appellants	:	Shri D.K. Gwalre, Advocate
For Respondent/State	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 29.3.2004 passed by the 1st Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Surguja at Ambikapur in Special Criminal Case No.1 of 2003 convicting and sentencing accused/Appellant Mohammad Hanif as under:

Conviction	**Sentence**
Under Section 13(2) of the Act of 1988	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation

2. During pendency of the instant appeal, accused/Appellant Mohammad Hanif died and in compliance of the order dated 19.9.2016 his above-named three legal representatives have been brought on record to prosecute the present appeal.

3. Case of the prosecution, in brief, is that on the relevant date and time, accused/Appellant Mohammad Hanif (dead) was working as a Patwari of Patwari Circle No.24 at Village Pondi (Bachara), R.I. Circle Khadgawan, Tahsil Manendragarh, District Korea. Complainant Rajendra Jaiswal (PW12) was an agriculturist of the said area. He wanted to obtain certified copy of Khasra and B1 of his agricultural land bearing Khasra No.1565 and 1566. For this, he made contact with the accused. The accused demanded Rs.800/- from him and also obtained Rs.500/- immediately from him and asked him to come along with remaining Rs.300/- at his residence at Village Pondi on 17.4.2002. Since he did not want to give the money to the accused, he made a written complaint (Ex.P3) before J.K. Thorat (PW3), Superintendent of Police, Lokayukt. He forwarded the complaint (Ex.P3) to S.K. Bramhe (PW15), Deputy Superintendent of Police. S.K. Bramhe (PW15) verified the complaint. Thereafter, he recorded First Information Report (Ex.P7). Panch witnesses P.N. Jangde (PW8) and Ravindra Kumar Singh (PW14) were called through Protocol Officer R.K. Sahu. Both the panch witnesses reached in the office of Lokayukt on 16.4.2002 where they met with the Complainant and verified his complaint (Ex.P3). The Complainant submitted 3 currency notes in the denomination of Rs.100/- each. Preliminary panchnama (Ex.P11) was prepared in which numbers of those 3 currency notes were noted. Those notes were smeared with phenolphthalein powder by Constable Dhaniram (PW1). The tainted currency notes were kept in the right pocket of the pant of the Complainant. A demonstration was also given regarding trap proceedings. Different solutions of sodium carbonate were also prepared. One tape-recorder and one cassette were also given to the Complainant and he was instructed to record conversation in the said tape recorder. On 17.4.2002, in the midnight, the trap party proceeded for the house of the accused. They reached Village Pondi in the morning at about 9:00 – 9:30 a.m. The Complainant was asked to get down of the vehicle first. Thereafter, other members of the trap party took their places as already discussed between them. The Complainant went to the house of the accused. There, 2 people were sitting and talking with the accused. After their coming out, the Complainant entered the room of the accused. The Complainant demanded copies of Khasra and B1 of his agricultural land from the accused. The accused asked him about the bribe money of Rs.300/-. The Complainant took out the tainted money of Rs.300/- and gave the same to the accused. The accused received the money in his hand and kept the same in his vest (*baniyan*). The Complainant came out and gave a signal to the trap party. The trap party entered the room of the accused. They caught the accused. The accused took out the tainted money from his vest and gave the same to the trap party. A test of reaction of phenolphthalein powder smeared on the currency notes was conducted by using different solutions of sodium carbonate in which colour of all the solutions turned into pink on washing hands and vest of the accused and on dipping the tainted notes. Numbers of the tainted notes were compared with the numbers already noted in the preliminary panchnama (Ex.P11). The numbers matched. The micro cassette was seized from the Complainant vide Ex.P15. Transcription (Ex.P14) of the conversation recorded in the cassette was prepared. The documents B1 and Khasra Naksha which were given by the accused to the Complainant were seized from the Complainant vide Ex.P16. A panchnama of the complete proceedings was prepared vide Ex.P17. The used solutions and the seized currency notes were sent to the FSL vide Ex.P4. FSL report is Ex.P28. The report is positive. Necessary sanction (Ex.P22) for prosecution of the accused was obtained from the sanctioning authority. Numbered First Information Report (Ex.P21) was registered. On completion of the investigation, a charge-sheet was filed against the accused for offence punishable under Sections 7, 13(1)(d), 13(2) of the Act of 1988 followed by framing of charges against him under the same provisions.

4. In order to prove the guilt of the accused, the prosecution examined as many as 15 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. 2 witnesses have been examined in his defence. It was the defence of the accused that he never demanded or accepted any bribe. Due to a previous enmity, Revenue Inspector Hanuman Prasad Dewangan with the connivance of the Complainant, falsely implicated him in the case.

5. After trial, the Trial Court convicted and sentenced the accused as mentioned in the first paragraph of this judgment. Hence, this appeal.

6. Learned Counsel appearing on behalf of the legal representatives of accused/Appellant Mohammad Hanif submitted that the alleged demand is not proved. Though Complainant Rajendra Jaiswal (PW12), in his Court statement, has stated that when he entered the house of the accused, the accused demanded bribe money of Rs.300/-. On being demanded, the Complainant gave the tainted money which was accepted by the accused and at that time, conversation of the Complainant and the accused was recorded in a micro cassette. But, the transcription (Ex.P14) of the said conversation does not contain any such demand. Therefore, demand of bribe money is not established. He further submitted that from the statement of Sarpanch Shyamlal (DW2), it is also clear that on 16.4.2002 itself, the Complainant had obtained B1, Khasra and Naksha, which is also established from the entries of Ex.D6 which is a register maintained by the accused for issuance of copies of revenue documents. Therefore, on 17.4.2002, the accused would have called the Complainant and accepted bribe money from him for giving him the aforesaid revenue documents is not acceptable. He further submitted that Revenue Inspector Hanuman Prasad Dewangan and accused/Appellant Mohammad Hanif were at inimical terms, therefore, the accused has been falsely implicated in the instant case at the instance of Revenue Inspector Dewangan. Thus, the conviction of the accused deserves to be set aside.

7. On the other hand, Learned Counsel appearing for the State opposed the above arguments and supported the impugned judgment of conviction and sentence.

8. I have heard Learned Counsel appearing for the parties and perused the record minutely.

9. It is not in dispute that on the relevant date and time, the accused (dead) was working as a Patwari of Patwari Circle No.24 at Village Pondi (Bachara), R.I. Circle Khadgawan, Tahsil Manendragarh, District Korea. Complainant Rajendra Jaiswal (PW12), in his Court statement, has stated that on 14.4.2002, he went to the Patwari (the accused) for obtaining copies of B1 and Khasra of his agricultural land. At that time, the accused demanded Rs.500/-. He gave him Rs.500/-. He has further deposed that the accused called him at his house along with remaining money of Rs.300/- on 17.4.2002 between 8:00 – 10:00 a.m. Since he did not want to give the money to the accused, he went to the office of Lokayukt and submitted a written complaint (Ex.P3) to the Superintendent of Police, Lokayukt. J.K. Thorat (PW3), Superintendent of Police, Lokayukt has supported the above statement of Complainant Rajendra Jaiswal (PW12) and has stated that the Complainant had first made oral complaint and on being asked to submit his complaint in writing, he made the written complaint (Ex.P3). He forwarded the complaint (Ex.P3) to Deputy Superintendent of Police S.K. Bramhe (PW15). Complainant Rajendra Jaiswal (PW12) has further stated that he went to the office of S.K. Bramhe (PW15). Thereafter, panch witnesses were called. The panch witnesses were introduced with him. The panch witnesses verified the complaint (Ex.P3) from him. Thereafter, he took out 3 currency notes each in the denomination of Rs.100/- and submitted the same to panch witness Ravindra Singh (PW14). He noted the numbers of those notes. Constable Dhaniram (PW1) smeared phenolphthalein powder on those notes and thereafter kept those tainted notes in the right pocket of his pant. A demonstration of trap proceedings was also given to him and the panch witnesses. Thereafter, he was given a micro cassette and a tape recorder which he kept in the pocket of his pant. A preliminary panchnama of the aforesaid proceedings was prepared vide Ex.P11. S.K. Bramhe (PW15), in his Court statement, has also stated in similar fashion. Both panch witnesses, P.N. Jangde (PW8) and Ravindra Singh (PW14) have also stated in similar fashion. Constable Dhaniram (PW1) has also stated that he had smeared phenolphthalein powder on the currency notes submitted by the Complainant.

10. S.K. Bramhe (PW15), in his Court statement, has further stated that after preparation of the preliminary panchnama (Ex.P11), in the night at about 1:30 – 2:00 a.m., he along with trap team proceeded towards Village Pondi. On reaching there, they stopped 1 – 1½ Kms. before the spot. They again inculcated the trap proceedings to the Complainant. Thereafter, they sent the Complainant to the house of the accused. Behind him, panch witness Ravindra Singh (PW14) was sent. Rest of the members of the trap party got down near the temple and took their places. He has further deposed that the Complainant, after about ½ hour came out of the house of the accused and gave a signal to the trap party. On this, the trap party entered the house of the accused.

Hands of the accused were caught and got washed in a solution of sodium carbonate on which colour of the solution turned into pink. On being asked from the accused that where was the tainted money kept by him, he replied that the same was kept in his vest (*baniyan*). Panch witness Ravindra Singh (PW14) took out the said tainted money from inside the vest of the accused. The recovered tainted notes, hands of panch witness Ravindra Singh (PW14) and hands and vest of the accused were washed/dipped into different solutions of sodium carbonate on which colour of all the solutions turned into pink. Numbers of the tainted currency notes were compared with the numbers already noted in the preliminary panchnama (Ex.P11). The numbers matched. The tape recorder which was given to the Complainant for recording conversation of the Complainant and the accused was taken back from the Complainant and was run in presence of the panch witnesses. Transcription (Ex.P14) of the conversation was prepared. The audio cassette was seized vide Ex.P15. Panch witnesses P.N. Jangde (PW8) and Ravindra Singh (PW14) and Complainant Rajendra Jaiswal (PW12) have also stated in similar fashion.

11. However, panch witness P.N. Jangde (PW8), in paragraph 14, has admitted the fact that when the trap party entered the room of the accused and the accused was caught, at that time, the accused had said that he had not taken any money and had not done anything. The accused had also said that he had not received any bribe money. The Complainant had given him reward money (*kharcha*). This witness has further admitted in paragraph 39 that he did not witness giving or taking of money between the

Complainant and the accused.

12. Other panch witness Ravindra Singh (PW14) has also admitted the fact in paragraph 29 of his cross-examination that at that time, the accused had said that he had not demanded any money nor did he create any pressure therefor and the Complainant had given him the said money at his own will.

13. Complainant Rajendra Jaiswal (PW12), in his Court statement, has further deposed that he entered the house of the accused and switched on the tape recorder in the courtyard of the house of the accused and thereafter he entered the house. Thereafter, he asked the accused to give him the copies of the B1 and Khasra. The accused gave him those copies and demanded money from him. On this, he took out the tainted money of Rs.300/- from his pant and gave the same to the accused. S.K. Bramhe (PW15) has stated that a transcription (Ex.P14) of the micro cassette was prepared at the spot before panch witnesses. Both the panch witnesses have also supported this fact. However, S.K. Bramhe (PW15) has admitted the fact in paragraph 50 of his statement that the accused demanded Rs.300/- for preparing copies of Khasra and B1, but mention of the same is not made in the transcription (Ex.P14). Panch witness Ravindra Singh (PW14), in his cross-examination, in paragraph 29, has also stated that after hearing the tape recorder it did not seem that the accused had made any specific demand nor did he create any pressure therefor. After hearing the conversation, it appeared that the Complainant himself had given the tainted money to the accused at his own will. The said transcription (Ex.P14) is available on record. From a bare perusal of the transcription makes it clear that there was no conversation between the Complainant and the accused that the accused demanded any specific money from the Complainant and the money given by the Complainant to the accused was a bribe money.

14. Patwari Jyoti Prakash Dubey (PW4), who prepared spot-map (Ex.P6) has admitted the fact that the accused and Revenue Inspector Dewangan were not at good relation and they were at inimical terms. This witness has also stated in paragraph 11 of his cross-examination that according to the entries of Nakal Panji (Ex.D5 and D6), the Complainant had obtained the copies and had also signed in the said register on 16.4.2002.

15. In paragraph 27 of his cross-examination, Sudan Ram Yadav (PW7), who was one of the members of the trap party, has admitted that the accused was frequently telling that he was deliberately being implicated in a false case. Patwari Jyoti Prakash Dubey (PW4) has also stated that Revenue Inspector Dewangan and the accused were at inimical terms and Revenue Inspector Dewangan had also stopped salary of accused Hanif many times. Though Complainant Rajendra Jaiswal (PW12) has denied the suggestion made before him that at the time of making complaint, the said Revenue Inspector was with him, in paragraph 18 of his cross-examination he has admitted the fact that before making the complaint he had informed Revenue Inspector Dewangan that the accused was demanding bribe. He has also admitted the fact that when he reached Bilaspur for making the complaint, Revenue Inspector Dewangan met him at the bus-stand and he had taken him to show the office of the Lokayukt.

16. Mohd. Islam (DW1) has stated that at the time of incident, he was sitting in the house of the accused. Sarpanch Shyamlal (DW2) and other villagers were also sitting there. At that time, the Complainant entered the house and demanded copies. The accused told him that he had already given him the copies 1 day before, therefore, what other copies were required by him. Then the Complainant went out of the room and while returning from the room, he forcefully tried to put money inside the vest (*baniyan*) of the accused. Sarpanch Shyamlal (DW2) has also supported the above statement of DW1.

17. If I proceed to consider the evidence adduced by the prosecution regarding proof of demand and acceptance of illegal gratification by the accused, in this case, as stated by Complainant Rajendra Jaiswal (PW12), at the time of entering the house of the accused, before entering the room, he switched on the tape recorder and thereafter he entered the room. Thereafter, he asked for the copies of Khasra, B1 etc. of his agricultural land from the accused. On this, the accused demanded money. Thereafter, he gave the tainted currency notes to the accused in his house. The accused kept those tainted notes inside his vest. But, these facts are not mentioned in his case diary statement (Ex.D3). As per the prosecution story and as stated by S.K. Bramhe (PW15), on the spot, he seized one micro cassette and one tape recorder from the Complainant. Before the panch witnesses, transcription (Ex.P14) was prepared. A bare perusal of the said transcription reveals that there is nothing in the said transcription which could indicate that the accused made any demand for money for providing the copies desired by the Complainant. In paragraph 50, S.K. Bramhe (PW15) has also admitted this fact that in the transcription (Ex.P14), this fact is not mentioned. Panch witness P.N. Jangde (PW8) has also admitted the fact that he did not witness giving or taking of money between the Complainant and the accused nor did he see any money in the house of the accused. He has also admitted the fact that when they entered inside the house of the accused, at that time, the accused said that he had not done anything, he had not received anything, he had been given only reward money by the Complainant. Other panch witness Ravindra Singh (PW14) has also admitted that when they entered inside the house of the accused, at that time, the accused was saying that the Complainant had given him money at his own will and he had not made any demand. This witness has also admitted that the transcription (Ex.P14) was read by him and he had listened the conversation between the Complainant and the accused. He has also admitted that from hearing the conversation, it appeared that the accused had not made any demand nor did he pressurise therefor and it appeared that the Complainant had given the money to the accused at his own will.

18. In order to constitute an offence under Section 7 of the Prevention of Corruption Act of 1988, 'proof of demand' is a *sine qua non*. In **(2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh)**, the Supreme Court held as under:

> "**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 I C.M. Sharma v. State of A.P. (2010) 15 SCC 1 : (AIR 2011 SC 608) and C.M. Girish Babu v. CBI (2009) 3 SCC 779 : (AIR 2009 SC 2022)."

The same view was reiterated by the Supreme Court in **(2015) 10 SCC 152 (P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh)**.

19. In **AIR 2016 SC 2045 (V. Sejappa v. State by Police Inspector Lokayukta, Chitradurga)**, it was also held by the Supreme Court as under:

> "**18**. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 28 of the Act.
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> **19**. After referring to Surajmal v. State (Delhi Administration) (1979) 4 SCC 725 : (AIR 1979 SC 1408), in C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779 : (AIR 2009 SC 2022, para 16), it was held as under:
>
>> "18. In Suraj Mal v. State (Delhi Admn.) (1979) 4 SCC 725 : (AIR 1979 SC 1408), this Court took the view that (at SCC p. 727, para 2) (at p. 1409, para 2 of AIR) 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."

In State of Kerala and Anr. V. C.P. Rao (2011) 6 SCC 450 : (AIR 2012 SC (Supp) 393, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

20. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in Mukut Bihari and Anr. v. State of Rajasthan (2012) 11 SCC 642 : (AIR 2012 SC 2270, para 8), wherein it was held as under:

> "11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with reward to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by brining on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as

> referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational fats must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

20. In the light of above view of the Supreme Court, in the instant case it is clear that though tainted money was recovered from the accused, as discussed above, from the evidence led by the prosecution it is clear that the accused had demanded money for providing the desired copies to the Complainant or he had accepted any bribe therefor from the Complainant is not established. Apart from this, as stated by Sarpanch Shyamlal (DW2), the Complainant had already obtained the desired copies from the accused in his presence on 16.4.2002. Patwari Jyoti Prakash (PW4), in his cross-examination, in paragraph 11, has admitted the fact that according to the entry dated 16.4.2002 made in the Nakal Panji (Ex.D5 and D6), the Complainant is shown therein that he had received certain documents Khasra and B1 from the accused on 16.4.2002 and signature of the Complainant is also present there. This witness has also admitted the fact that there was a previous enmity between the accused and Revenue

Inspector Dewangan. Naib-Tahsildar Jogiram Rathiya (PW10) has also admitted that there was a dispute between them regarding revenue record of the Complainant. He has also admitted the fact that there was a dispute between the accused and Revenue Inspector Dewangan regarding the area of the land of the Complainant and Revenue Inspector Dewangan had also got the payment of the accused stopped. Complainant Rajendra Jaiswal (PW12), in paragraph 18, has also stated that the accused had demanded bribe and in this regard he had told to Revenue Inspector Dewangan. He has also admitted the fct that he had not seen the office of Lokayukta and Revenue Inspector Dewangan had met him at the bus stand and along with Revenue Inspector Dewangan he had gone to the office of the Lokayukt. From the above, it seems that Revenue Inspector Dewangan was taking interest in the matter of the Complainant and he had also gone to the office of the Lokayukt along with the Complainant. From the evidence on record it is clear that the desired copies had already been obtained by the Complainant from the accused on 16.4.2002. Therefore, it is suspicious that the Complainant would have gone to the accused again for obtaining the same copies on 17.4.2002 and the accused would have made any demand for money for providing those copies to the Complainant. From the above, possibility of false implication of the accused in the instant case by Revenue Inspector Dewangan and the Complainant cannot be ruled out due to the previous enmity between Revenue Inspector Dewangan and the accused.

21. From the above discussion, in my considered opinion, the prosecution has not been able to prove that the accused had made any demand for bribe money or he had accepted any money as bribe. There is also a possibility of false implication of the accused by Revenue Inspector Dewangan and the Complainant due to the previous enmity between the accused and Revenue Inspector Dewangan. Therefore, the prosecution has not been able to prove its case against the accused beyond reasonable doubt.

22. In the result, the appeal is allowed. The judgment of conviction and sentence under challenge is set aside. Accused/Appellant Mohammad Hanif (dead) is acquitted of the charge framed against him.

23. 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

Gopal